

Scientific Journal of Applied Social and Clinical Science

INCLUSIVE EDUCATION AND COMMENTARY N. 4 OF THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

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Abstract: People with disabilities are recognized by international treaties, international jurisprudence, the Federal Constitution, Brazilian laws and Resolutions of the National Council of Justice (CNJ) as holders of rights, from which we highlight the right to education, without discrimination and based on equal opportunities. Despite the progress made, the Committee on the Rights of Persons with Disabilities expresses its views on the persistence of new challenges: countless people with disabilities continue to suffer violations of their right to education. The general objective of this research is to analyze the perspectives of inclusive education based on Comment no. 4 of the United Nations Committee on the Rights of Persons with Disabilities. The methodology used in this research regarding the means was developed through the deductive, descriptive and qualitative method, through doctrinal, bibliographic and jurisprudential analysis. It is concluded that General Comment no. 4 of the United Nations Committee on the Rights of Persons with Disabilities deals with a general education duty, under which the exclusion of people with disabilities from the educational system is prohibited, including through any legislative or regulatory provisions that limit their inclusion with based on the degree or level of the disability or impairment.

Keywords: person with disability; inclusive education; Committee on the Rights of Persons with Disabilities

INTRODUCTION

People with disabilities are recognized by international treaties, international jurisprudence, the Federal Constitution, Brazilian laws and Resolutions of the National Council of Justice (CNJ) as holders of rights, from which we highlight the right to education, without discrimination and based in equal opportunities.

The United Nations Convention on the Rights of the Child (CDC, 1989), the World Declaration on Education for All (1990), the United Nations General Rules on the Equality of Opportunities for Persons with Disabilities (1993) and the United Nations Declaration of Salamanca on Principles, Policy and Practice in the Area of Special Educational Needs (1994) incorporate measures that attest to the growing evolution of the rights of people with disabilities to education.

Decree no. 99,710 (1990), which promulgates the Convention on the Rights of the Child, with article 23 recognizing children with physical or mental disabilities of the right to enjoy a full, decent life that facilitates their active participation in the community.

It is worth highlighting article 4 of the World Declaration on Education for All (1990), which deals with “Universalizing access to education and promoting equity”, in item 5, it highlights the idea that “It is necessary to take measures to guarantee equality of access to education for people with any type of disability, as an integral part of the educational system.”

The recognition of inclusion as a key to achieving the right to education has strengthened over the years and is enshrined in the International Convention on the Rights of Persons with Disabilities, the first legal binding instrument that contains reference to the concept of quality inclusive education, promulgated by Brazil through Decree 6,949/2009.

The right to remain in local communities for people with disabilities within the scope of regular education structures (inclusive education) is stated in item 27 of the General Rules on Equal Opportunities for People with Disabilities (1993), corroborating the ideal of removing in its entirety, segregating education.

Sustainable Development Goal (SDG) 4 also affirms the quality of inclusion and equal education. Inclusive education is fundamental to achieving quality education for all students, including those with disabilities, and to the development of inclusive, peaceful and just societies.

Only inclusive education can provide both quality education and social development for people with disabilities, in addition to guaranteeing the universality and non-discrimination of the right to education.

However, despite the progress made, the Committee on the Rights of Persons with Disabilities expresses its views on the persistence of new challenges: countless people with disabilities continue to be denied their right to education. For many others, education is only available in environments where they are separated from their peers (segregated education) and receive simplified, lower-quality teaching.

Thus, the present research has the general objective of analyzing the perspectives of inclusive education based on Comment no. 4 of the United Nations Committee on the Rights of Persons with Disabilities.

Specifically, its objectives are to study the egalitarian perspective of the rights of people with disabilities based on national and international regulations, to expose the constitutional status of the Convention on the Rights of Persons with Disabilities and the importance of the Committee for Persons with Disabilities for the realization of Rights and analyze Comment no. 4 of the United Nations Committee on the Rights of Persons with Disabilities.

The methodology used in this research regarding the means was developed through the deductive, descriptive and qualitative method, through doctrinal, bibliographic and jurisprudential analysis.

