ARTÍCULO DE INVESTIGACIÓN

The right of people with disability to a high-quality education. Remarks on its scope and limitations in the Cuban Legal system

El derecho de las personas con discapacidad a una educación de calidad. Apuntes en torno a su extensión y límites en el ordenamiento jurídico cubano

Leyanis Lantigua Estupiñan [iD]
leyanis.lantigua@umcc.cu
Universidad de Matanzas, Matanzas, Cuba

Yairis Arencibia Fleitas [iD]
yairisaf84@gmail.com
Universidad de Matanzas, Matanzas, Cuba. Universidad de Alicante, Alicante, España

Dulce María Martín González [iD]
dulce.martin@umcc.cu
Universidad de Matanzas, Matanzas, Cuba

ABSTRACT Educational inclusion is intended to enable people to develop and optimize their capacity regardless of their differences, offering equal opportunities to allow every individual to solve their educational and social needs. The aim of this paper is to provide a legal perspective of the Cuban Legal system, in which such opportunities are included as basic human rights. We review the treatment due to people with disabilities prescribed in the international legal instruments signed and ratified by Cuba. Starting from the conceptualization, principles and bases on which are founded the concepts of disability, deficiency and handicap, we identify the levels of adaptation necessary to implement them in any education system. Thus, curricular adaptations should respond to the specific needs imposed by disability, respecting the scope and limitations of the rights of the people involved.

RESUMEN La inclusión educativa es el modelo que pretende dejar de ver las diferencias como un problema, para que cada persona desarrolle y optimice sus capacidades y así brindar igualdad de oportunidades, en función de sus necesidades tanto educativas como sociales. A tal fin, se ofrece en este estudio una perspectiva jurídica que lo aprecia en su dimensión como derecho humano y fundamental, a la luz del ordenamiento jurídico cubano y los instrumentos internacionales suscritos y ratificados por Cuba al respecto. Se parte entonces de su conceptualización, principios y fundamentos en los que se sustenta, para distinguir los conceptos de discapacidad, deficiencia y minusvalía, en función de los cuales habrán de ser definidos los niveles de adaptación a implementar en cada sistema educativo, de modo que las adaptaciones curriculares a introducir respondan a sus necesidades, en franco respeto al alcance y límites de los derechos de cada persona involucrada.

Introduction

To understand the concept of disability it is necessary to comprehend the importance given nowadays to terms such as diversity and connivance in diversity. These concepts closely relate to educational inclusion. Specifically in Cuba, these concepts are considered socio-educational challenges for institutions at all levels of the national educational system, since diversity, disability and high-quality education are recurrent concepts in pedagogical practices and discourse, where attention is focused on the learners and the quality of their learnings for life.

The so-called human rights model, created in recent years for people with disability, considers the topic as an issue of universal interest, and not exclusively for people with a functional limitation. That is why the concept of disability has evolved through numberless stages.

Educational inclusion means granting the right to education for all learners. This implies overcoming all manifestations of discrimination and exclusion. To advance in this direction presupposes reducing barriers of any kind that impede or hinder learners' access, participation and learning, with special attention focused on learners with special educational needs (SEN), who require a high-quality education.

The concept of inclusion implies changes in curricular philosophy and in teaching and learning strategies. These aspects affect not only learners with special needs and those with some disabilities, but also include what has traditionally been considered

'special education'. Due to its importance, the concept of inclusion has transcended the legal context to become a human right acknowledged in important international legal instruments.

Notwithstanding the above, it is necessary to consider the principles supporting the concept of educational inclusion, stressing the aspect of diversity which focuses not only on learners, but also on the teachers, governing bodies, non-teaching personnel, and the community in general. For this reason, the present study explores the foundations and principles of educational inclusion to achieve a high-quality education; it attempts to find the legal elements that provide the necessary equilibrium to people with disabilities to enable them to achieve their potential in a respectful environment, that is to say, with human equality and dignity for all the participants.

Development

It must be stressed that the concept of special educational needs does not include aspects such as educational inclusion, quality education, equilibrium, respectful environment, human equality, and dignity for all the participants used at the social level to refer to people with any kind of disability, which comprised the legal context.

Hundreds of years have passed, in which many concepts have been adopted that bring us closer to a more positive and optimistic conception of the term disability. In ancient times, the animistic view understood disability as a divine punishment, or that the person was "possessed by a demon".

This view moved on to a more a recent attitude that considered disability as a health-related concept. Disdain towards disabled people was frequently found in the family environment, where the disabled person as a child, adolescent or adult, was hidden away in the house and excluded from social life. This conduct arose from social stereotyping, and was supported by religious and cultural concepts of what was considered "normal, mentally deficient, subnormal" etc. Such concepts are now obsolete, due to their erroneous use, vulgar meaning, lack of humanity, and distance from the meanings understood by people who study the phenomenon of disability.

This development brought about a cyclical change in the terminology used, which now refers to people who "suffer an imperfection". Although "disability" is a concept still used internationally, both in colloquial speech and in professional language and the scientific literature, people who study the subject consider it to be inaccurate. It refers to a wide variety of conditions that may put people at a disadvantage with respect to others in society, e.g.: a functional or structural anomaly of the body; a protein metabolism problem; loss of a body part; a behavioural disorder which makes people unable to dress themselves unaided or drive a car. All these restrict the possibilities for example of securing a job or obtaining a driving license.

