

# MAKING GOOD ON THE PROMISE OF INTERNATIONAL LAW: THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND INCLUSIVE EDUCATION IN CHINA AND INDIA

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*Abstract:* The Convention on the Rights of Persons with Disabilities conceptualizes disability as a human rights issue and requires state parties to provide an inclusive education to all children with disabilities. However, China and India, the two most populous signatory countries, do not currently provide inclusive education—described by the Convention as nondiscriminatory access to general education, reasonable accommodation of disability, and individualized supports designed to fulfill the potential of individual children with disabilities. Though both India and China have laws that encourage the education of children with disabilities, neither country's laws mandate inclusive education and neither country currently provides universal education to children with disabilities. Furthermore, both countries lack the funding and teaching force to enforce existing laws or provide inclusive education. Assuming that India and China intend to comply with the Convention, the United Nations must use the Convention to persuade China and India to also change domestic laws and facilitate the involvement of non-governmental organizations that can help increase and effectively use fiscal and human resources necessary to provide inclusive education to all students with disabilities.

## I. INTRODUCTION

Disability is a human rights issue! . . . Those of us who happen to have a disability are fed up being treated by the society and our fellow citizens as if we did not exist or as if we were aliens from outer space . . . If asked, most people, including politicians and other decision makers, agree with us. The problem is that they do not realize the consequences of this principle and they are not ready to take action accordingly.<sup>1</sup>

The governments of China and India are responsible for the education of approximately twenty-six million children with disabilities.<sup>2</sup> Both China and India

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<sup>1</sup> Bengt Lindqvist, Special Rapporteur on Disability of the United Nations Commission for Social Development, Remarks at the 19th Congress of Rehabilitation International, Rio De Janiero (Aug. 25-30, 2000), in U.N. High Commissioner for Human Rights, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* at 13, U.N. Doc. HR/PUB/02/1 (2002) (prepared by Gerard Quinn and Theresia Degener) [hereinafter *Human Rights and Disability*].

<sup>2</sup> See United Nations ("U.N.") Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: China* at 50, U.N. Doc. CRC/C/83/Add.9 (July 15, 2005) [hereinafter *CRC Report: China*] (estimating that there are 600 million disabled persons in China and 9.5 million under the age of fourteen). See also U.N. Committee on the Rights of Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: India*, at 202, U.N. Doc. CRC/C/93/Add.5 (July 16, 2003)

have adopted laws encouraging the education of disabled children,<sup>3</sup> but have been unable to provide many of them with education. In China approximately sixty percent of children with disabilities are enrolled in some form of school,<sup>4</sup> as few as forty percent of children with disabilities in India are enrolled in school.<sup>5</sup> Both China and India have recognized the need to improve the provision of education to children with disabilities.<sup>6</sup>

Educating students with disabilities is a human rights issue and an economic one.<sup>7</sup> Scholars recognize that, around the world, children with disabilities are often marginalized and poorly served by schools, even when they are enrolled.<sup>8</sup> Lack of adequate education is the key risk factor for poverty and social exclusion for all children, but children with disabilities who are excluded from education in developing countries are almost certain to live in long-term poverty.<sup>9</sup>

[hereinafter *CRC Report: India*] (estimating that 5 percent of the population of India is disabled); U.S. Department of Commerce, Bureau of the Census, *Population Trends: India*, at 1, IB/97.1 (Apr. 1997) (prepared by Arjun Adlakha), available at <http://www.census.gov/ipc/prod/ib-9701.pdf> (estimating that approximately 340 million persons in India are under the age of fourteen). Based on the author's calculations, that would mean there are approximately seventeen million disabled children in India. These statistics may not be completely reliable. Much depends on how a country defines disability.

<sup>3</sup> See Regulations on the Education of Persons with Disabilities (China) (Aug. 23, 1994), in U.N. Economic and Social Commission for Asia and the Pacific [ESCAP], *Legislation on Equal Opportunities and Full Participation in Development for Disabled Persons: Examples from the ESCAP Region*, U.N. Doc. ST/ESCAP/1651 (Dec. 1997), available at <http://www.unescap.org/esid/psis/disability/decade/publications/z150071e/z1500701.htm> [hereinafter Regulations]; Law of the People's Republic of China on the Protection of Disabled Persons, art. 22 (promulgated by the President of the People's Republic of China, Dec. 28, 1990, effective May 15, 1991), available at [http://www.cdpf.org.cn/english/info\\_01.htm](http://www.cdpf.org.cn/english/info_01.htm) [hereinafter LPDP]; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1 (India), ch. 5 (Jan. 1, 1996) in U.N. Economic and Social Commission for Asia and the Pacific [ESCAP], *Legislation on Equal Opportunities and Full Participation in Development for Disabled Persons: Examples from the ESCAP Region*, U.N. Doc. ST/ESCAP/1651 (Dec. 1997), available at <http://www.unescap.org/esid/psis/disability/decade/publications/z150071e/z1500701.htm> [hereinafter PDA].

<sup>4</sup> See Asia-Pacific Development Center on Disability [APCD], *Country Profile: People's Republic of China*, s. 3.15, <http://www.apcdproject.org/countryprofile/china/index.html> (last visited Dec. 26, 2007) [hereinafter *APDC Profile: China*].

<sup>5</sup> World Bank, Human Development Unit South Asia Region, *People With Disabilities in India: From Commitments to Outcomes*, at 17 (2004) [hereinafter *People With Disabilities in India*].

<sup>6</sup> See *CRC Report: China*, *supra* note 2, at 52; *CRC Report: India*, *supra* note 2, at 235; David Mitchell, *Special Educ. Policies and Prac. in the Pacific Rim Region*, at 12, Paper presented at the Annual Int'l Convention of the Council for Exceptional Children (Apr. 6-9, 1995), available at <http://edres.org/eric/ED391261.htm>.