Regarding the deductive method, it starts from general arguments to particular arguments. In this sense, first, the arguments that are considered true are presented and then formal conclusions are reached, as the conclusions are restricted to the logic of the established premises, with a smaller margin of error (MEZZAROBÀ, 2014, p. 91). As for the purposes, the research was qualitative.

THE EGALITARIAN PERSPECTIVE OF THE RIGHTS OF PEOPLE WITH DISABILITIES: INCLUSIVE EDUCATION BASED ON NATIONAL AND INTERNATIONAL REGULATIONS

Initially, it is important to address the evolution of the concept of people with disabilities. The original wording of Law No. 8,742/93 (Organic Law on Social Assistance) defined a person incapable of working and living independently as disabled.

In the same sense, article 3 of Decree No. 3,298/1999, as amended by Decree No. 5,296/2004, which regulates the National Policy for the Integration of Persons with Disabilities, defined disability as “any loss or abnormality of a structure or psychological, physiological or anatomical function that generates inability to perform an activity, within the standard considered normal for humans”.

Regarding the terminological issue, criticizes Ramos (2021, p. 8):

Here we must make a small observation about the terminology used in the question. The expression “person with a disability” corresponds to that used by the Brazilian Constitution (article 7, XXXI; article 23, II, article 24, XIV; article 37, VIII; article 203, IV; article 203, V; article 208, III; article 227, § 1º, II; article 227, § 2º; article 244). However, the term “carrier” highlights the “carrier”, as if it were possible to stop having the disability. Thus, the expression

used by the United Nations is “persons with disabilities”, as stated in the Standard Rules and the 2006 UN Convention.

Therefore, the correct term to be used is a person with a disability, not “a person with a disability” (RAMOS, 2021, p. 8).

The United Nations Convention on the Rights of Persons with Disabilities, already in its preamble, in paragraph “e”, points to the incompleteness of the concept of disability, which must be verified and updated at each moment/historical context, also pointing out, to its social dimension, no longer considering it as something intrinsic to the person. Let's see:

[...] e) recognizing that disability is an evolving concept and that disability results from the interaction between people with disabilities and the barriers due to attitudes and the environment that prevent the full and effective participation of these people in society on equal terms opportunities with other people.

Based on the same line as the Convention on the rights of people with disabilities, Law 13,146/15 provided for the following concept:

Article 2°. A person with a disability is considered to be someone who has a long-term impairment of a physical, mental, intellectual or sensory, which, in interaction with one or more barriers, may obstruct your full and effective participation in society on equal terms with other people.

Thus, it is observed that currently, the concept of disability is no longer just a medical one, but begins to take into consideration, mainly, social aspects. This way, it is understood that the current legal concept considers that disability is not in the human being itself, but in the relationship between the person and the equality of conditions with the community, in an analysis of the barriers that allow their full participation and effectiveness of society.

The “*medical model*”, a medical model for approaching the situation of people with

disabilities, saw disability as a “defect” that must require some treatment or cure. Those who must adapt to social life were people with disabilities, who must be “cured” (RAMOS, 2021, p. 8).

The attention of society and the State, in the medical model, must be directed to recognizing the integration problems of people with disabilities so that they can develop strategies to minimize the effects of disability in their daily lives (RAMOS, 2021, p. 8).

However, violating the right to equality and dignity of the human person, the adoption of the medical model generated a lack of attention to social practices that precisely worsened the living conditions of people with disabilities, causing poverty, invisibility and perpetuation of stereotypes of people with disabilities. as recipients of public charity (and punished piety), denying them the title to rights as human beings (RAMOS, 2021, p. 8).

Furthermore, since disability was seen as a “personal defect”, the adoption of public inclusion policies was not considered necessary. The human rights model (or social model) sees people with disabilities as human beings, using medical data only to define their needs. The main characteristic of this model is its approach to “enjoyment of rights without discrimination” (RAMOS, 2021, p. 8).

