

EXECUTIVE SUMMARY

THE RIGHT TO EDUCATION OF PERSONS WITH DISABILITIES:



What is the situation in Latin America and the Caribbean?

Reflections and recommendations based on a consultation
with education communities and organizations in the region



"Empecemos en la Escuela" [Let's start from school] (RREI) Campaign



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por el Derecho
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INTRODUCTION

The main characteristic of an inclusive education system is that it prohibits any discriminatory practice, promotes the recognition of difference rather than sameness, embraces plurality and guarantees equal opportunities, and, therefore, benefits the entire collective. From that perspective, Campaña Latinoamericana por el Derecho a la Educación (CLADE) has been mobilizing and strongly advocating for international laws that guarantee inclusive education in our region.

Despite advancement in the recognition of inclusion as a key element for the realization of the right to education for all, it is still necessary to demand governments to adopt and implement inclusive policies. Many countries in Latin America and the Caribbean have laws and policies that guarantee the right to education of persons with disabilities and an inclusive education model, but there are still many obstacles for the enrolment and completion of studies of persons with disabilities in regular education systems.

Apart from physical and economic barriers, we can observe the prevalence of a stereotyped vision of these populations, sustained policies based on the medical model of disability, lack of prioritization in public budgets, limited coverage in schools that have moved forward or are moving forward towards inclusion, as well as the persistence of the concept of segregated “special education”. The absence or limited development of a political and pedagogical project that considers and values difference is particularly underscored.

In recent years, two international processes have played a key role in deepening the debate and expanding effectively the perspective of inclusive education in laws, policies and practices in the region. On one hand, the adoption of **Sustainable Development Goals, in 2015, establishes target 4.5** to guarantee the right to inclusive education for all, underscoring governments’ commitment to eliminate gender disparities in education, at all levels, and ensure access on equal terms also for persons with disabilities.

At the same, in 2016, the **Committee on the Rights of Persons with Disabilities, adopts its General Comment N° 4**, providing further information and recommendations on the right to inclusive education set forth in article 24 of the Convention on the Rights of Persons with Disabilities (CRPD).

On top of the long-standing history of struggle to realize the human right to education of persons with disabilities, and together with these new advances, CLADE took the lead in the organization of a consultation process to explore to which degree said international agreements are being implemented through laws, policies, and practices in countries from Latin America and the Caribbean. Thus, in 2017 this consultation was launched and held with different civil society organizations, academia representatives, students, teachers, administrators and relatives of persons with disabilities.

In this publication, we share the main findings of the consultation. The answers of 216 people and organizations from 19 countries constitute an important contribution to raise awareness about the situation in our region and reveal key areas where we should target our advocacy to ensure the full realization of the human right to education for all.

Maíra Soares





2 WHY INCLUSIVE EDUCATION?

Although there are different references in international legislation that prohibit discrimination in general, and, in particular, in the education field, persons with disabilities currently constitute one of the more discriminated groups and, at the same time, the discrimination of this group is overshadowed.

According to data from the Economic Commission for Latin America and the Caribbean (ECLAC), based on census statistics of countries in the region (2000 to 2010), there were more than 66 million persons living with some kind of disability in the region. The number equals 12.3% of the total population. The document warns the absence of updated data and affirms that the number could be even larger, currently surpassing 100 million people.

The World Report on Disability (WHO, 2011) as well as the Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS, by its Spanish acronym) remark that persons with disabilities are overrepresented among poor and extremely poor populations. There are several causes and they are intertwined in a complex way. On one hand, their own poverty and vulnerability exacerbate disabilities due to lack of timely assistance and care. On the other hand, in many cases, the lack of care services causes at least one family member to give up working resulting in less income for the household.

In Latin America and the Caribbean, data on access and retention of persons with disabilities in education systems are still scattered and difficult to compare at regional level. An estimated number of seven out of ten children with disabilities do not have access to education in Latin America and the Caribbean, which represents 6.4 million children (UNICEF, 2016).