<sup>7</sup> See, e.g., World Conference on Special Needs Education, *Salamanca Statement and Framework for Action on Special Needs Education*, at iii-iv, U.N. Doc. ED-94/WS/18 (June 7-10, 1994) [hereinafter *Salamanca Statement*]; World Bank, *Education, Poverty, and Disability in Developing Countries*, Technical Note for the Poverty Reduction Sourcebook, at 1 (June 21, 2001) (prepared by Ture Jonsson & Ronald Wiman) available at <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172610312075/EducationPovJonsson.pdf> [hereinafter *Jonsson & Wiman*].

<sup>8</sup> See U.N. Educational, Scientific and Cultural Organization [UNESCO], *Inclusion in Education: The Participation of Disabled Learners*, at 3, UN Doc. ED.2001/WS/24 (2001) (prepared by James Lynch) [hereinafter *Lynch*]; David Mitchell, *Introduction to CONTEXTUALIZING INCLUSIVE EDUCATION: EVALUATING OLD AND NEW INTERNATIONAL PERSPECTIVES 1*, 6 (David Mitchell ed.) [hereinafter *CONTEXTUALIZING INCLUSIVE EDUCATION*].

<sup>9</sup> See *Jonsson & Wiman*, *supra* note 7, at 1.

The United Nations Convention on the Rights of Persons with Disabilities (“Convention”), which China signed in 2007 and India signed and ratified in 2007,<sup>10</sup> recognizes education as a basic human right.<sup>11</sup> The Convention is the first piece of binding international law that places on states an affirmative obligation to ensure that students with disabilities are educated in mainstream schools and have equal access to educational opportunities. If enforced in India and ratified and enforced by China, the Convention could potentially increase educational opportunity for millions of children with disabilities. India and China could then provide a model for other nations facing similar challenges. The United Nations must leverage the Convention to engage China and India in revising existing laws to comply with the Convention’s view of inclusive education as a basic human right, as well as involve the international community—particularly non-governmental organizations—in building China’s and India’s capacity to make and implement such changes.

Part II of this Comment will explain how the Convention, unlike earlier United Nations documents, exemplifies a social model or human rights approach to disability and education. Part III will define the Convention’s primary method of providing education to children with disabilities: “inclusive education,” which attempts to ensure the best outcomes for students with disabilities by providing non-discriminatory access, reasonable accommodations, and individualized support. Part IV will argue that China and India need to revise their existing laws and policies in order to comply with the Convention’s requirements for inclusive education. Part V will analyze how the United Nations can use the Convention’s enforcement mechanisms to facilitate effective revision of China’s and India’s existing laws and encourage transnational advocacy networks to provide the expertise, financial resources, and capacity-building that will enable China and India to transform their education systems.

## II. THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES EXEMPLIFIES A HUMAN RIGHTS APPROACH TO EDUCATION AND DISABILITY

The Convention is the culmination of the United Nations’ shift from a medical to a social model of disability.<sup>12</sup> A “medical” model “views a disabled person’s limitations as inherent, naturally and properly excluding her from

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<sup>10</sup> U.N. Enable, *Convention and Optional Protocol Signatories and Ratification*, <http://www.un.org/disabilities> (last visited Dec. 27, 2007) (click on document title).

<sup>11</sup> Convention on the Rights of Persons With Disabilities, G.A. Res. 61/106, art 24. cl. 1, U.N. Doc. A/RES/61/106 (Dec. 6, 2006) [hereinafter *Convention*].

<sup>12</sup> See U.N., Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *Report of the Working Group to the Ad Hoc Committee*, at 10 n.12, UN Doc A/AC.265/2004/WG.1 (Jan. 27, 2004) [hereinafter *Working Group Report*].

participating in mainstream culture.”<sup>13</sup> A “social” or “human rights” framework has two elements.<sup>14</sup> First, it affirmatively recognizes the basic human rights of persons with disabilities.<sup>15</sup> Second, it underscores the extent to which disability is socially constructed and asks communities to change normative practices that contribute to the impairment of individuals with disabilities.<sup>16</sup> Whereas early United Nations documents focused on education as therapy or treatment for disability, more recent documents, including the Convention, have recognized that children with disabilities are entitled to an education that will develop their full potential.

A. *Early United Nations Statements on Disability and Education Were Based on a Medical Model, Which Asked States to Treat or Care for Disabled Persons*

In its early years, the United Nations did not explicitly recognize the human rights of persons with disabilities.<sup>17</sup> For example, the Universal Declaration on Human Rights states that “everyone” is entitled to the rights and freedoms set forth in the declaration, but does not recognize persons with disabilities as one of a series of classes in need of protection from human rights violations.<sup>18</sup> Rather, it lumps disability with circumstances beyond one’s control, like unemployment, sickness, old age, and widowhood.<sup>19</sup> Individuals in such circumstances, the United Nations declared, should receive “food, clothing, housing, and medical care and necessary social services” to ensure an adequate standard of living.<sup>20</sup> While the Universal Declaration on Human Rights may create obligations to treat, educate, or care for persons with disabilities, it does not do so because of the inherent dignity or rights of persons with disabilities.<sup>21</sup>

When the United Nations officially recognized the human rights of persons with disabilities, it retained vestiges of the medical model. The 1975 Declaration on the Rights of Disabled Persons explicitly recognizes that persons with disabilities have “the inherent right to respect for their human dignity,” including the same fundamental rights as their fellow citizens.<sup>22</sup> As recognized by the

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<sup>13</sup> See Michael Ashley Stein, *Disability Human Rights*, 95 CAL L. REV. 75, 86 (2007).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Charles D. Siegal, *Fifty Years of Disability Law: The Relevance of the Universal Declaration*, 5 ILSA J. INT’L & COMP. L. 267, 269 (1999).

<sup>18</sup> See Universal Declaration of Human Rights, G.A. Res. 217A, art. 2, U.N. GAOR, 3d Sess., 1st plen. mtg. UN Doc. A/810 (Dec. 12, 1948).

<sup>19</sup> See *id.* art. 25.

<sup>20</sup> See *id.*

<sup>21</sup> See Siegal, *supra* note 17, at 269.

<sup>22</sup> Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), ¶ 3, U.N. Doc. A/10034 (Dec. 9, 1975).