Attitudes to disability have evolved throughout the history of society. An essay published by the World Health Organization (WHO) in 1980 led to an International Classification of deficiencies, disabilities and handicaps in which the following concepts were recognised:

> Impairment – any loss or abnormality of psychological, physiological, or anatomical structure or function;
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> Disability – restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being;
>
> Handicap – disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex and social and cultural factors) for that individual.

After the approval of the above classification, the WHO established an agreement with a group of international organizations about the most important and appropriate conceptualization of disability. In contrast to the above classification of impairment, disability and handicap, WHO members were committed to achieving more positive concepts; many voted against a classification that included terms such as 'limit', 'restriction' and 'disadvantage'. This point of view led to a new review of the conceptualization used, and at the end of a long process WHO produced a new classification: The International Classification of Functioning, Disability and Health (ICF).

The title of this classification shows its different intentions. It removes the three levels of consequences of the condition, focusing instead on the following generic concepts:

> Functioning – to name all the body functions and structures, the capacity to execute activities, and the person's possibility of taking part in social life;
>
> Disability – to include deficiencies in bodily functions and structures, limitations in the capacity to perform activities and restrictions on social participation;
>
> Health – as a key aspect that embraces the aspects of the two concepts defined above.

The ICF appeals against labelling people with disabilities[1], and suggests that this new classification should not focus on the person only: "a classification of the person's health characteristics within individuals' life situational contexts and environmental effects. Health characteristics interactions are what creates given disabilities."

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1. LÓPEZ (2011) p. 12.

The components mentioned above appear in the following activities and forms of participation:

- Learning and application of knowledge
- Tasks and general demands
- Communication
- Mobility
- Self-care
- Domestic life
- Interpersonal relations and interactions
- Community, social and civic life

In a brief analysis, the classifications of people with disabilities given by the WHO, ICFD and ICFS have evolved, coming closer to the human rights-based social models of the twenty-first century. This approach also includes the interaction between a person with a disability and his or her environment. It is relevant that this classification takes into account the role of society in defining, causing or maintaining the disability condition of the person, including attitudes, and favoring access standards.

In 2011 WHO designated disability as a general concept, embracing deficiencies, limitations of activity and restrictions in participation. Deficiencies are those aspects that affect a body structure or function; limitations are conditions affecting activity, including difficulties in acting or executing a task, while restrictions in participation are problems in taking part in situations in everyday life.

The above definitions make evident the transit of medical and individual models towards social models in the conceptualization of disability; such models refer to the influence of the context in order to favor inclusion processes. These models refer not only to disabled people, but also to the contextual environment and situations, with the object of making people with disabilities feel more included.

The construction of the social model for disability, as well as the publication of rights and policies, result to a large extent from the efforts made by disabled people in different countries all over the world.

In the context of the above analysis of the evolution of the term 'disability', we must not ignore the studies related to equal opportunities and the proclamation of standards for non-discrimination and inclusion of people with disabilities that accompanied the consolidation of this concept.

We would highlight in particular the following instruments and events among the important international developments related to disability: UN Universal Declaration of Human Rights[2]: in article 26, as part of its objectives, we find the right of every

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2. UNO (1948), Article 23. Reference: Version 39 of 2011.

person to the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms, and the promotion of understanding and tolerance among all ethnic or religious groups, as an instrument to promote and maintain peace.

The importance assigned by the Cuban state and institutions to this issue is shown by their participation in different international organizations and events:

-Member of the International Covenant on Civil and Political Rights;
-Member of the International Covenant of Economic, Social and Cultural Rights;
-Member of the Convention on the Elimination of all forms of Discrimination against Women;
-Member of the Convention on the Rights of the Child;
-Member of the World Declaration for Education for All[3];
- Participant of the UNESCO World Conference on Special Needs Education: Access and Quality[4];
-Participant in the World Education Forum[5].

The Convention on the Rights of People with Disabilities marks a second milestone in the comprehension of disability, as it met with great recognition all over the world. It comprises specific dispositions for education, and commits signatory countries to adopting all the measures necessary to protect, respect and exercise the right to education in an environment free of discrimination. It provides a roadmap for change in societies towards inclusiveness and embracing individual differences.

The point of view that it is society that should change, and not the individual, becomes a factor for social change. It is the first time that people with disabilities are so comprehensively exposed in a binding international instrument[6]. Each period and each country assigns different qualities to people considered in a condition of disability, thus attributing roles according to the society where they live.

Attention to people with disabilities, as expressed above, is directly related to the opportunities the country gives to it citizens. Thus, the option that best develops people is the one that assumes a single socio-pedagogical context, in harmony with the most updated people. This option, still under development, presupposes respecting human diversity, that is to say, accepting diversity as a standard of human development.

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3. UNESCO (1990).