Historically, people with one or several disabilities have been constrained to stay at home, or, at most, attend segregated institutions that have been collectively called “special education” institutions, violating the inalienable right to public education—free and compulsory—in regular institutions.

The inclusion of students with disabilities in regular schools provides important psychological advantages and meets, to a larger extent, intellectual and, particularly, social and emotional needs, through the regular interaction with a diverse group of students. Besides, one of the best ways of confronting stereotypes and promoting awareness about the potential of persons with disabilities is to guarantee their access to all levels of the education system, from an early age, learning and participating on an equal basis with others.

Carlos Palácio





3 INCLUSIVE EDUCATION IN INTERNATIONAL RULES

Since the 90s, important international and national legal frameworks and norms represented great progress for the concept of “Inclusive Education”, opposed to “Special Education”, addressing specifically the rights of persons with disabilities and, furthermore, the right they have to inclusive education.

The first of these frameworks is the resolution on Standard Rules on the Equalization of Opportunities for Persons with Disabilities, approved by the United Nations General Assembly in December 1993. Its article 6 not only affirms the principle of equal opportunities in education at primary, secondary and tertiary levels for children, young people and adults, but also specifies that it has to take place in “integrated environments”, ensuring that “education of persons with disabilities is an integral part of the education system”.

The following year, 1994, the Salamanca Statement was approved, a result of the World Conference on Special Needs Education, promoted by the Spanish government and UNESCO, signed by representatives of around 100 countries and different international organizations. This statement sets forth that “those with special educational needs must have access to regular schools which should accommodate them within a childcentred pedagogy capable of meeting these needs”. An important change of approach is explicitly stated here, inherent to the concept of inclusive education, that implies that schools have to meet the needs of their students and not vice versa.

Another key framework approved five years later, in 1999, is the **Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities**, also known as the Declaration of Guatemala. The Convention recognizes that all people have the same rights to life, well-being, education and work, to live independently and to participate actively in all aspects of society. For this reason, any act of discrimination against a person with disabilities is considered a violation of his/her fundamental rights.

In September 2006, the Committee on the Rights of the Child approved **General Comment N° 9** regarding the “The rights of children with disabilities”, giving even more legitimacy to inclusive education by clearly affirming that “Inclusive education should be the goal of educating children with disabilities” and that children with disabilities must receive “the necessary support within the general education system, to facilitate their effective education”. This General Comment

is important because it incorporates the idea of keeping support programs and services always within regular classes and schools, making sure that persons with disabilities are enrolled for the period required as mandatory education, an inalienable right for all.

In December 2006, the United Nations General Assembly approved resolution 61/106, the **Convention on the Rights of Persons with Disabilities** (CRPD). Addressing this issue in a very detailed way, the framework provides a new paradigm to interpret the right to education of persons with disabilities.

This Convention, that came into force in May 2008, seeks to guarantee access of persons with disabilities to regular education, prohibiting the denial of their enrolment, and also presents some requirements and strategies for their retention and success at school, among them, implementing “reasonable accommodation based on individual needs”; provide the “necessary support, within the framework of the general education system, to facilitate their effective education”; and provide “personalized and effective support measures”. These three differentiated strategies have to be developed “in line with the aim of full inclusion”, including the third one which implies the possibility of additional support. In this sense, to ensure that personalized measures are actually supportive without replacing the right to attend regular classes, they must be offered outside regular school hours.

Some years later, the Committee on the Rights of Persons with Disabilities that follows up the implementation of the convention across the world, adopts General Comment N° 4 (2016) that precisely addresses extending the understanding of inclusive education set forth in article 24 of the Convention.

Other two Comments issued by this Committee are also important. The first one is **General Comment N° 3 (2016)**¹ **about women and girls with disabilities**, that underscores the existence of multiple and intersectional forms of discrimination against girls and women with disabilities, recalling that governments must take positive measures to ensure that women with disabilities are protected against multiple discrimination and can enjoy human rights and fundamental freedoms on an equal basis with others.