Universal Declaration of Human Rights, one of those rights was the right to an education.<sup>23</sup> However, the declaration did not expressly state the measures that countries should take to ensure those rights.<sup>24</sup> Rather, it called for countries to “hasten the processes of . . . social integration or reintegration” by providing persons with disabilities the right to medical, psychological, and functional treatment.<sup>25</sup> Within such a framework, states provide education to “treat” a disability rather than to develop the potential of students with disabilities.

*B. Since 1990, the United Nations Has Shifted Toward a Social Framework of Disability, Which Focuses on the Rights and Abilities of Persons with Disabilities*

In shifting towards a social model of disability and education, the United Nations’ first step was to recognize the inherent rights of persons with disabilities.<sup>26</sup> The first document in the field of education to do so was the Convention on the Rights of the Child (“CRC”), passed in 1991. The CRC explicitly recognizes the right of all children to an education, a provision that applies with equal force to children with disabilities.<sup>27</sup> Furthermore, it asks states to provide assistance, whenever possible, to disabled children and their families.<sup>28</sup> Such assistance should “ensure that the disabled child has effective access to and receives education . . . in a manner conducive to the child’s achieving the fullest possible social integration and individual development.”<sup>29</sup> Unlike the Declaration on the Rights of Persons with Disabilities and the Universal Declaration of Human Rights, the CRC requires states to provide education to students with disabilities as a basic right, rather than to further the aims of charity or social integration. Furthermore, because the CRC asks states to provide education in a manner conducive to the individual development of the child, it implies that states should re-evaluate their practices to ensure that those practices do not result in the discrimination or marginalization of students with disabilities.

Subsequent United Nations documents embraced a social model of disability by calling on states to educate students with and without disabilities in the same “integrated” environment. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (“Standard Rules”) were adopted in

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<sup>23</sup> See Universal Declaration of Human Rights, *supra* note 18, art. 26.

<sup>24</sup> See generally Declaration on the Rights of Disabled Persons, *supra* note 22.

<sup>25</sup> See *id.* ¶ 6; see also Stein, *supra* note 13, at 88.

<sup>26</sup> See *Human Rights and Disability*, *supra* note 1, at 1.

<sup>27</sup> Gerard Quinn & Theresia Degener, *Building Bridges From “Soft Law” to “Hard Law”: The Relevance of the United Nations Human Rights Instruments to Disability*, in *Human Rights and Disability*, *supra* note 1, at 49.

<sup>28</sup> Convention on the Rights of the Child, G.A. Res. 44/25, art. 23, cl. 2, U.N. Doc. A/44/49 (Nov. 20, 1989).

<sup>29</sup> *Id.*

1993,<sup>30</sup> and call on countries to adopt policies and revise curricula to encourage the education of children with disabilities in general schools.<sup>31</sup> The Salamanca Statement and Framework for Action on Special Needs Education (“Salamanca Statement”), adopted in 1994, goes further, proclaiming the right of every child to an education, and specifically calling on governments to adopt policies that further the access and accommodation of students with special educational needs in “regular schools.”<sup>32</sup> Though neither the Standard Rules nor the Salamanca Statement is binding international law, the documents’ emphasis on educational rights of students with disabilities and insistence that states revise education policy to uphold those rights illustrates the United Nations’ growing commitment to a social model of disability in the field of education.

C. *The Convention Firmly Embraces the Social Model of Disability and Requires Governments to Provide an Inclusive Education*

The Convention goes further than any previous United Nations document to adopt a social model and recognize the human rights of persons with disabilities. Because the United Nations intended the Convention to clarify, consolidate, and strengthen rights already conferred on persons with disabilities by previous United Nations statements and conventions,<sup>33</sup> the Convention includes articles on all facets of life, including accessibility, personal mobility, health, employment, participation in political life, and education.<sup>34</sup> Its purpose is “to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.”<sup>35</sup> The United Nations created the Convention with unprecedented input from disabled people’s organizations and other non-governmental organizations.<sup>36</sup> Some of those organizations helped draft the Convention; others submitted written statements, made oral interventions, or brought activists from around the world to testify.<sup>37</sup> Numerous legal scholars have

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<sup>30</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, G.A. Res. 48/96, U.N. Doc. A/RES/48/96 (Dec. 20, 1993).

<sup>31</sup> *Id.* rule 6.

<sup>32</sup> See *Salamanca Statement*, *supra* note 7, ¶¶ 2-3.

<sup>33</sup> See Anna Lawson, *The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?*, 34 SYRACUSE J. INT’L L. & COM. 563, 589 (2007).

<sup>34</sup> See Don MacKay, *The United Nations Convention on the Rights of Persons With Disabilities*, 34 SYRACUSE J. INT’L L. & COM. 323, 328 (2007).

<sup>35</sup> See Convention, *supra* note 11, art. 1.

<sup>36</sup> See Lawson, *supra* note 33, at 588-89.

<sup>37</sup> See Janet E. Lord, *NGO Participation in Human Rights Law and Process: Latest Developments in the Effort to Develop an International Treaty on the Rights of People With Disabilities*, 10 ILSA J. INT’L & COMP. L. 311, 314-15 (2004).

hailed the Convention as a human rights document consistent with the social model of disability.<sup>38</sup>

In the area of education, the Convention recognizes the right of persons with disabilities to an education and requires states to realize those rights through inclusive education.<sup>39</sup> Article 24 of the Convention obligates state parties to “recognize the right of persons with disabilities to education.”<sup>40</sup> However, as many scholars point out, merely recognizing the right of students with disabilities to an education does not ensure that students receive it.<sup>41</sup> Though education policies may state that schools are open to all children, disabled children may be prevented from attending school by rigid curricula, inaccessible buildings, untrained teachers, and many other factors.<sup>42</sup> Thus, in order to realize the right to education without discrimination, the Convention requires state parties to “ensure an inclusive education system at all levels and lifelong learning directed to . . . [t]he development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.”<sup>43</sup> The Convention, consistent with the social model of disability, calls for education that focuses on both equality of rights and the realization of those rights on a day-to-day basis.<sup>44</sup>

### III. INCLUSIVE EDUCATION, AS DEFINED BY THE CONVENTION, REQUIRES STATES TO ENSURE EQUALITY OF ACCESS AND OPPORTUNITY FOR STUDENTS WITH DISABILITIES

Scholars, international organizations, and activists believe that inclusive education benefits disabled students and society at large,<sup>45</sup> although the term does

<sup>38</sup> See, e.g., Arlene S. Kanter, *The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities*, 34 SYRACUSE J.INT'L L. & COM. 287, 291 (2007); Lawson, *supra* note 33, at 617; MacKay, *supra* note 34, at 323, 331.