4. UNESCO (1994).

5. UNESCO (2000).

6. PALACIOS (2008) p. 15 and UNO (2006, 2016).

Although the Cuban government frames its policies with an eye to the full inclusion of people with disabilities, still there are social and psychological barriers, which, according to some authors[7], are inherited from the clinical or traditional conceptions which endured for so many years. Those beliefs are based on concepts that put the defect as the core of their proposals, without considering either the capacities and potentialities preserved, or human and material resources.

This study of disability reveals that it is more than a condition of the person; it is an evolutionary process in which a group of conditions interacts, many of which are created by the context. It is therefore essential to comprehend the evolution of the contextual factors in full interaction with the person. Independent of the loss or limitation of capacity, it is the physical and socio-cultural context where the person lives that makes the experience of disability unique. It is lived in a particular way by every individual, and that is what makes its classification so difficult.

Thus, to analyze the disability classification[8], it is necessary to define each disability in the light of its specificities, considering it as a complex phenomenon that hinders full and effective participation of the person in society, on equal terms with others. This study assumes that the social context is essential in determining whether a person has a disability.

There is an interesting classification[9]: physical or motor disability, sensorial disability, intellectual disability, and psychological disability. In Cuba, psychological disability is not considered as a classification requiring the orientation of educational attention within the general education system below higher education.

Persons with physical or motor disabilities are those who have less than full movement capacity; this often arises during life (the person is not born with it). This type of disability incudes a wide variety of conditions, as it can be caused by a missing limb, neurological affections, muscle injuries or other reasons. It can be of differing degrees of severity.

Sensorial disability refers to people with visual or hearing loss, or those with difficulties in communicating or making use of language.

Intellectual disability: people with several limitations in their ability to respond to everyday situations, to comprehend them and to communicate with others. It may be mild, moderate, severe or deep. Mild: people are able to learn and develop a professional activity, although their learning requires special support; Moderate: with therapy and adequate support, they may achieve a certain degree of autonomy; Severe: in most cases they suffer neurological damage, reduced motor abilities and little or

7. Such us Castellanos & López (2012).

8. Published by the WHO (2001).

9. Offered by the WHO (2001).

no reading and numeric comprehension; Deep: accompanied by neurological problems and very limited communicative capacity. Intellectual disability is irreversible, but with the proper support, people may progress and achieve many goals, as well as improving their quality of life.

It must be noted that there are other types of disabilities, for instance, when the person has difficulties in executing everyday or common tasks. Such disabilities are associated with health problems that hinder the person's capacity in the physical, social and cultural contexts.

Psychic, visceral and multiple disabilities can been defined as follows: psychic disability presents as alterations, predictably in a permanent and intensive manner, in the persons' adaptive behavior or in his/her relations. Generally, these disabilities are the result of mental disorders such as depression, bipolar disorders, schizophrenia, personality disorders. One of the most serious problems for the social integration of these persons is social stigmatization of mental disease, both due to the difficulties in acknowledgement and acceptance, and due to unfounded fear about these diseases.

Visceral disability is one of the least known but most frequent disabilities. It refers to functional and structural deficiencies in the cardiovascular, hematological, immunological, respiratory, digestive, metabolic, endocrine and genitourinary systems that hinder persons who suffer such disabilities from taking part in the community.

Multiple disability is characterized by different disabilities in different degrees and combinations. It is the combination and interaction of different disabilities in a person, in most cases developing into new and separate types of disabilities. They may vary depending on age, and the combination and severity of the disabilities involved.

Analysis of the above concepts related to disabilities, from the perspective of the social model, identifies contextual factors as determining the opportunities for participation that people with disabilities have, as well as their quality of life. These factors lead to the understanding that, in order to succeed in the incorporation of people with disabilities in an inclusive society, it is mandatory to make important changes in attitudes towards these people, in the support they need and the resources (material, professional and technological) required. Only then will these persons be able to take part and develop as individuals in the affective and social spheres in conditions of equality.

Although important steps have been taken in the inclusion of people with disabilities, it is still necessary to study the phenomenon from the social point of view to understand and deal with disabilities. In the same way, educational institutions need to include activities, objectives and contents focused on the improvement and assessment of the activities designed for people with disabilities (for both teachers and learners).

The quality of the education designed for people with disabilities relates closely to their potential for inclusion in society. Thus, the system should insert them in an educational system able to offer an equilibrium in their opportunities compared to those of people with no disabilities. The success of inclusive educational systems largely depends on the commitment of the country and its institutions to tailor legislation to an inclusive society. That is to say, focusing on changes in syllabuses and study plans, methods and teaching aids, as well as on evaluation systems.

After analyzing the evolution of the opportunities for and treatment of people with disabilities in society, we should now seek to understand the international legal framework for the right to education of people with disabilities. It is necessary to find the congruence between the legal framework and the inclusive education model. This approach has already been evolving and integrating for several decades, since responses started to emerge to the limitations of traditional education. That model was considered utilitarian and segregationist, and inadequate for the integration of students with special needs in the regular education system, leading to the search for inclusive education.

Inclusive education presupposes studying deficiencies as a problem, or as something to be added or compensated by society. From the new perspective, difference is necessary, as it enables each individual to develop and optimize their personal and social capacities. In this approach, differences among human beings stop being a threat and become a value and an opportunity for growth for the whole of society.