This principle of anti-discrimination entails reflection on the need for public policies to ensure material equality, consolidating the responsibility of the State and society in eliminating barriers to the effective realization of human rights. Thus, it is no longer a question of demanding that people with disabilities must seek out all the means to adapt alone, but rather of demanding, based on human dignity, that society and the State treat those who are different in a way that ensures equality. material, eliminating barriers to its full inclusion (RAMOS, 2021, p. 8-9).

Following the social model and overcoming the medical model, with the entry into force of the Statute of Persons with Disabilities, people with disabilities are now considered legally capable. Let's see what the Statute provides:

Article 6th. The disability does not affect the person's full civil capacity, including to:

- I - Get married and form a stable union;
- II - Exercise sexual and reproductive rights;
- III - exercise the right to decide on the number of children and to have access to adequate information on reproduction and family planning;
- IV - Preserve fertility, with compulsory sterilization being prohibited;
- V - Exercise the right to family and family and community coexistence; It is
- VI - Exercise the right to custody, guardianship, guardianship and adoption, as an adopter or adoptee, on equal opportunities with other people.

Article 84. Persons with disabilities are guaranteed the right to exercise their legal capacity on equal terms with other people.

Thus, people with disabilities are now considered, from an equal perspective, fully capable, even with the possibility of using protective institutes such as guardianship and supported decision-making.

Aiming to overcome the segregated model, the Statute of Persons with Disabilities provides for the right to education, ensuring an inclusive educational system at all levels of learning and throughout life, with it being a duty of the State, family and community to ensure this right:

Article 27. Education constitutes the right of people with disabilities, ensuring an inclusive educational system at all levels and lifelong learning, in order to achieve the maximum possible development of their

physical, sensory, intellectual and social talents and abilities, according to their characteristics, interests and learning needs.

Single paragraph. It is the duty of the State, the family, the school community and society to ensure quality education for people with disabilities, keeping them safe from all forms of violence, neglect and discrimination.

In this sense, the entire educational system must be inclusive in nature, complying with the provisions of the Salamanca Declaration: "each child has the fundamental right to education and must have the opportunity to achieve and maintain an acceptable level of learning".

For the Committee on the Rights of Persons with Disabilities (UN, 2021, p. 118), inclusive education must be understood as:

- a. A fundamental right of all students. Specifically, education is a right of students and not of parents or guardians, in the case of children. Parental responsibilities in this matter are subordinate to the rights of the child;
- b. A principle that values the well-being of all students, that respects their inherent dignity and autonomy and recognizes people's needs and their ability to effectively be included in society and contribute to it;
- c. A means of realizing other human rights. It is the primary means by which people with disabilities can escape poverty, obtain the resources to participate fully in their communities, and be protected from exploitation. Furthermore, inclusive education is also the main means of achieving inclusive societies.
- d. The result of a process of continuous and proactive commitment to the elimination of barriers impeding the right to education, associated with changes in the culture, policy and practice of regular schools in welcoming and implementing the inclusion of all students. (UN, 2021, p. 119).

Along the same lines, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, known as the Guatemala Convention and promulgated by Decree 3,956/2001, provides that persons with disabilities have the same human rights and fundamental freedoms as other people and these rights, including the right not to be subjected to discrimination based on disability, must be realized due to the dignity and equality inherent to all beings (TIBYRIÇÁ, 2018, p. 59).

In order to understand the mechanisms for interpreting the norms that provide for the rights of people with disabilities, we will study the hierarchy of the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, as well as the importance of the Committee on Persons with Disabilities for the realization of rights.

THE CONSTITUTIONAL STATUS OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS OPTIONAL PROTOCOL AND THE IMPORTANCE OF THE COMMITTEE ON PERSONS WITH DISABILITIES FOR THE REALIZATION OF RIGHTS

It is important to highlight the legal status of the Convention on the Rights of Persons with Disabilities and its Optional Protocol in the Brazilian legal system. The aforementioned Convention and its Optional Protocol were signed in New York, on March 30, 2007. The International Convention on the Rights of Persons with Disabilities has 50 articles, not divided into specific parts, and its Optional Protocol has 18 articles. The Convention and its Protocol have, in 2021, respectively 184 and 100 States parties. In Brazil, the Convention was approved by the National

Congress through Legislative Decree no. 186, of July 9, 2008, according to the procedure in § 3 of article 5th of the Constitution. (RAMOS, 2021, p. 7).