1 CRPD/C/GC/3

Secondly, **General Comment N° 5 (2017) on the right to independent living and to be included in the community**, reaffirms that the inclusion of these persons in the general education system creates their further inclusion in the community and States parties should note the role that exercising the right to inclusive education will play in building the strengths, skills and competencies necessary for all persons with disabilities to enjoy, benefit from and contribute to their communities.

In addition, **General Comment N° 6 (2018) on equality and non-discrimination**, establishes the obligation of State parties to remove all types of discriminatory barriers, including legal and social barriers, to inclusive education.


Up to now, 30 countries from Latin America and the Caribbean have ratified the Convention on the Rights of Persons with Disabilities², which represents an important framework to ensure a rights-based approach. At the same time, in constitutional and legal terrains, it is worth underscoring that out of 33 countries in Latin America and the Caribbean, in 17 countries the issue of disabilities is directly mentioned in constitutional rules, and 23 countries in the region have specific legislation about disabilities at national level³.

In general, the Final Comments issued by the Committee in charge of the Convention follow-up, during the last three years (2015-2018), for Bolivia, Brazil, Chile, Colombia, Guatemala, Haiti, Honduras and Dominican Republic reflect two great areas of concern: on one hand, the exclusion and stigmatization rationale in these contexts, and, on the other hand, the urgent need for protection measures. Both areas are completely interrelated because mechanisms of protection are necessary to guarantee security, dignity and full realization of human rights of persons with disabilities, in the face of processes of stigmatization and exclusion in those contexts.

Exclusion and stigmatization constitute the structural obstacles that strongly prevent the realization of human rights of persons with disabilities, in general, and, specifically, the right to education. According to the Committee, low levels of enrollment and high school dropout rates among persons with disabilities are some of the exclusion indicators. It further states that those who did enroll, in most cases, have enrolled in special and segregated education institutions.

2 <http://www.un.org/esa/socdev/enable/documents/tccconvs.pdf>

3 CEPAL: <https://dds.cepal.org/bdips/dim14.php>



CONSULTATION PROPOSAL AND METHODOLOGICAL GUIDELINES

To get a better idea about the progress and also the challenges that prevail in education systems in Latin America and the Caribbean in this area, CLADE developed the consultation named “The right to education of persons with disabilities. What is the situation in Latin America and the Caribbean?” in an attempt to listen to different players, through a strategic dialogue with citizens that informs and rates the network advocacy actions with political authorities carried out to push for the realization of the human right to education for all.

The consultation targeted two priority audiences. On one hand, the **education community**, including students, teachers and relatives of persons with disabilities and, on the other hand, **civil society organizations and academia**. We based on the premise that those audiences have fundamental and complementary points of view for a better understanding of the advancements and challenges regarding the right to education of persons with disabilities.

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Likewise, the consultation was divided in seven analytical categories, based on the rights enshrined in the CRPD and the instruments for the protection of the right to education as a fundamental human right for all, throughout life. These are the categories: (1) Education systems and development of inclusive education policies; (2) School retention and educational path; (3) Adaptability of education centers: (4) Teacher training; (5) Pedagogical practices and curricula; (6) Participation in the debate and education policy-making; and (7) Financing for education.

The Consultation was carried out by setting up two online surveys⁴, one for each target audience, between November 2017 and February 2018, through CLADE website and using the link of the Inclusive Education Regional Observatory (OREI, by its Spanish acronym)⁵. Surveys were published in Spanish and Portuguese, ensuring accessibility resources, video recordings in Portuguese and Spanish, as well as videos in Brazilian Sign Language and the Plurinational State of Bolivia⁶.

A total of **216 people** participated in the consultation, both, from the education community (148 responses) and from civil society organizations and academia (68 responses). Mostly teachers and relatives of persons with disabilities from the education community answered the consultation while, from the second group, mainly civil society organizations replied to the consultation. People from a total of 19 countries participated in the consultation: Argentina, Bolivia Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Spain, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela.

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4 The initial proposal of the consultation was prepared by CLADE, and further enriched with the inputs and contributions of these organizations: Mais Diferenças, Inclusion International, Global Campaign for Education and the Inter-American Institute on Disability and Inclusive Development.