Educational inclusion demands not only equality, but also equity in treatment and access, given that equity in education means equity for everyone. Equality refers to treating all learners in the same manner, while equity means a State obligation to guarantee that personal circumstances, such as gender, ethnic origin, or economic situation, do not obstruct access to education; and that all people achieve at least a minimum level of capacities and abilities.

There are theoretical foundations for educational inclusion that contribute to construing, in a non-exclusive way, education for people with some deficit: The term "special educational needs" was suggested for the first time in 1978[10], to refer to those learners with any deficiency[11].

The concept of special educational needs addresses directly the human and material resources required to provide an adequate educational response to learners' needs. A learner has special educational needs when he/she has more difficulties than the rest of the learners in learning the contents in the curriculum, according to his/her age[12]. Such difficulties may have internal causes, difficulties or lacks in the so-

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10. Warnok Report, WARNOCK (1978) p. 46.

11. One in five children, according to UNESCO data, 2004.

12. According to Warnock (1978) p. 51.

cio-familiar environment, or be due to a maladjusted learning history. These learners need important adaptations to their access or in the curriculum.

According to an author[13] "There is a special need when a deficiency (physical, sensorial, intellectual, emotional, social, or any combination of them) affects the learning to the extent that some or all special access to the curriculum or modifications are necessary, or to one of the learning conditions specially adapted for the learner to be educated in the proper manner. The need may appear at any moment in the process, from mild to severe, and may be permanent or temporary in the learner's development."

It is clear that any generalization is not healthy, as each child is an individual with a rhythm in his/her development, according to which all the educational conducts corresponding to each special characteristic should be deployed.

When referring to special educational needs, we acknowledge a diversity of subjects in the face of learning processes, which requires very detailed analysis of all the elements involved in the teaching and learning process according to the subjects' characteristics[14].

The term 'diversity' found in the most important pedagogical discourse of the current times[15]. However, the plurality of learners facing him/her places the teacher in a great dilemma on how to educate within a diversity of cultures, possibilities, beliefs, capabilities, interests and motivations of both children and parents. It is not a matter of teaching the teacher how to look for strategies to assist people with special needs associated with disabilities; it is a matter of teaching the teacher to manage diversity, which is the norm.

Despite these difficulties, the concept of special educational needs (SEN) proposes that:

– No child will be considered as non-educable in the future;
– Education is a good[16] to which everyone has the right;
– The goals of the education are the same for all;
– Special education will consist of satisfying the special educational needs of the child to achieve these goals; and
–SEN are common to all children.

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13. BRENNAN (1988) p. 36.

14. URQUÍZAR y MARTÍNEZ (1998) p. 52.

15. BORGES y OROSCO (2014) p. 48, criterion with which these authors agree.

16. Se refiere este término al bien jurídico protegido, en tanto derecho intrínseco que la norma resguarda con la intención específica de darle protección a ciertos valores del ser humano y que se conviertan en intereses no sólo personales sino sociales y del Estado.

It has become difficult to identify adequate educational responses in practice, and it is not always possible to distinguish those that are the direct responsibility of the education system from those belonging to other contexts. It is necessary to review the international legal basis for the treatment of disabilities, because it refers to principles of educational inclusion and governments' obligations to achieve equity and educational inclusion for people with disabilities, as stated below:

• The Universal Declaration of Human Rights[17] states: "We all are equal before Law, with no distinction and against any discrimination" (Article 7). This declaration promotes the inclusion of human rights in the national legislation, policies and development plans of subscribing States.

• The Convention on Children's Rights[18] states the need to respect all the rights of all children, with no exception. In its articles, it points out that children with disabilities should enjoy a full life, decent, in such conditions that assure their dignity, and allowing them be autonomous and with active participation in their community (Article 23). In addition, it establishes a State responsibility to take the necessary measures to protect those children from any kind of discrimination.

• The purpose of the United Nations Convention on the Rights of Persons with Disabilities (UNO) is to promote, protect and assure the full enjoyment by all people with disabilities, in equal conditions, of all the human rights and main freedoms; and to promote respect for their inherent dignity.

In Article 24, referring to education, it states that Member States should ensure an inclusive educational system at all levels; people with disabilities shall have access to primary and secondary education, free of charge and of quality, in equal conditions to all. Thus States, within the general educational framework, should make the proper adjustments to their individual needs to allow people with disabilities be properly educated. The system should implement effective, personalized support measures in contexts that permit full academic and social development as per the full inclusion goal.

This purpose appears in the Cuban State goals, declared in Article 13 of the Cuban Constitution (2019). It focuses on guaranteeing effective equality in the enjoyment and exercise of rights; it promotes sustainable development to ensure individual and collective prosperity; it promotes higher levels of equity and social justice; and guarantees for people's full dignity and their integral development, to ensure the educational, scientific, technical and cultural development of the country. All of this is supported by the most modern trends in the educational context.

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17. Article 7. Reference: Version 7 of 2011.

18. Article 23.18 of 2006.

At the same time, Article 13 of the Cuban Constitution defends, as the basis of the country's educational policy: advances in science, technology and innovation; tradition; and Cuban and universal progressive pedagogical thought. These form a basis for upgrading education to the category of a basic right, in virtue of Article 46.