<sup>39</sup> See Convention, *supra* note 11, art. 24.

<sup>40</sup> *Id.*

<sup>41</sup> See U.N. Human Rights Council, *The Right to Education of Persons with Disabilities, Report of Victor Muñoz, the Special Rapporteur on the Right to Education*, at 5, U.N. Doc. A/HCR/4/29 (Feb. 19, 2007) [hereinafter *Muñoz Report*]; CONTEXTUALIZING INCLUSIVE EDUCATION, *supra* note 8, at 11; Martha E. Snell, *Characteristics of Elementary School Classrooms Where Children with Moderate and Severe Disabilities are Included: A Compilation of Findings*, in INCLUSIVE SCHOOLING: NATIONAL AND INTERNATIONAL PERSPECTIVES 76, 78 (Stanley J. Vitello & Dennis E. Mithaug, eds., 1998) [hereinafter INCLUSIVE SCHOOLING].

<sup>42</sup> Hazel Jones, *Disabled Children's Rights and the UN Convention on the Rights of the Child*, 20 DISABILITY STUD. Q., at 1, 2-3.

<sup>43</sup> See Convention, *supra* note 11, art. 24(1)(b).

<sup>44</sup> See *Human Rights and Disability*, *supra* note 1, at 16-18.

<sup>45</sup> See, e.g., *Salamanca Statement*, *supra* note 7; *Muñoz Report*, *supra* note 41, at 7-8; InterAmerican Development Bank, *Disability and Inclusive Education*, 11-12 (Mar. 16, 2001) (prepared by Gordon L. Porter) [hereinafter Porter]; World Bank, Disability Group, *Inclusive Education: Achieving Education for All By Including Those With Disabilities and Special Education Needs*, at 74 (Apr. 30, 2003) (prepared by Susan J. Peters) [hereinafter Peters]; INCLUSIVE SCHOOLING, *supra* note 41, at 79-80.

not have a universally accepted definition and the practices currently labeled “inclusive” have a strongly local flavor.<sup>46</sup> At a basic level, inclusive education is the opposite of “segregated” education, which consistently places students with disabilities in “special schools” that fail to provide them the same range of academic and extracurricular opportunities or meet their needs in a comprehensive or dedicated manner.<sup>47</sup> Inclusive education is superior for a variety of reasons: it combats the tendency to exclude students with disabilities from education or educational opportunities<sup>48</sup> and mitigates the tendency of education to perpetuate lifelong segregation in work and recreation programs.<sup>49</sup> Education theorists also believe that inclusive education increases achievement and performance for all learners and reduces the inefficiency of multiple systems of educational administration.<sup>50</sup>

Despite the absence of a universal definition, the Convention includes language that reflects a growing international consensus about the principal features of inclusive education.<sup>51</sup> Article 24 of the Convention provides the following five points to guide states seeking to create and maintain an inclusive education system.<sup>52</sup> It requires states to 1) refrain from excluding persons with disabilities from the general education system on the basis of disability, 2) ensure that people with disabilities have equal access to a free and quality education, 3) provide reasonable accommodation of the individual’s requirements, 4) support persons with disabilities in the way required to facilitate their effective education, and 5) provide effective individualized support measures in environments that maximize academic and social development.<sup>53</sup> Broadly categorized, the Convention requires states to guarantee non-discriminatory access to general education; reasonable accommodation of disability; and adequate, individualized supports for students with disabilities.

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<sup>46</sup> See CONTEXTUALIZING INCLUSIVE EDUCATION, *supra* note 8, at 3.

<sup>47</sup> See *Human Rights and Disability*, *supra* note 1, at 198; *Muñoz Report*, *supra* note 41, at 6.

<sup>48</sup> See Lynch, *supra* note 8, at 3.

<sup>49</sup> See Porter, *supra* note 45, at 9. *Contra*. Alan Dyson & Alan Millward, *Falling Down the Interfaces: From Inclusive Schools to an Exclusive Society*, in INCLUSIVE EDUCATION: INTERNATIONAL VOICES ON DISABILITY AND JUSTICE 152, 159 (Keith Ballard, ed.) (recognizing that the mechanism by which inclusive schools produce inclusive societies is far from clear, and that the empirical evidence that inclusive schools provide quality education to all children has been challenged).

<sup>50</sup> See Porter, *supra* note 45, at 11-13; Peters, *supra* note 45, at 47.

<sup>51</sup> See CONTEXTUALIZING INCLUSIVE EDUCATION, *supra* note 8, at 4 (proposing the following features of the growing consensus on the meaning of inclusive education: entitlement to full membership in the regular classes at the neighborhood school, access to appropriate aids and support services, and individualized programs with appropriately differentiated curriculum and assessment practices).

<sup>52</sup> See Convention, *supra* note 11, art. 24.

<sup>53</sup> See *id.* art. 24(2).



A. *In Order to Provide Inclusive Education, a State Must Provide Non-Discriminatory Access to General Education*

One of the primary features of inclusive education is that all children with disabilities attend regular neighborhood or local schools. The Convention requires states to ensure that children with disabilities have equal access to education and are not excluded from the general education system because of their disability.<sup>54</sup> The members of the ad hoc committee that drafted the first version of the Convention disagreed about the extent to which the Convention should require states to place students with disabilities in the general education system.<sup>55</sup> On one hand, some members of the committee believed that the education of children with disabilities in the general education system should be the rule and the provision of special education services should be the exception.<sup>56</sup> Other members advocated a “choice” model, wherein “specialist education services should be provided not only where the general education system was inadequate, but should rather be made available at all times without a presumption that one approach was more desirable than the other.”<sup>57</sup> In the first draft of the Convention, Article 17 proposed a “choice” standard for education of students with disabilities.<sup>58</sup>

Ultimately, the Convention unequivocally states that students with disabilities shall not be excluded from the general education system,<sup>59</sup> thus implying an entitlement to a unitary education for all children with disabilities. The Convention does not imply that students can never benefit from special education, but instead appears to recognize that students in “special” schools are often segregated and marginalized, failing to enjoy the range of academic and recreational opportunities available to students in mainstream schools.<sup>60</sup> This understanding is consistent with previous United Nations statements on the issue, including those signed by China and India.<sup>61</sup> For example, the Biwako Millennium Framework, which both countries signed in 2003, states the following:

<sup>54</sup> See *id.* art. 24(2)(a)-(b).