5 Observatory link: <https://orei.redclade.org>

6 Mais Diferença was the organization in charge of the accessibility resources and the video in the Brazilian Sign Language, while Campaña Boliviana por el Derecho a la Educación was in charge of the video of the Plurinational State of Bolivia.



5 REFLECTIONS AND RECOMMENDATIONS

In the current context, persons with disabilities still face several difficulties to realize their right to education with no discrimination and based on equal opportunities as set forth by the CRPD. The push and reinforcement registered since the Convention came into force is unquestionable but the Consultation reveals some challenges that still need to be overcome. Thus, based on the feedback obtained, final reflections and recommendations are issued for each line of the consultation.

It is worth mentioning that choosing lack of information regarding the right to education of persons with disabilities as one of the reasons for their exclusion puts in the spotlight the issue of **increasing awareness about the Convention and the rest of the international instruments that protect the rights of persons with disabilities**, at international, regional and national level; as well as about the processes of enforceability and justiciability. Likewise, as suggested in the Consultation, **it is extremely necessary to increase awareness about successful inclusive education experiences**, initiatives intended to promote and consolidate it.

Thus, despite advances, there is still a **long way to go to build a truly inclusive school culture**. The need for coordinated efforts to promote this perspective as the prevailing narrative in our education systems is, thus, underscored. That is to say, to **develop a deep debate on the current sense and meaning implied in the idea of inclusive education**. This is key to avoid educational changes from being mere name shifts regarding groups and individuals considered to be “different”; on the contrary, they should be new forms of pedagogical relations between members of the education community (CLADE, 2009).

There is particular concern on narrated cases where progress has been reversed, such as Brazil, where, at the beginning of 2019 and with the new administration, policies are proposed for the promotion of special education, at the expense of all the achievements in terms of participation of persons with disabilities in regular education systems. We need to stop any and every regression alike that **threatens the historical achievements of the movement through decades of struggle for an inclusive education** and the rights of persons with disabilities

Likewise, at regional level there was agreement on two sensitive cases that deserve specific reinforcing actions for the realization of the rights of their individuals. On one hand, **persons with disabilities who seek to receive Youth and Adult Education (YAE) face even more barriers**. 80% of consultation

respondents considered that the right to education is not guaranteed for this population, in fact, answers mostly mention children and young people, and they mention adults very rarely. There is a double violation in this regard: generations that, for decades, were denied access to education systems are still unable to access. On the other hand, **rural populations were also mentioned as examples of areas with more precarious infrastructure and, thus, more restricted access and possibilities for persons with disabilities.** In both situations specific public policies are necessary to address them.

After analyzing the findings of the consultation, we summarized some recommendations to follow according to their lines of analysis.

5.1. About education systems in countries and the development of inclusive policies

In general, a group of advances is recognized in terms of promoting more inclusive education systems, through legal frameworks as well as setting up education policies and practices even from a cross-sectoral perspective. The ratification of the Convention on the Rights of Persons with Disabilities was particularly mentioned and its promoting role in guaranteeing the right to education of persons with disabilities in countries of Latin America and the Caribbean. Answers recall that these advances were the results of citizens' demands and struggles.

The vast majority of participants supported inclusion in regular schools. None of the persons consulted defended segregation of persons with disabilities in special schools as a principle, and, the few times this happens, it is attributed to the fact that regular schools are still not fully prepared to accommodate effectively persons with disabilities, for different reasons that must be addressed and solved.

Despite advances, some of the issues raised deserve special attention to continue the long way towards the development of real practices to address diversity in education systems. The main concern was on cases where reverse in progress was mentioned in some responses, so it is necessary to protect laws and policies as State policies, conquered through social struggles and citizens' demands. Inclusive education policies can never be vulnerable to government changes. In terms of human rights, we cannot afford to go backwards.