These postulates coincide with Precept 73, which summarizes the essential principles upon which the Cuban educational system rests, namely:

- The interdependent binomial; it is a right of all persons and a responsibility of the State;
- Free education at all levels: education services are granted free of charge, they are affordable and of quality for integral education, from early childhood up to higher and postgraduate education;
-Public institutionalism: the State, to make effective this right, establishes a broad system of educational institutions for all types and levels of education.
- It is individualized: it provides the possibility to study at any stage of the person's life, according to aptitudes, social requirements and the socio-economic needs of the country.
- Social and family co-responsibility: society and family are both responsible for education;
- Obligation: the Law defines the scope of the individual's obligation to study as basic and general education; these are the minimum that should be reached.

The Committee on the Rights of People with Disabilities states that, to guarantee the right to educational inclusion, it is necessary to make changes in the culture, policy and practices of all formal and informal educational contexts, in order to accommodate the needs and identities of each learner; and to make a commitment to remove obstacles that hinder such possibilities.

Goal Four of the UN 2030 Agenda for Sustainable Development is to "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all". It not only includes assistance to learners with special educational needs, conceived in the first references, but also broadens its view to include other sectors where limits exist to learning and full participation. Ethnic, cultural and economic factors, gender, sexual orientation, academic trajectory, and other differences become disadvantages for given populations of learners. Thus, emphasis is on "the importance of broadening the concept of inclusion to include all children, starting from the assumption that all learners count and have the right to receive effective educational opportunities"[19].

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19. AINSCOW (2020) p. 8.

Diversity is a natural quality of all school groups, and its management is a challenge for schools at all educational levels. It is essential to pay attention to any kind of discrimination and inequality. From an opportunity perspective, educational inclusion should favor cooperative learning, preventing differences from becoming a pretext for exclusion – contrary to welfare, compensatory and focused approaches.

Educational systems should be responsible for creating the conditions and strategies necessary to respond to individual and group needs.

It is important to analyze the definition of educational inclusion given by different authors, as many acknowledge the universal right to a high-quality education. Talking about inclusion means assuming a global change in culture and institutional practices, and in the social context of schools. Armstrong[20] defines inclusion as "an educational system that acknowledges all children and young people's right to share a common educational environment, where all are equally valued, despite the differences perceived in capacities, sex, social class, ethnics, or learning styles".

Inclusion does not occur by itself; it requires a change in educational policy and in the functioning of institutions. It is opposed to competition since it implies a right, equity, and a struggle against inequality, to ensure that all citizens enjoy an education according to their needs and individual peculiarities.

Inclusive education has been considered[21] to be a means for understanding the different capacities and learning styles of learners; it is a practical way to assume diversity. It places individuality in the social context, as well as its historical comprehension; it is a right.

Educational inclusion is closely related to the context in which it takes place[22]. For that reason, its acceptance at an international level has many meanings, due not only to the way that the people involved understand it, but also to the way in whch it is put into practice, which depends on the socio-educational objectives of each community or country. Some authors concur[23] when they state that each improvement process should be established according to the context, the teaching staff and the learners' characteristics.

According to the above paragraph, training of the whole of society is a basic condition for inclusion as human development is transferred from the social to the individual.

We assume the definition of educational inclusion given in 2005[24] as "…a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion with-

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20. ARMSTRONG (1999) p. 23.

21. TERRÉ (2005) p. 29.

22. BORGES *et al.* (2016) p. 33.

23. AINSCOW y BOOTH (2000) p. 22, ECHEITA, (2006) p. 29 and BORGES *et al.* (2016) p. 33.

24. UNESCO (2005) p. 14.

in and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children".

Inclusion is an effective means for the development of learners with or without special educational needs or disabilities, where actions should be undertaken to strengthen the relations among people and groups, to remove individual differences and the competitiveness characterizing current times.

There is a strong suggestion[25] about justifying and supporting inclusive education by different disciplines such as Philosophy, Law, Sociology, Psychology and Pedagogy. Philosophy, as the most general theoretical and critical support of all educational activity, and as a condition of scientific pedagogy, continues to be of interest to many professionals all over the world.

Dissatisfaction with educational methods and practices, and the desire to transform the whole system, has led pedagogues of all periods to study the issues related to education in detail. This has resulted in the creation of general theoretical foundations on education and pedagogy[26].

In the literature, important pedagogues have described the different stages undergone through educative practices to assist people with disabilities. Such practices continued to generate new philosophical points of view in the twentieth century.

The evolution of philosophical knowledge linked to special pedagogy is also associated with social development, as science develops through the activity of large groups inserted in society and not of individuals. Society and its institutions influence science with their questioning, stimulating and supporting scientists.

The philosophy of inclusion defends an effective education for all, based on the view that schools and educational communities should satisfy the needs of all learners, regardless of their personal, psychological or social characteristics (having deficiencies or not). Inclusion deals with the ability of the school to successfully educate the diversity of its learners, and collaborate in the eradication of injustice and inequality.