The instrument of ratification of the texts was deposited with the Secretary-General of the United Nations on August 1, 2008, coming into force for Brazil, at the external legal level, on August 31, 2008. The promulgation took place through of Decree no. 6,949, of August 25, 2009. As the rite used was the rite provided for in article 5th, § 3rd of federal constitution /1988, this treaty consequently has an internal hierarchy equivalent to that of a constitutional amendment. (RAMOS, 2021, p. 7). Let's see what §3 of article 5th of the Federal Constitution:

International treaties and conventions on human rights that are approved, in each House of the National Congress, in two rounds, by three-fifths of the votes of the respective members, will be equivalent to constitutional amendments.

In the words of André de Carvalho Ramos (2021, p. 9): “The backbone of the Convention is its commitment to the dignity and rights of people with disabilities, who are seen as holders of rights and not as the object or target of public compassion”.

In the preamble of the Convention on the Rights of Persons with Disabilities, it was established that, based on the Universal Declaration of Human Rights and the International Covenants on Human Rights, every person is entitled to all the rights and freedoms established therein, without distinction of any kind, as well as the need to ensure that all people with disabilities exercise them fully, without discrimination (RAMOS, 2021, p. 9).

This Convention's vision of people with disabilities as *rights holders* covers civil, political, social, economic and cultural rights, including the right to a minimum standard

of living, reaffirming the characteristics of universality, indivisibility and interdependence of the regime legal framework for human rights at the international level (RAMOS, 2021, p. 9). We even defend the possibility of direct judicialization of second dimension rights before international protection bodies in the case of violation by the Brazilian State.

Brazil also ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, under the same rite as article 5th, § 3rd, of federal constitution /1988, also having a *status* equivalent to the constitutional amendment, composing the constitutionality block.

According to the Protocol, the Committee on the Rights of Persons with Disabilities, established by the Convention, may receive and consider communications submitted by, or on behalf of, persons or groups of persons subject to its jurisdiction, alleging that they are victims of violations of the provisions of the Convention by said State (RAMOS, 2021, p. 9).

The Committee on the Rights of Persons with Disabilities was created by the UN Convention on the Rights of Persons with Disabilities, to evaluate its implementation. It is composed of 18 independent experts, appointed by the Contracting States for four-year terms, with re-election possible. Members act in a personal capacity and are elected by the States Parties, observing an equitable geographic distribution, representation of different forms of civilization and the main legal systems, balanced gender representation and participation of experts with disabilities. (RAMOS, 2021, p. 9)

The Committee prepares so-called “General Observations” or “General Comments”, which contain the Committee’s interpretation of the protected rights. Currently (2021), there are 7 general comments, with n. 4 issued in 2016 on the right to inclusive education (article 24 of

the Convention), the highlight of this work.

The General Comment of n. 5 deals with the right to independent life (article 19 of the Convention); that of n. 6, issued in 2018, deals with equality and non-discrimination. Besides, in 2018, n. 7, which explains the right to participation of people with disabilities in the implementation and monitoring of the Convention itself (RAMOS, 2021, p. 9-10).

The General Comments aim to expose States to the internationalist interpretation of the provisions of the Convention. With this, the aim is to complete the internationalization of human rights, preventing States from accepting - formally - to promote the rights provided for in a given treaty, but, through the nationalist interpretation of their daily internal application, end up violating them (RAMOS, 2021, p. 9-10), which is not acceptable.

The General Comments strengthen the international interpretative function of international human rights bodies, with the contracting States being responsible for observing such interpretation, in the name of the principle of good faith, in the internal implementation of the provisions of the treaty (RAMOS, 2021, p. 10).

With this, we defend the need to comply with the determinations set out in the General Comments of the body for the protection of human rights, as its objective is to interpret the International Treaty to which Brazil is a signatory, including with the force of a constitutional amendment, which is why its provisions must be fully complied with.

In this sense, we will study in depth in the next topic the determinations of General Comment no. 4 of the Committee for People with Disabilities.