Likewise, overcoming shortfalls in regular education provision (mentioned in the cases of Nicaragua, Honduras and Haiti) and the prohibition of selection processes "according to the type of disability" are recommended. Inclusive education is a right for all, so selection processes go against this principle. Special attention must be paid to students with different types of intellectual disability who, in the end, face even more visible barriers to access.

In terms of inclusive policies, the plans to transform special schools in regular schools or centers to support inclusion and training of employees and public servants are also key.

Finally, another important issue is the regulation of the private sector and controls over its activity, to prevent the denial of access to students with disabilities. There are different testimonies that attest to this practice that violates upfront the right to education for all. As stated in the General Comment N° 4 of the Convention: “States parties must recognize that the right to inclusive education extends to the provision of all education, not merely that provided by public authorities. States parties must adopt measures that protect against infringements of rights by third parties, including the business sector (...). Educational institutions, including private educational institutions and enterprises, should not charge additional fees for integrating accessibility and/or reasonable accommodation” (article 74). For this purpose, it is deemed relevant to provide persons with disabilities and their families efficient procedures to file claims to report situations of discrimination taking place in education systems.

5.2. Barriers to school retention and completion faced by persons with disabilities

A key barrier to overcome, as previously mentioned, is the very concept of the right to inclusive education and how this right is realized. An important fact is that 97% stated that they had noticed some form of discrimination against persons with disabilities in education systems in their countries which means immediate and strong actions are required to change behaviors, overcome prejudice and remove stereotypes in our societies.

Despite their access to education systems, there are still barriers that prevent the realization of the right to education, as mentioned in this consultation and widely addressed in legal frameworks for inclusive education: availability of accessible infrastructure and transportation, adapted pedagogical materials, as well as a consistent teacher training policy to address diversity, are fundamental. Full free provision of education is equally imperative to remove barriers.

Finally, we need to acknowledge the educational path of persons with disabilities through adequate credentials that help them continue with their studies, move to further levels and enter the labor market.

5.3. Accessibility and adaptability of education centers

By inquiring specifically about adaptability of education centers, the consultation tried to grasp the insight of participants in the face of accommodations in school infrastructure as well as availability of resources adapted to the needs of persons with disabilities (pedagogical or technological support materials), and also human resources, teachers and support staff. That is to say, do these centers have the necessary infrastructure?

Responses on infrastructure lead immediately to the issue of how distant is legislation from practice: barely 1% of respondents from civil society and academia, and 14% of respondents from education communities consider it to be good. Both groups of respondents considered that the situation is even more serious in rural areas. Thus, architectural adaptation of the necessary educational materials and learning strategies is imperative, removing all sorts of barriers that any person with any type of disability may face to attend education centers.

Regarding the availability of resources and materials, despite advances observed, a significant fact is that more than half (56%) affirms that the State does not guarantee their free distribution, which is clearly a violation of rights. Therefore, it is necessary to underscore the importance of a wide offer of all the supporting resources needed to meet the different kinds of disabilities, ensuring coverage in all education centers. To make this possible, a permanent diagnosis of the attendance of students with disabilities, by type of disability and the need for adapted resources, is key.

Unlike what was documented in the consultation, these resources must be free, they cannot be charged through any type of reasonable adjustment, not even in private schools as recalled in Comment N° 4 of the CRPD.

5.4. Teacher training

Although the issue of teacher training was mentioned in most of the questions, the consultation had a specific section to understand participants' insights about this in their countries. As mentioned before, most participants indicated the absence of an inclusive education perspective in early education as well as in continuing education of teachers, stating that this is absent in the curricula of colleges and universities, or is still at an emerging stage.

The education community responses, in particular, raise an alert when we observe that only 5% evaluates that teachers in their education centers are duly qualified. We must recall that almost half (47%) of the participants in this consultation are teachers, that is to say, they are referring to their own training.

One of the key features of inclusive education, according to Comment N° 4, is precisely to provide support to teaching staff: “all teachers and other staff receive the education and training they need to give them the core values and competencies to accommodate inclusive learning environments.” Furthermore, the document recalls the importance of including teachers with disabilities, because “an inclusive culture provides an accessible and supportive environment that encourages working through collaboration, interaction and problem-solving.”