Regarding the psychological aspect, "it is really important to impregnate and change the thought and attitudes, construing them into new statements of solidarity, tolerance and new educative practices that bring about a new way of facing plurality and multiculturalism of the learners[27]".

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25. CANET (2009) p. 14.

26. BORGES y OROSCO (2014) p. 9.

27. ARNÁIZ (2005) p. 43.

Educational assistance provided to persons with special educative needs from a sociological perspective has been analyzed[28], addressing three different aspects: the content of change; the way to put it into practice, and the motives and causes that created it. These condition the study of the phenomenon of educational assistance to people with SEN from different angles to achieve a more integral explanation and understanding.

Educational sociology penetrates curricula, the pedagogic styles of educational agencies in performing their roles, and teacher-training, through many other elements related to education. The essential function of education is linked to the continuous development of the person and society. It is a means for a more harmonious and more genuinely human development, by reducing discrimination and exclusion.

Psychology explains why no learner should be excluded from educational institutions that value diversity; the ideal is an environment where all are welcomed, accepted and supported. These institutions respect each learner's capacities and consider each person as a valuable member, who may perform different skills and different functions to support others. In this way they do not reject or segregate anybody[29]. Such institutions rescue the positive side of individuals instead of labeling them for their deficiency. In this way they strengthen learners' self-esteem and satisfaction with their achievements.

Moreover, institutions that value diversity nurture values such as the sense of belonging to a group, personal value, cooperation, tolerance, mutual respect, etc., favoring interpersonal relationships and thus the learning process. This perspective provides people with the opportunity to know themselves better, and have a better self-concept and personality[30].

The above ideas regarding educational inclusion orient thinking towards a type of school where children, adolescents and young people with special educational needs are educated without any limits on their integration. Schools should embrace and educate all learners, and not only those considered "educable".

Hence, inclusion, from the pedagogical perspective, assumes that cooperation and group learning benefit all, not only those labeled as different. In many systems, educational inclusion is recognized as an attempt to assist learning difficulties and a means to ensure that learners with special educational needs have the same rights of the rest of the pupils in a regular school.

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28. BORGES y OROSCO (2014) p. 11.

29. ARNÁIZ (2005) p. 3.

30. PEARPOINT & FOREST (1999) p. 16.

We can say therefore that inclusion has an impact on everyone in the school. "An inclusive school is one that is in movement and not one that has achieved a given goal"[31]. At the same time, we can say that:

– Inclusion is a process;
– Inclusion looks to identify and remove barriers;
– Inclusion seeks the presence, involvement and success of all learners;
– Inclusion puts particular emphasis on those groups of learners who may be at risk.

Important work has been done in the past on inclusive education in schools: "The Index of Inclusion"[32]; learning and participation development in schools; the design of materials to support the inclusion process; as well as the points of view of teaching staff, families and other members of the community, all in an effort to improve educative achievements through inclusive practices.

The Index of Inclusion is not only a tool to aid careful planning of progressive change; it also has the goal of generating changes in culture and values to facilitate inclusive practices for schools staffs and learners. Working with the Index should drive innovation and development cycles in schools.

An interesting edge has explored inclusion through three inter-related dimensions in the schools' lives: culture, policy and practices[33].

Inclusive CULTURE: the creation of a safe, welcoming, collaborative and stimulating school community, where each person is valued as the basis for all learners to reach higher levels of achievement. It refers also to the development of inclusive values shared by all the school staff, learners, governing body, and families, and which are passed on to all the new members of the school community. The principles derived from this culture ensure that the policy and everyday decisions taken in the school support the learning of all through a continuous process of innovation and development.

Inclusive POLICY: ensures that inclusion is the core of school development, permeating all the policies adopted to improve the learning and participation of all learners. It is the basis of all activities undertaken to improve the school's capacity to respond to the diversity of the learners: a unique framework that groups all the school's support systems, conceived from the perspective of the learners' development and not from that of the school or its administrative structures.

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31. AINSCOW *et al.* (2006) p. 34.

32. AINSCOW & BOOTH (2000) p. 15.

33. AINSCOW & BOOTH (2000) p. 19.

Inclusive PRACTICES: the school's educational practices should reflect its inclusive culture and policies. This means promoting the participation of all learners in classroom and outdoor activities, and takes into account the knowledge and experience that learners obtain from the school.

Teachers at all educational levels are studying the Index, as it leads the creation of initiatives and strategies in different countries, regions, schools or education levels. It helps in evaluating, in detail, the real possibilities for developing learning and participation by all learners.

The above dimensions guide educational institutions towards the necessary changes. Culture is an important factor that may hinder or favor both learning and changes in teaching. By working to develop an inclusive culture, the school community may change its policies and practices, which it will then keep and pass on to new members of the school community.

We assume the definition of inclusive schools that indicates: "an inclusive school is one that guarantees the access of all children, adolescents and young people to an education of quality with equal opportunities for all"[34] .

Educational inclusion presupposes granting the right to education of all learners; it implies overcoming all discrimination and exclusion. To advance in this direction it is necessary to minimize different types of barriers that hinder or obstruct access, participation and learning, with special attention to learners with special educational needs who require an education of quality.