<sup>55</sup> See *Working Group Report*, *supra* note 12, at 22 nn.58, 61-62.

<sup>56</sup> *Id.* at 22 n.61.

<sup>57</sup> *Id.*

<sup>58</sup> See *id.* at 22.

<sup>59</sup> See Convention, *supra* note 11, art. 24(2)(a)-(b). The Convention may include an exception for students who are deaf, blind, or deafblind. Art. 24(3)(c) provides that states must ensure that those students are educated “in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.” While this provision follows statements that inclusive education maximizes equal opportunity for students, it may be in place to address Working Group concerns that students not have “an obligation . . . to attend general schools where their needs may not be adequately met.” *Working Group Report*, *supra* note 12, at 22 n.58.

<sup>60</sup> See Dr. Ursula Kilkelly, *Disability and Children: the Convention on the Rights of the Child in Human Rights*, in *Human Rights and Disability*, *supra* note 1, 191, 198.

<sup>61</sup> See U.N., ESCAP, *Biwako Millennium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific*, Resolution 58/4, U.N. Doc.

[I]nclusive education, with access to education in the regular local neighbourhood or community school, provides the best opportunity for the majority of children and youth with disabilities to receive an education, including those in rural areas. Exceptions to this rule should be considered on a case by case basis where only education in a special school or establishment can be shown to meet the needs of the individual child.<sup>62</sup>

The Convention's definition of inclusive education appears to require educators to determine the ideal placement of students based on their individual needs and to establish access to general schools as the norm.

*B. Inclusive Education Requires Governments to Provide Reasonable Accommodation for Students with Disabilities*

Inclusive education not only requires states to increase disabled students' access to mainstream schools, but also their access to meaningful learning in those schools.<sup>63</sup> The United Nations Human Rights Committee recognizes that "the principle of equality may require affirmative action in order to . . . eliminate conditions which cause . . . discrimination."<sup>64</sup> In other words, a disabled child may need something different in order to access the same education as other students.<sup>65</sup> To that end, the Convention requires states to provide reasonable accommodations to students with disabilities.<sup>66</sup> Reasonable accommodations are changes to the traditional school building, curriculum, and culture that increase the ability of disabled students to engage in meaningful learning.<sup>67</sup> The Salamanca Framework for Action on Special Needs Education explicitly states that "[i]nclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning."<sup>68</sup> To do so, schools need to develop curricula, organization arrangements, teaching strategies, and resource uses that are appropriate for all students.<sup>69</sup>

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E/ESCAP/APDDP/4/Rev.1 (Jan. 24, 2003) [hereinafter *Biwako Millennium Framework*]; U.N., ESCAP, *Countries and Areas Signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in Asian and Pacific Region for the Asian and Pacific Decade of Disabled Persons, 1993-2002*, <http://www.unescap.org/esid/psis/disability/decadenew/sign.html> (last visited Mar. 4, 2008).

<sup>62</sup> See *Biwako Millennium Framework*, *supra* note 61, ¶ 27.

<sup>63</sup> U.N., UNESCO, *Educating Children and Young People With Disabilities: Principles and the Review of Practice*, at 16 (1992) (prepared by Seamus Hegarty) [hereinafter Hegarty].

<sup>64</sup> See Jones, *supra* note 42, at 3.

<sup>65</sup> *Id.* See CONTEXTUALIZING INCLUSIVE EDUCATION, *supra* note 8, at 4; *Human Rights and Disability*, *supra* note 1, at 16.

<sup>66</sup> See Convention, *supra* note 11, art. 24 (2)(c).

<sup>67</sup> Hegarty, *supra* note 63, at 20, 22.

<sup>68</sup> *Salamanca Statement*, *supra* note 7, at 11-12.

<sup>69</sup> *Id.*

C. *Inclusive Education Requires Governments to Provide Individualized Supports for Students with Disabilities*

Individualized support requires schools to acknowledge that each child has unique characteristics, interests, abilities, and learning needs, and that schools provide individualized support through a child-centered pedagogy.<sup>70</sup> The Convention requires the general education system to support persons with disabilities to facilitate their effective education and to do so in an environment that maximizes social and academic development.<sup>71</sup> Teachers who engage in individualized instruction match student needs to instructional options and alter the instructional environment accordingly.<sup>72</sup> To some extent, the concepts of adequate support and reasonable accommodation overlap, and the draft version of the Convention conflated the two.<sup>73</sup> The draft included in the definition of required support:

[S]pecialized training of teachers, school counselors and psychologists, an accessible curriculum, an accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, an accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities.<sup>74</sup>

Though this language was eventually deleted from the Convention, it indicates that the drafters of the Convention did not draw a sharp line between reasonable accommodations and individualized support, but instead emphasized the necessity of both in the education of students with disabilities. The Convention recognizes that in order to ensure inclusive education, schools need to make systematic changes to accommodate all students with disabilities while simultaneously focusing on the needs of individual students.

IV. CHINA AND INDIA MUST REVISE DOMESTIC LAW AND POLICY BEFORE THEY CAN MEET THEIR OBLIGATION TO PROVIDE INCLUSIVE EDUCATION

Despite legal developments in their respective countries over the past twenty years, China's and India's existing laws do not comply with the Convention's

<sup>70</sup> Muñoz Report, *supra* note 41, at 6; Dorothy Kernzer Lipsky & Alan Gartner, *Factors for Successful Inclusion in INCLUSIVE SCHOOLING*, *supra* note 41, at 98, 103.