INCLUSIVE EDUCATION BASED ON GENERAL COMMENT N. 4 OF THE COMMITTEE FOR PEOPLE WITH DISABILITIES

Inclusive education is fundamental to achieving high-quality education for all students, including people with disabilities, and to the development of inclusive, peaceful and just societies (UN, 2021, p. 116).

The Committee for People with Disabilities also points out certain barriers that prevent access to inclusive education for people with disabilities, namely:

- a. failure to understand or implement the human rights model of disability, according to which barriers within the community and society, rather than personal disabilities, exclude people with disabilities;
- b. the persistent discrimination against people with disabilities, aggravated by the asylum of people who still live in long-term residential institutions, and low expectations for those who are in a regular school environment, allowing prejudice and fear to increase and remain unchallenged;
- c. The lack of knowledge about the nature and advantages of inclusive and quality education and diversity, including with regard to competitiveness, in learning for all; lack of awareness among all parents and guardians; and lack of appropriate responses to demands for support, leading to fear and misguided stereotyping that inclusion will cause the quality of education to deteriorate or otherwise have a negative impact on others;
- d. The lack of disaggregated data and research (both necessary for accountability and program development), which impedes the development of effective policies and interventions to promote inclusive and quality education;
- e. The, lack of political will, technical knowledge and capacity to implement the right to inclusive education, including

insufficient training of the entire teaching staff;

f. Inappropriate or insufficient financing mechanisms to promote incentives and make reasonable adaptations for the inclusion of students with disabilities, interministerial coordination, support and sustainability;

g. Lack of legal remedies and mechanisms to claim redress for violations.

Ensuring the right to inclusive education requires a transformation in culture, policy and practice across formal and informal educational environments to accommodate the different needs and identities of students, coupled with engagement in removing the barriers that impede this possibility (UN, 2021, p 118).

This involves strengthening the education system's ability to reach all students. In addition to full and effective participation, accessibility, assistance and good performance for all students, especially those who, for different reasons, are excluded or are at risk of being marginalized. Inclusion involves access to high-quality formal and informal education without discrimination and the progress resulting from this (UN, 2021, p. 118).

In Brazil, to seek material equality for the population, the Federal Constitution of 1988, a democratic Constitution, broke with a period marked by military dictatorship, aiming to implement fundamental rights in the real world, in order to bridge the abyss that still separates the excluded layers. of the population.

Currently, Brazil is experiencing the so-called "Post-Democratic State of Law", a new variation of the authoritarian liberal State, where the State has no commitment to the realization of fundamental rights and the limits of the exercise of power (CASARA, 2017, p. 37).

With the disappearance of effective limits on the exercise of power, in the name of market

logic, post-democracy is established. With the rise of neoliberal reason and the establishment of the Post-Democratic State, the market was elevated to the position of main regulator of the world of life. The market became the guiding axis of all actions, as it was elevated to the fundamental nucleus responsible for preserving economic and political freedom. There was maximum dehumanization inherent to the logic of capital, which is based on competition, individualism and the search for unlimited profit (CASARA, 2017, p. 39-40).

The Post-Democratic State is, therefore, a model that tends to be omitted in the field of social well-being (CASARA, 2017, p. 184) and which makes the gap between the excluded layers of society, people with any vulnerability, even greater, where In this work, we highlight people with disabilities, who live with their rights constantly violated, as well as living with the invisibility of their challenges in everyday social life.

The invisibility regarding the rights of people with disabilities is further aggravated by the separation between them and the majority social group, caused by physical and social barriers, making clear the social abyss that marks the Post-Democratic State of Law. Even when there is public news of marginalization, there is still a common sense that such marginalization is the result of the individual condition (medical model of disability) and not the social context (RAMOS, 2021, p. 7).

For example, still within the scope of the Brazilian State, the inaccessibility of some polling places in Brazil was responded to by the issue of a resolution by the Superior Electoral Court exempting voters with disabilities from voting (which, in fact, goes against the duty to vote, provided for in federal constitution /1988), instead of requiring the modification and full accessibility of these locations. (RAMOS, 2021, p 7).