In a modern society, it is not enough to assist learners with given educational needs; we need to face the challenge of educating **all learners** to their maximum capacity. From this perspective, the curriculum is a key aspect in designing the educational response: a curriculum that puts learning and teaching at the core of the process, from the objectives and contents up to the subjects, to provide all the learners with equal opportunities in their education.

To achieve all the above, education professionals should act responsibly, as they are responsible for people, society and the future development of the culture. According to this viewpoint, culture is everything the person acquires throughout their entire life from birth.

Inclusive education in Cuba is a concept that acknowledges the right of all to an education of quality, notwithstanding the particularities and characteristics that condition development variables. It promotes people's integration into society as individuals with full conditions, to enjoy the possibilities that the society offers and contribute to its improvement in return[35].

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34. ECHEITA (2008) p. 14.

35. BORGES y OROZCO (2014) p. 14.

Inclusive education is a system of ideas, judgments, concepts, suggestions and methodological procedures for implementation in any educational context. Including children, adolescents and young people means training them for social life, to exercise their functions and tasks in society. All this is inextricably linked to people's work, the activity that human beings execute during their lives.

Inclusive education does not center attention on the type of school, special or regular, but on ensuring that all learners achieve their socio-educational objectives, regardless of the type of school or institution. Cuban educational policy is essentially inclusive, since it proposes including all citizens in education. This principle has existed in education policy since the triumph of the Revolution, as a matter of human rights, social justice, equity and equality of opportunities.

In Cuban education, the inclusion of citizens is part of the national standards, executed in social practice through the Constitution of the Republic 2019 (Articles 1, 16 c), 41, 42, 44, 73 and 89); the Childhood and Youth Code (1978, Articles 19 to 30), the recently approved Family Code (Articles 5 i), 136, 137.2, 138[36]) and the Civil Code (Article 1). All of these regulate the full exercise of people's rights, without any exclusions, to develop a guaranteed system that ensures coherent, operative articulation of the country's policies, plans and programs with political, social and cultural conceptions of persons with disabilities, respecting their individuality.

The right to education in Cuba is human by its nature, extending a universal right to a free education. Education is mandatory until the completion of secondary school. It is accessible to all without distinction, equitable and of quality, oriented to achieve citizens' full and integral development. The Cuban Socialist project supports these values to ensure that people are educated to be able to transform society effectively.

It is necessary to to ensure that schools, teaching and society in general accept difference as a possibility for individual and social growth. In this way all human beings, as active members of a universal school and as citizens, will be able to live their experiences, rights and obligations in a reflexive manner within a diverse, democratic society.

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36. This Law was conceived to comply with the international agreements to which Cuba is signatory. Article 138, Item l refers to parental responsibility. It includes the duty to provide family, community and social inclusion, for persons in a situation of disability, and to provide an inclusive education in environments that will allow such learners to achieve their maximum educational development, in equal conditions to other children.

To avoid the obstacles in the teaching-learning process of people with disabilities, many countries have designed strategies for integral, universal education in contexts of diversity. For example, in Mexico reasonable adjustments were made by the Second Chamber of Mexico's Supreme Court in its Direct Protection ruling 31/2018[37]. According to the rapporteur's ruling, the following elements should be included:

1. Detect and remove the obstacles influencing the enjoyment of their human rights by people with disabilities, through dialogue with such persons;

2. Evaluate the feasibility of making adjustments (legal and practical);

3. Evaluate the relevance of the adjustment (if it is necessary or adequate), and its effectiveness in guaranteeing the exercise of the right in question;

4. Avoid modification becoming an unnecessary burden. It is necessary to analyze the balance between the means deployed and the aim, which is the enjoyment of the right in question;

5. Make the suitable adjustments to promote equality and remove discrimination against people with disabilities. This requires a case-by-case approach. Among the factors to be taken into account are the financial costs, the resources at hand, the effects of the modification, the advantages for third parties, the negative effects for others and reasonable health and safety requirements;

6. Guarantee that the costs will not be a burden on persons with disabilities, and;

7. Ensure that the burden of the task falls on the party that grants the rights to sustain that the load is disproportionate or inappropriate.

The above document includes some points in the pursuit of equity and non-discrimination that become unsound in the case of children who are not motivated; that is to say, the object is to achieve levels of inclusion that do not infringe the rights of the collective.

The legal status of the ownership of a right is unlimited, since any other situation would lead to arbitrariness. This is why the rights themselves are subject to limits, one of which is the existence of a right pertaining to another person; this acts as a limitation on the right as such, bringing about what is known as collision of rights[38].

It is therefore necessary to establish a ranking among different colliding rights, giving priority to the oldest in virtue of the principle that *prior tempore potior iure.* In other cases, rights are sometimes ordered by pre-relation or preference according to the circumstances affecting the nature of the right; to protect, by a establishing a legal order, the person who has advanced in the exercise of the right, and who shows more diligence than the other. Again, all the colliding rights may be treated equally, requiring a proportional sacrifice from each, which might be the case in the present analysis.

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37. Amparo Directo 31/2018.