<sup>71</sup> Convention, *supra* note 11, art. 24(2)(d)-(e).

<sup>72</sup> See Yi Ding, Kathryn C. Gerken, Don C. VanDyke, & Fei Xiao, *Parents and Special Education Teachers' Perspectives on Implementing Individualized Instruction in P.R. China—An Empirical and SocioCultural Approach*, 21 INT'L J. SPECIAL EDUC. 138 (2006).

<sup>73</sup> Working Group Report, *supra* note 12, art. 17(2)(b).

<sup>74</sup> *Id.*

mandate of inclusive education. Although both China and India have made significant progress in recognizing the rights of persons with disabilities by adopting domestic laws on disability and education,<sup>75</sup> neither country currently complies with the Convention.

Adequate domestic laws are a prerequisite for states to meet their obligations of providing education generally and inclusive education specifically.<sup>76</sup> In light of the Convention, the United Nations will need to push China and India to revise existing laws and policies protecting the right of children with disabilities to inclusive education. China will need to focus primarily on revising and amending existing laws, while India will need to revise and adopt as law its informal Action Plan for Inclusive Education.

However, even if India and China revise their existing laws, they still may not fully comply with the Convention. Neither India nor China is able to effectively implement their existing laws on the education of students with disabilities, and both nations would therefore need to increase funding, teacher recruitment, and teacher training in order to achieve universal enrollment of students with disabilities in an inclusive education system.

A. *China Must Revise Existing Laws That Adhere to a Medical Model of Disability and That Do Not Require the State to Provide Inclusive Education*

Since the 1990s, China has made a concerted effort to adopt laws and policies that protect people with disabilities. In 1993, China joined in the Asian Pacific Decade of Disabled Persons.<sup>77</sup> In 2003 China signed onto the Biwako Millennium Framework, recognizing that the majority of persons with disabilities in Asia were excluded from equal opportunities and affirming its commitment to promote full participation and equality.<sup>78</sup> China has also adopted numerous laws and regulations dealing with disability and education.<sup>79</sup> While the country's laws provide a strong regulatory framework, they also adopt a medical model of disability and do not require the state to provide inclusive education. As such, China will need to make substantive changes to existing law in order to comply with the Convention.

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<sup>75</sup> Regulations, *supra* note 3; LPDP, *supra* note 3; PDA, *supra* note 3.

<sup>76</sup> Muñoz Report, *supra* note 41, at 11.

<sup>77</sup> See APCD Profile: China, *supra* note 4, s. 3.4.

<sup>78</sup> Biwako Millennium Framework, *supra* note 61, pmbl.

<sup>79</sup> See, e.g., LPDP, *supra* note 3; Regulations, *supra* note 3. See also Nancy Ellsworth & Chun Zhang, *Progress and Challenges in China's Special Education Development*, 28 REMEDIAL AND SPECIAL EDUC. 58, 60 (2007) (noting that every province in China has adopted a regulatory scheme in compliance with the LPDP).

1. *China Should Revise Provisions of Its Constitution and Domestic Laws to Eliminate the Medical Model of Disability*

China's initial attempts to address the issue of disability adhere to a medical philosophy—creating obligations rather than rights for persons with disabilities—and should be amended in order to comply with the Convention. China's Constitution, adopted in 1982, stipulates that all children have the right to an education.<sup>80</sup> However, Article 45 of the Constitution parrots the medical-based language of the Universal Declaration on Human Rights and affirms that the state shall provide material assistance, including education, for those who are old, ill, or disabled.<sup>81</sup> The Chinese Constitution connects the education of persons with disabilities to charitable assistance, and therefore must be amended to reflect the principle that disabled people are entitled to education as a basic human right.

Furthermore, China's primary law on disability, the Law on the Protection of Disabled Persons ("LPDP"),<sup>82</sup> defines disability from a medical standpoint rather than a social one.<sup>83</sup> That definition negatively impacts any interpretation of subsequent provisions. The law defines a disabled person as "one who suffers from abnormalities of loss of a certain organ or function, psychologically or physiologically . . . and has lost wholly or in part the ability to perform an activity in a way considered normal."<sup>84</sup> This definition, which essentially categorizes persons with disabilities as "abnormal," is inconsistent with the Convention's emphasis on the social and environmental factors that create and define disability. Though the Convention does not adopt a fixed definition of disability, the preamble recognizes that "disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."<sup>85</sup> If China does not amend its definition, it will not be in compliance with the Convention.

2. *China Should Revise Existing Laws to Mandate Access to General Schools for Students with Disabilities*

Chinese law does not require that children with disabilities receive an inclusive education. Articles 18 to 24 of the LPDP guarantee the rights of persons with disabilities to an education.<sup>86</sup> They require the state to provide education to students with disabilities "according to their physical and psychological features

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<sup>80</sup> XIAN FA art. 46 (1994) (P.R.C.).

<sup>81</sup> *Id.* art 45.

<sup>82</sup> LPDP, *supra* note 3.

<sup>83</sup> LPDP, *supra* note 3, art. 2(1).

<sup>84</sup> *Id.*

<sup>85</sup> Convention, *supra* note 11, pmb. (e).