Therefore, we advocate the achievement of inclusion for all beings, with the aim of enabling communities, systems and structures to combat discrimination, including harmful stereotypes, recognizing diversity, promoting participation and overcoming barriers to learning and participation for all through focus on the well-being and success of students with disabilities (UN, 2021, p. 118).

This requires a profound transformation of educational systems in the areas of legislation, policy and educational financing, administration, design, distribution and monitoring mechanisms. (UN, 2021, p. 118).

According to the Committee for Persons with Disabilities, the exclusion of people with disabilities from the educational system must be prohibited, including any legislative measures and regulatory provisions that limit the inclusion of these people based on impairment or degree of impairment, such as, for example, conditioning the inclusion to the extent of each person's individual potential or claim a disproportionate and undue burden to evade the obligation to make reasonable adaptations (UN, 2021, p. 123).

General education refers to all common learning environments and the teaching department. Direct exclusion would be classifying certain students as "uneducable" and, therefore, not eligible for access to education. Indirect exclusion would be imposing a requirement to pass a common assessment as a condition for school entry, without reasonable accommodations or offering adequate support (UN, 2021, p. 123).

Thus, it is argued that inclusion is an educational movement, of a social and, mainly, political nature, which guarantees the right of all human beings to participate freely in the society of which they are part and to be accepted and respected in what differentiates them. of others.

Inclusive education does not only aim to access and remain in school, even though there is an improvement in the “socialization” of students with disabilities. The most important thing, and, therefore, a greater challenge, is to offer these students conditions that allow their development and learning of academic content and skills conveyed in the class they are part of (GLAT and PLETSCHE, 2012, p.30).

This objective, however, “will only be achieved if the curriculum and pedagogical practices of schools take into account the diversities and specificities of each student’s teaching-learning process, and do not start from a standard of homogeneity” (GLAT and PLETSCHE, 2012, p. 30).

LBI demonstrates concern with guaranteeing support for people with disabilities when in article 3rd, inc. XIII defines the school support professional as:

That person who carries out feeding, hygiene and mobility activities for students with disabilities and performs all school activities where necessary, at all levels and types of education, in public and private institutions, excluding identified techniques or procedures with legally established professions.

This support for people with disabilities aims to eliminate barriers and allow full inclusion. It is a fact that the inclusion of people with disabilities in regular education, ensuring all adaptations, support and accessibility technology resources, is not an easy task nor is it low cost, whether for the Public Authorities or for private education establishments, however does not mean that both can avoid this responsibility. The issue must be faced seriously and responsibly so that school inclusion can be effective (TIBYRIÇÁ, 2018, p. 62-63).

It is necessary that, more than guaranteeing access, the Government guarantees permanence, participation and especially learning, which will certainly depend on the

way in which support, reasonable adaptations and accessibility resources will be made available and implemented, as this is the only way we will achieve implement the right to education of people with disabilities in its entirety (TIBYRIÇÁ, 2018, p. 66).

Inclusive education guarantees a differentiated and quality learning space for all students. We seek a public policy of inclusion that recognizes differences, works with them for development, recognizing each person’s personal abilities and bringing respect to all beings as a fundamental basis, thus guaranteeing the material equality provided for in the Federal Constitution of 1988.

FINAL CONSIDERATIONS

The entire educational system must be inclusive in nature, with inclusion being an educational movement, of a social and political nature, which defends the right of all citizens to participate, in a conscious and responsible way, in the society they are part of and to be accepted and respected. what differentiates them from others.

We defend the need to comply with the determinations set out in the General Comments of the United Nations Committee on the Rights of Persons with Disabilities, as the body’s objective is to interpret the International Treaty to which Brazil is a signatory, including with the force of a constitutional amendment, which is why its provisions must be fully complied with.

General Comment no. 4 of the United Nations Committee on the Rights of Persons with Disabilities deals with a general education duty, under which the exclusion of people with disabilities from the educational system is prohibited, including through any legislative or regulatory provisions that limit their inclusion with based on the degree or level of the disability or impairment.

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