38. VALDÉS (2000) p. 95.

Subjective right may be subject to general limits, in the form of principles such as the right of good faith and no abuse of the right[39]. Article 4 of the Cuban Civil Code establishes the abusive exercise of a right as a limit, in the statement: "*The rights this Code acknowledges shall be exercised as per their social content and purpose, and their exercise is not licit when the purpose is to cause damage to others*".

The Code protects against any exercise of a right that exceeds the scope of its aims; to which the authors of this paper would add "or undermines the rights of third parties, in which case legal steps would be taken to interpose the most adequate legal resource against a breach of the legal mandate as a legitimisation of all interest requiring legal tutoring, to find equilibrium among the legal situations in collision".

We should also mention the instances to which the Code is applicable. In the first order, it applies to the educational institution, to solve any legal situation that is in collision: for example when the exercise of the Law on the educational inclusion of a learner provokes impairment of the right of the rest to receive an education of quality. This does not mean discarding *prima facie* the need to integrate children with disabilities, or separating them from the levels of opportunities to which they could have access in an inclusive educational context through special education; rather it means ensuring the necessary equilibrium so as to advocate an equitable and just educational environment for all.

To achieve an equitable and just diversity, Cuba supports the development of methodological work that reaches all learners in schools. This is the justification underlying the organization and curriculum of each school.

All the measures proposed to respond to diversity and to achieve more personalized teaching are intended to benefit learners with special educational needs, in particular curricular adaptations. Curricular adaptations has benn defined[40] as responses to the concrete reality of a learner or group of learners; they may be applied to objectives, contents, methods and evaluation.

Among the main suggestions for curricular adaptations are the following[41]:

• Introducing individualized, alternative or complementary activities;
• Removing those activities that do not benefit the learner or ensure real, active participation;
• Using different types of organization of the group in the classroom, considering that learners with greater difficulties may perform better with such adaptations;
• Modification of the general method followed to teach a content, and the complexity level of the activities;

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39. DÍEZ PICAZO y GULLÓN (1994) p. 127.

40. GARRIDO (2001) p. 34.

41. GUERRA (2014) p. 234.

- Modification of the material selected and adapting how it is ordered;
- Modification of the evaluation instruments;
- Creation of new tasks taking into account the interests of learners with greater difficulties;
- Creation of tasks that allow the participation of all learners;
- Inclusion of specific materials and visual aids for learners who require them;
- Adaptation of the scheduling of activities.

Attention to learners' diversity in the form of inclusive practices should include systematic, coordinated actions directed towards achieving an educational inclusion that really responds to the learners' needs. These activities should be promoted in the teachers' training, exchange of information and preparation, prioritizing the organization of the activity. Teachers should also design and implement social, psychological and pedagogical supports, and special didactic resources, to assist specific needs in different educational contexts. Moreover, they should be flexible and add value to the curriculum, to its objectives, contents, methods, means, strategies and organization, through creative mechanisms to solve specific problems.

Conclusion

Because 'inclusion' has both an educational and a social meaning, the actors involved should pay careful attention to the correlation between advantages/disadvantages for all the participants in promoting access to an education of quality, adjusted to the needs of each learner, as the only way to effectively exercise the basic human right to education.

In Cuba, the notions of quality and equity in the educational context, adapted to learners' aptitudes, are a State concern at the Constitutional level. It is mandatory to consider respect for differences as an element of social richness that encourages attitudes of tolerance and comprehension, and the elimination of prejudices by involvement, concern and interest for others.

After analyzing the literature and the Cuban position on inclusive education, it is important to influence the culture of all those involved: teaching staff, families, and society in general. All of these must participate in providing inclusive education, considering its benefits and contradictions. Success in this process depends on introducing the necessary and agreed curricular bases and adaptations to provide individualized support, assuming that each learner and each educational scenario is different and taking its particularities into account.

Sobre las autoras

Leyanis Lantigua Estupiñan es Profesora Auxiliar de Educción Especial y Logopedia. Licenciada en Educación Especial. Máster en Ciencias de la Educación. Mención Educación Especial. Jefa del grupo de trabajo de Ciencia, Tecnología e Innovación de la Universidad de Matanzas. Principales líneas de investigación: La atención educativa de niños, adolescentes y jóvenes con discapacidad, la inclusión educativa universitaria.

Yairis Arencibia Fleitas es Profesora Titular de la Universidad de Matanzas. Máster en Derecho de Familia. Doctora en Ciencias Jurídicas. Investigadora/Colaboradora Senior de la Universidad de Alicante, España. Trabajo realizado en el marco de las Ayudas María Zambrano para la atracción de talento internacional, financiadas por el Ministerio de Universidades, la Universidad de Alicante y la Unión Europea. Plan de Recuperación, Transformación y Resiliencia de España (Instrumento Europeo de Recuperación "Next Generation" para el periodo 2021-2027).

Dulce María Martín González es Profesora de Educación Especial y Logopedia. Licenciada en Defectología, Especializaciones en Oligofrenopedagogía y Tiflopedagogía. Máster en Educación Especial. Doctora en Ciencias Pedagógicas. Las principales líneas de investigación trabajadas son: atención educativa a personas con discapacidad visual, el proceso de inclusión educativa.

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