<sup>86</sup> LPDP, *supra* note 3, arts. 18-24.

and needs.”<sup>87</sup> However, “[o]rdinary educational institutions” will provide education only to those students with disabilities “who are able to receive ordinary education.”<sup>88</sup> Article 22 of the Regulations on the Education of Persons with Disabilities (“Regulations”), adopted in 1994, further specifies that children with disabilities may, “in light of actual conditions,” be educated in general education schools, special education classrooms attached to general classrooms, or in special schools.<sup>89</sup>

Under these laws children with disabilities have no right to access general schooling. Though they are guaranteed an education, only “special schools” or “special classes” are unequivocally required to provide compulsory education to disabled children.<sup>90</sup> To comply with the Convention, the Chinese government must rewrite Articles 18 to 22 of the LPDP and Article 22 of the Regulations to reflect the principle that all children with disabilities are entitled to education with the general student population,<sup>91</sup> except where education in a special school is necessary to meet the needs of the child.<sup>92</sup>

3. *China Should Revise Existing Laws to Require Schools to Provide Accommodations and Individualized Support Based on the Needs and Potential of Individual Students with Disabilities*

Unlike the laws dealing with the rights of disabled students to attend general schools, Chinese laws requiring schools to accommodate and provide individualized support to students with disabilities are not overtly at odds with the Convention. For example, Article 19 of the LPDP states that “education of disabled persons shall be carried out according to their physical and psychological needs.” The Article requires schools to “adopt ordinary or special methods of education according to different categories of disabilities and varied abilities of response of the disabled persons.”<sup>93</sup> Similarly, Article 21 of the Regulations states that the curricula, teaching programs, and teaching material of ordinary schools may be applied to students with disabilities.<sup>94</sup> However, “the requirements for the study of such students *may* be determined with appropriate flexibility.”<sup>95</sup> According to the LPDP and the Regulations, education officials are strongly

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<sup>87</sup> *Id.* art. 19.

<sup>88</sup> *Id.* art. 22.

<sup>89</sup> Regulations, *supra* note 3.

<sup>90</sup> LPDP, *supra* note 3, art. 23(2).

<sup>91</sup> Convention, *supra* note 11, art. 24 (3)(c).

<sup>92</sup> For example, it might be necessary to place a deaf child who required special instruction in sign language in a special school.

<sup>93</sup> LPDP, *supra* note 3, art. 19.

<sup>94</sup> Regulations, *supra* note 3, art. 21.

<sup>95</sup> *Id.* art. 21 (emphasis added).

encouraged, but not required, to be flexible while educating individual students with disabilities.<sup>96</sup> By encouraging schools to provide individualized supports and reasonable accommodations, Chinese law supports the goals of the Convention, while simultaneously not going far enough to achieve them.

Chinese law does not go far enough to ensure that schools accommodate and support every child with disabilities because it provides school officials with too much discretion and insufficient benchmarks against which to assess progress. Article 19 of the LPDP allows schools to adopt methods of education according to the category of disability or the needs and abilities of an individual with disabilities.<sup>97</sup> Moreover, it identifies only two methods of education—ordinary or special—as opposed to recognizing a continuum of options and services available for individual students.<sup>98</sup> Unlike the Convention, which requires school districts to provide accommodations and individualized support necessary to fulfill the greatest potential of the child, Chinese laws do not identify either desired or actual outcomes by which a school can judge accommodation and support decisions.<sup>99</sup> In the absence of clear goals for student outcomes, school districts may make decisions regarding support and accommodations that do not in fact increase educational opportunity for students with disabilities.<sup>100</sup> China should amend the LPDP and the Regulations to comply with the Convention's mandate that school districts provide reasonable accommodations and individualized support necessary to fulfill the greatest potential of the child.

Though China's laws on the provision of education to persons with disabilities are relatively new and the country has made progress in this area,<sup>101</sup> it must reform existing inadequate laws. However, the extent of China's legal framework on disability will make it easier for the country to comply with the Convention's mandates. India, on the other hand, will face greater challenges.

*B. India Should Adopt into Binding Law Its Action Plan for Inclusive Education, Which Is Consistent with the Convention's Requirements*

Like the Chinese government, India must review its existing laws on disability in light of its ratification of the Convention. However, India's challenges are fundamentally different from China's. Whereas China has a fairly detailed

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<sup>96</sup> *See id.*

<sup>97</sup> *Id.* art. 19.

<sup>98</sup> *Id.*

<sup>99</sup> *See* Convention, *supra* note 11; *contra* LPDP, *supra* note 3, arts. 18-22; Regulations, *supra* note 3, art. 22.

<sup>100</sup> *See, e.g.,* Jean B. Crockett & James M. Kaufmann, *The Concept of Least Restrictive Environment and Learning Disabilities: Least Restrictive of What?* in RESEARCH AND GLOBAL PERSPECTIVES IN LEARNING DISABILITIES, 147, 152, (Daniel P. Hallahan & Barbara K. Keogh, eds., Lawrence Erlbaum 2001).

<sup>101</sup> Meng Deng & Janet C. Holdsworth, *From Unconscious to Conscious Inclusion: Meeting Special Education Needs in West China*, 22 DISABILITY AND SOC'Y 507, 508 (2007).

legal and regulatory scheme to govern the education of children with disabilities, India's legal framework is sparse, particularly with regard to individualized supports and reasonable accommodations. Where China will need to revise and rewrite, India will need to create. However, India's government has taken steps in this area by introducing an informal Action Plan for Inclusive Education, and its adoption would enable India to comply with the Convention.

1. *India's Existing Laws Require the State to Provide an Education to Persons with Disabilities, but Not an Inclusive One with Equal Access and Opportunity*

India's laws on the rights of persons with disabilities are weak but include stronger protections in education than in other areas. The Indian Constitution requires the state to provide free and compulsory education to all children between ages six and fourteen.<sup>102</sup> Furthermore, the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation) ("PDA") requires state and local governments to ensure that persons with disabilities have access to an appropriate education.<sup>103</sup> Interestingly, the law also obligates government agencies to reduce discrimination in employment, infrastructure, and transport, as well as to conduct research into how to best accommodate persons with disabilities.<sup>104</sup> However, agencies need only carry out these requirements "within the limits of their economic capacity."<sup>105</sup> Essentially, the law permits agencies to avoid recognizing the rights of persons with disabilities when the agency believes that the economic burden of recognition is too great. However, there are no similar economic loopholes for the provision of education to students with disabilities. In that sense, the education provisions are among the strongest protections for persons with disabilities in Indian law.

Nevertheless, the PDA does not recognize the right of students with disabilities to attend general schools, as required under the Convention. Article 26 of the PDA states that authorities shall "ensure that every child with a disability has access to a free education in an appropriate environment."<sup>106</sup> The law does not define "appropriate environment." It calls on those authorities to "endeavor to promote the integration of students with disabilities in normal schools,"<sup>107</sup> but also places equal emphasis on the government's responsibility to promote establishing

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<sup>102</sup> INDIA CONST. art. 21A: amended by the Constitution (Eighty-Sixth Amendment) Act, 2002.

