

"Right to Inclusive of PWDs in the Gambia- A call for Inclusive Education in Secondary Education in the Gambia"

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Research for YARD
on Pertinent
Disability Rights in
The Gambia

1.0 Background: Right to Education of Persons with Disabilities in the Global Context

Inclusive education as opposed to exclusion, integration and segregation entails a systematic approach to education which seeks to reform the learning and teaching process in terms of content, method and approach in education to overcome the multidimensional barriers to the education of all particularly persons with disabilities.¹ This is premised on the overarching vision of participatory and equitable learning experience of all persons with due regards to their individual differences.² The benefit of inclusive education allows children with disabilities educated in mainstream schools have a better chance in the labour markets.³ Numerous efforts at the global and regional levels have been garnered to respond to the challenges faced by people with disabilities in their enjoyment of the right to quality and relevant education.

Shifting from welfare approach, persons with disabilities are no longer viewed as objects of charity with no rights. They are now recognized as right holders in international law with the right to education on an equal basis with others without discrimination. Consequently, there is now a plethora of conventions and declarations that recognize the right to education of persons with disabilities. Article 23(3) of the Convention on the Rights of the Child⁴ recognizes and obliges state parties to the convention to provide effective access to education to children with disabilities. Article 3(5) of the World Declaration on Education for All (1990)⁵ also positions the right to education of persons with disabilities as an integral part of the mantra for the right to education. The impetus, however, for inclusive education for persons with disabilities started taking shape in 1994 with the adaption of the

¹ B Deco Gauthier 'The Right To Inclusive Education According To Article 24 Of The Un Convention On The Rights Of Persons With Disabilities: Background, Requirements And (Remaining) Questions' (2014) Vol. 32/3 Netherlands Quarterly of Human Rights, 263–287

² Ibid (n1 above)

³ Ibid (n 1 above)

⁴ Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

⁵ The World Declaration on Education for All adopted by the World Conference on Education for All (Thailand, March 1990), served as useful guide to governments, international organizations, educators and development professionals in designing and carrying out policies and strategies to improve basic education. This blueprint factored in the right to education of persons with disabilities. It is important to note that this document also reflects a global consensus on the right to basic education. However, this document is not disability specific.

Salamanca Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action.⁶

After giving context to the general framework of disability rights protection generally, this paper will critically analyse the juridical implications of article 24 of the Convention on the Rights of Persons with Disabilities with a focus on inclusive education for persons with disabilities. The paper will be further limited to basic and secondary education. It is also important to note that, the research will utilize the available literature, relevant domestic legislations, policy documents and reports of NGOs on inclusive education at the basic and secondary education level to analyse how the Gambia implements inclusive education for persons with disabilities. Where possible the paper will also critically look at the challenges in the implementation of the content of article 24 of the Convention having in mind General Comment 4.⁷

1.2 The Gambia's Implementation of Article 24 of the Convention on PWDs

The Republic of the Gambia acceded to the Convention on the Rights of Persons with Disabilities in June 2015.⁸ Aside of the Disability Rights Bill, which is currently undergoing a legislative process, the Gambia has legislations which are minimally relevant to inclusive education of persons with disabilities. Article 31(2) of the 1997 Constitution of the Gambia prohibits discrimination of persons with disabilities in terms of, *inter alia*, access to education.⁹ Article 31(2) of the Constitution is supplemented by article 18(1) of the Children's Act, 2005 which also provides for non-discrimination of children with respect to education on the basis of disabilities. However, beyond this minimalist legislative guarantee of right to education of persons with disabilities the Gambia has no comprehensive legislative

⁶ United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A / R E S / 4 8 / 9 6 , United Nations Resolution adopted by the General Assembly at its 48th session on 90 December 1993 served as the basis and inspiration for the Salamanca Statement. The latter emphasized the need for schools to respond to the 'diverse' needs of students bearing in mind their peculiar physical and psychological characteristics.

⁷ Committee on the Rights of Persons with Disabilities General comment No. 4 (2016) on the right to inclusive education, CRPD/C/GC/4, 25 November 2016

⁸ The Disability Rights Bill is still in Parliament. Gambia: GFD Urges Government to Enact Disability Bill, Adopt Policy, 20 September 2016- AllAfrica

⁹ The Constitution of the Gambia 1997, Article 31(2) reads: 'Disabled persons shall be entitled to protection against exploitation and to protection against discrimination, in particular as regards access to health services, education and employment.' (Emphasis added)

framework for inclusive education of persons with disabilities as envisioned in article 24 of the convention and as explained in General Comment 4.