Setting up a strong strategy to offer early and continuing education to teaching staff, to provide them the knowledge, tools and resources they need for the development of a truly inclusive education. In particular, to ensure their contribution in building inclusive environments, co-creators of strategies that enable the realization of the human right to education for all, including those with any type of disability.

5.5. Pedagogical practices and curricula

For a better understanding of pedagogical practices, the consultation included questions about curriculum, supplementary education provision and assessments. In general, the prevail of a homogeneous pedagogical approach in the education system that does not consider students’ different needs, was observed.

On the other hand, those who observed undermining practices proposed interesting alternatives to move forward towards inclusion. For example, the elaboration of pedagogical projects to address specific needs, apart from the collective work of special care teachers and regular teachers in the adaptation of curricula; and modifications in assessment methods to analyze student learning, ensuring access to the same content.

Approximately half of the respondents observed the existence of initiatives for supplementary education provision, individually or in groups. However, some answers indicate that families pay for private services to have access to this type of supplementary provision (Argentina, Bolivia and Colombia), which constitutes a clear violation of rights.

Assessments are still a challenge: less than a third of the participants stated that there are no policies or procedures that meet the specific needs of students. Comment N° 4 of CRPD, in its paragraph 74, states that quality inclusive education requires evaluation and follow-up methods that consider the barriers faced by persons with disabilities. “Traditional systems of assessment, which use standardized achievement test scores as the sole indicator of success for both students and schools, may disadvantage students with disabilities.” In this sense, learning and supporting methodologies and adequate accommodations must be offered, including flexible and multiple assessments, and based on the recognition of individual progress towards general objectives provided by alternative learning options (article 26). Likewise, it is very important that students with disabilities certify their capacities and achievements on an equal basis with others.

5.6. Participation

Considering social participation as a fundamental principle and right for democratic societies, this consultation also sought to find out if there are mechanisms to ensure the participation of persons with disabilities (or organizations that represent them) in the design, monitoring and evaluation of education policies addressing them. 53% of civil society and academia participants answered affirmatively, however some expressed concern in terms of effectiveness, advocacy capacity on policy design and implementation. At schools, 48% of participants from the education community considered that students still have some level of participation at decision-making levels.

The search for effective participation in decision-making of the education community, including, in particular, students and teachers with disabilities, has to be constant. Their voice is key as a principle, and, in particular, in the development of laws and policies concerning their lives. Thus, setting up actions that create the conditions, promote this participation, and ensure the consideration of their opinion, is recommended.

Article 4.3 of the CRPD specifically refers to the obligation of holding consultations in the design and application of legislation and policies related to persons with disabilities. Beyond the generic obligation, disability issues are expressly regulated as a State obligation that must be dealt with in collaboration with persons with disabilities, including children, through the organizations that represent them.

5.7. Financing for education

As mentioned before, regarding this issue, a relevant fact is the absence of details in participants' responses, on such an important issue. Thus, it is necessary to increase not only the availability of public resources to make inclusive education possible and move budget resources from segregated environments to inclusive ones, but also increase the availability of information related to financing for education, providing always disaggregated data, allowing a close scrutiny by civil society.

Inadequate and insufficient financing mechanisms to offer incentives and the necessary reasonable accommodation for the inclusion of students with disabilities is a CRPD concern expressed in paragraph 69 of their General Comment N° 4: "States parties must commit sufficient financial and human resources throughout the development of an education sector plan and of cross-sectoral plans to support the implementation of inclusive education, consistent with the principle of progressive realization. States parties must reform their governance systems and financing mechanisms to ensure the right to education of all persons with disabilities."

Likewise, as mentioned before, we need to pay attention to how different education privatization trends in our region have impact on the realization of the right to education of persons with disabilities. Principles ruling competitive education markets with large participation of private actors, tend to conflict with those supporting inclusive education. It is worth recalling that the State has the fundamental obligation to guarantee free, inclusive and quality public education for all, and to control and ensure that all public and private education institutions are truly inclusive.