Beyond the legislative framework the Ministry of Basic and Secondary Education (MOBSE) is being very instrumental in devising policies relevant to inclusive education of persons with disabilities. With the Gambia's development blueprint, Vision 2020 and Programme of Accelerated Growth and Employment (PAGE), MOBSE prepared a comprehensive policy¹⁰ in January 2016 called the "Accessible, Equitable and Inclusive Quality Education for Sustainable Development" 2016-2030. This policy focuses on three thematic areas such as Technical and Vocational Training, Teacher Training and Education Management. However this policy document barely has anything concrete on inclusive education, thus one may question the commitment of the government of the Gambia in her legal obligation to provide inclusive education as required in article 24 of the Convention. This document is still steeped in the old model of integration and/or seclusion of persons with disabilities in the education system.¹¹

Structurally only three schools exist in the Gambia that give educational services to persons with disabilities.¹² All these institutions however operate in the urban areas thereby depriving a large number of children of essential educational services. Aside of these institutions, children with disabilities don't have access to education in the Gambia.

1.3CRPD: Inclusive Education

After long and protracted negotiations the General Assembly of the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD) in October 2006.¹³ This convention was intended to be a human rights instrument with a social dimension-approach to disability issues. In addition, the adoption and

¹⁰ EDUCATIONSECTOR POLICY 2016 – 2030 Accessible, Equitable and Inclusive Quality Education for sustainable Development January 2016- the primary aim of this policy is to provide a policy framework which will guide the delivery of primary and secondary education from 2016-2030.

¹¹ Ibid (n9 above)pp14 states that 'Special needs children with who can cope will be educated within the existing school system and adequate resources put in place to make schools more accessible. Children with severe special needs will be educated in special schools with opportunities to go to regular schools.'

¹² The Institutions are the Gambia Organisation for the Visually Impaired (GOVI), the Gambia Association of the Deaf and Hard of Hearing (GADHOH), the Gambia Organisation for the Learning Difficulties (GOLD)

¹³ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html> [accessed 21 March 2017]

coming into force of the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention formally brought a legally binding provision on inclusive education of persons with disabilities.¹⁴ This success marked a significant shift from the medical model approach to social model approach in dealing with disability issues. Aside of the elaborate substantive rights, the convention also creates a mechanism for the promotion and protection of disability rights.¹⁵ In the thematic report of the UN High Commission on disability rights, it is reported that inclusive education can enhance social development of persons with disabilities.

1.4 Normative Content of Article 24 of the CRPD: General Comment 4

The normative content of Article 24 of the CRPD is explained in General Comment 4 by the United Nation's Committee on the Rights of Persons with Disabilities. The Comment came at a time when a greater part of the content of article 24 was oblivious to many stakeholders on disability rights. According to the comment only inclusive education can "provide both quality education and social development for persons with disabilities, and a guarantee of universality and non-discrimination in the right to education".¹⁶ The Committee expressed some major barriers which impede the implementation of inclusive education for persons with disabilities across the world.¹⁷

A salient feature of the normative content of Article 24 of the Convention is the realization of inclusive education in all levels of the education system such as primary, secondary, tertiary education and vocational training.¹⁸ Thus a positive obligation is imposed on the state pursuant to the state obligation under the convention.¹⁹ Inclusive education factors in the differing requirements of individual students with the vision to accommodate each student irrespective of their mental and physical conditions. Such follows to remove the barriers that affect the education of persons with disabilities.

¹⁴ Ibid (n 1 above, Article 24)

¹⁵ State report is one of the mechanisms through which the Committee ensures compliance of states with their obligations arising from the convention.

¹⁶ Ibid (n7 as above) pp 2

¹⁷ Such Barriers include: failure to understand social model/human rights model, discrimination, lack of knowledge, lack of data, absence of political will, inadequate funding and lack of legal remedies.

¹⁸ Ibid (n 7) pp 8

¹⁹ What is the corresponding obligation on states?

Inclusive education charges the respect of the fundamental human rights of the learner taking into account their physical and mental conditions.²⁰ Thus, in the education process, the focus is on the learner as he is the right holder as opposed to the parents, caregiver or guardian. In addition to that the principle of the well-being of the learner is sacrosanct whereas the enhancement of the learner to overcome the multidimensional barriers such as exclusion, poverty and discrimination should guide this process. To that end, this process should logically enhance the change of culture and policies to effectively accommodate each student including a person with disability.

Inclusive education goes with recognition of individual differences but contra to seclusion.²¹ It should also be noted that inclusive education is not the same as integration of a person with disabilities with the hope that he could adjust to the already established environment.²² The former is a comprehensive and systematic process of learning, teaching, curriculum and other education processes which are geared towards an equitable participation of all learners including persons with disabilities.

Moreover, inclusive education imports the respect for the inherent autonomy of persons with disabilities. This acknowledges the individual's requirement to be included in the education system without having to intrude their inherent autonomy and dignity as a person.

1.5 Corresponding State Obligation under Article 24 CRP

The juridical implication of article 24 of the Convention can be understood with the content of article 4 which deals with general state obligation. Article 4(1) of the Convention provides that States Parties are required to 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention' and 'in the development and implementation of legislation and policies' they have to 'closely consult with and actively involve persons with disabilities' in accordance to article 4 (3). Article 5 (3) also provides that states must 'take all appropriate steps to ensure that reasonable

²⁰ Ibid (n 7) pp 11

²¹ Ibid (n 7) pp 11

²² UN Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Austria' (2013) UN Doc CRPD/C/AUT/CO/1 para 40 Committee on the Rights of Persons with Disabilities' Concluding Observations to Austria's initial interprets inclusive education as distinct from integration as 'that there is some confusion between "inclusive" education and "integrated" education' in the State.

accommodation is provided'. One of the main juridical imports of article 24 is generally to provide inclusive education and/or special education as an exception.

Article 24(2)(a) of the Convention provides that states must not exclude 'from free and compulsory primary education on the basis of disability'. In addition, 'persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.'²³ This article forms the legal basis for the social model of persons with disabilities education. As stated elsewhere, inclusive education does not mean special schools as that will lead to the segregation of persons with disabilities. Equally, inclusive education is different from integration of persons with disabilities in regular schools. In the latter persons with disabilities are expected to adjust to the school environment without regards to their impairments. Thus, inclusive education recognises the various differences in children and children with disabilities must be able to participate in the regular learning system.²⁴ On that basis, the obligation on states is to eliminate barriers and provide reasonable accommodation for persons with disabilities in regular school systems.

However, given the positive nature of the right to education, states are required to progressively make efforts that will yield the full enjoyment of right to persons with disabilities. Article 4 (2) of the Convention is couched in language that is resource based. It provides that states 'undertakes to take measures to the maximum of its available resources'²⁵ Thus states have to progressively work to realising inclusive education by putting in resources. As such, the realization of the right is not immediate; however, this does not mean continuous postponement of the right.

Given the above exposition of the juridical implication of article 24 of the Convention two fundamental obligations can be deduced. One is reasonable accommodation and two, special measures. Article 24(2)(c) and article 5(3) provide that states shall make sure 'reasonable accommodation of the individual's requirements is provided'. Article 2 of the Convention defines reasonable accommodation as measures:

²³ Ibid (n 7 above) Article 24(2)(a)

²⁴ UNCHR, 'The right to education of persons with disabilities. Report of the Special Rapporteur on the Right to Education' (2007) UN Doc A/HRC/4/29, 9.

²⁵ Ibid (n 7 above) Article 4(2)

‘necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

In addition to that it provides that a denial of reasonable accommodation is a form of discrimination which imposes an immediate obligation on the states.²⁶ Reasonable accommodation seeks to ensure the special needs of children with disabilities.²⁷ Such measures are individualised measures.²⁸ The rationale for reasonable accommodation is to enable children with disabilities to attend regular schools in their societies. Article 9 (1) of the Convention provides the various forms of measures that can be adopted by states to ensure reasonable accommodation. These include the construction of school facilities that are accessible²⁹, provision of transportation with a universal design and provision of communication technologies.³⁰

In addition to reasonable accommodation, the Convention requires states parties to put in special measures that will allow the maximum participation of children with disabilities in regular schools. These measures are supplementary to reasonable accommodation thereby giving it a human rights focus. Article 24(2)(d) of the Convention provides that states parties should ensure that ‘persons with disabilities receive the support required, within the general education system, to facilitate their effective education’. In the event those children with disabilities in the regular schools have special needs that the regular schools cannot provide, states are required to provide individualised support measures in accordance with article 24(2)(e) of the Convention.³¹ These measures must be consistent with the vision to realize inclusive education.

Finally, incidental to achieving inclusive education is the training of teachers. Teachers must be trained on how to teach, assess and supervise persons with

²⁶ Ibid (n 7 above) Article 2

²⁷ UNICEF Innocenti Research Centre, Promoting the Rights of Children with Disabilities (UNICEF2007) 17 www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf (accessed 26 March 2017)

²⁸ Ibid (n 26 above) pp 2 to 6

²⁹ Ibid (n 7 above) Article 9(1)(a)

³⁰ Ibid (n 7 above) Article 9(1)(b)

³¹ Ibid (n 7 above) Article 24(2)(e) reads : ‘Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.’

disabilities. In addition to that, article 24(4) of the Convention requires also the training of students to assist persons with disabilities.³²

The major challenges that Gambia faces in her implementation of her obligation in the Convention include lack financial of resources, inadequate human resource, cultural stereotype of persons with disabilities, lack of infrastructure for persons with disabilities and also lack of aggregated data on persons with disabilities to inform any meaningful policy.

1.6 Conclusion

It falls on the Government of the Gambia as a party to the Convention on the Rights of Persons with Disabilities to put in legislative mechanisms and policies that will enhance the realization of inclusive education in the Gambia. So far, the Government is doing nothing meaningful to implement inclusive education in the Gambia. Large number of children with disabilities in the rural and even urban areas does not enjoy or have access to education. The obligation arising from article 4 and 24 of the Convention are positive and therefore, more actions is required from the Gambia to fulfil her obligation under the Convention.

³²

Ibid (n 7 above) Article 24(4) reads: 'students are trained in how to deal with persons with disabilities and the use of supporting communication and other methods [...] to support persons with disabilities'