<sup>103</sup> PDA, *supra* note 3, art. 26.

<sup>104</sup> PDA, *supra* note 3, arts. 25, 41, 44-46, 66.

<sup>105</sup> *See id.*

<sup>106</sup> *Id.* art. 26(a).

<sup>107</sup> *Id.* art. 26(b).



special schools for students who need special education.<sup>108</sup> Therefore, the PDA appears to place equal value on attendance in segregated and general schools, thus contradicting the Convention's emphasis on the general education environment.

The PDA also does not comply with the Convention because it asks state and local governments to promote the "integration" of students in normal schools rather than the "inclusion" of students in normal schools. Though some use the terms interchangeably, education scholars recognize a substantial difference between inclusion and integration.<sup>109</sup> Integration focuses on ensuring that students with disabilities are educated in the same physical spaces as the general education population; it is concerned about rights of access and placement.<sup>110</sup> On the other hand, an "inclusive" school system focuses on the quality and equality of educational opportunity for disabled students.<sup>111</sup> Because the PDA requires only "integration," it does not go far enough to meet India's obligations under the Convention.

Nowhere does the PDA mandate that governments must provide reasonable accommodations and individualized supports. Articles 28 and 29 merely require governments to initiate research to design programs necessary to give children with disabilities equal opportunities in education, and to set up teacher training institutes specializing in disabilities.<sup>112</sup> An inclusive education system cannot exist without government investing in research and training; however, the rights of students to reasonable accommodations and individualized supports necessary to create an inclusive education system are not guaranteed when the government's only mandates are to initiate research and the training of teachers.

## 2. *In Order to Comply with the Convention, the Indian Government Should Revise and Adopt into Law the Action Plan for Inclusive Education*

Members of the Indian government recently developed an Action Plan for Inclusive Education,<sup>113</sup> and if the language and goals of that plan are adopted into binding law, India will likely be in textual compliance with the Convention. According to its author, Arjun Singh, Minister for Human Resource Development, the objective of the plan is to "make mainstream education not just available but

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<sup>108</sup> *Id.* art. 26(c).

<sup>109</sup> See Lisa Vislie, *From Integration to Inclusion: Focusing Global Trends and Changes in Western European Societies*, 18 EUR. J. SPECIAL NEEDS EDUC. 17, 19-20 (2003).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> PDA, *supra* note 3, arts. 28-29.

<sup>113</sup> Department of Education (India), *Action Plan for Inclusive Education of Children and Youth with Disabilities* (Aug. 20, 2005), <http://education.nic.in/INCLUSIVE.asp> (last visited Jan. 1, 2008).

accessible, affordable and appropriate for students with disabilities.”<sup>114</sup> To do so, the plan states that the government must ensure the following outputs: 1) enrollment and retention of all children with disabilities in the mainstream education system, and 2) providing needs-based educational and other support to children in order for them to develop their learning and abilities.<sup>115</sup> This language comports directly with the Convention and should be a starting point for Indian government officials seeking to ensure compliance.

The Action Plan is a sufficient starting point, but should be amended to create a specific governmental body responsible for the education of children with disabilities. Currently, the Ministry of Human Resources is responsible for the education of disabled students in general education schools, and the Ministry for Social Justice and Empowerment is responsible for the education of disabled students in segregated schools.<sup>116</sup> In addition, the government often delegates responsibility for educating disabled students to non-governmental organizations, resulting in “[p]iecemeal responses to individual pressures” that have “taken the place of concerted policy.”<sup>117</sup>

In order to implement a concerted policy on disability education, Indian law should designate a specific governmental agency responsible for the education of children with disabilities. Typically, states designate a department in the ministry of education that deals specifically with the education of children with disabilities.<sup>118</sup> A separate administrative agency is generally effective at defending the specific interests of children with disabilities, securing resources for their education, and coordinating the efforts of various organizations involved in the provision of education for disabled children.<sup>119</sup> In order to comply with the Convention, India should amend the Action Plan to create a governmental organization responsible for the education of all children with disabilities.

India, like China, has made tremendous progress in recognizing the rights of children with disabilities to an education. Because India does not have a fully developed legal and regulatory scheme around education and disability, it has the opportunity to create laws that fully comply with the Convention and a new administrative body to implement those laws. India should start the process by adopting its Action Plan for Inclusive Education into law and creating a ministry that monitors the education of children with disabilities.

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<sup>114</sup> Department of Education (India), *Statement of the Minister of Human Resources to Indian Parliament* (Mar. 21, 2005), <http://education.nic.in/INCLUSIVE.asp> (last visited Jan. 1, 2008).

<sup>115</sup> *Id.*

<sup>116</sup> MITHU ALUR, *INVISIBLE CHILDREN: A STUDY OF POLICY EXCLUSION* 48-49 (Viva Books 2003).

<sup>117</sup> *Id.* at 41.

<sup>118</sup> See Hegarty, *supra* note 63, at 38.

<sup>119</sup> *Id.* at 38-39.

C. *Once China and India Have Changed Existing Laws on Education and Disability, They Must Increase Financial and Human Resources in Order to Implement Those Laws*

Even if the Chinese and Indian governments revise their existing laws with an eye towards the Convention's mandates of nondiscriminatory access, reasonable accommodation, and individualized supports, they still may not fully comply with the Convention. The Convention calls for more than textual compliance; one of its goals is to ensure that states make continuous progress towards realizing the rights recognized in the Convention.<sup>120</sup> Without further measures, China and India are unlikely to make that progress. Neither India nor China has fully complied with their existing laws and provided universal education (of any type) to children with disabilities. Changing the text of those laws is unlikely to change practices in the schools. Indeed, universal enrollment of children with disabilities in India and China and the Convention's provision of inclusive education to those students will further tax already strained budgets and require tremendous growth in teacher training. The United Nations will need to work with China and India to address these obstacles if the rights in the Convention are to be realized.

1. *Neither China nor India Currently Enforces Existing Laws on Disability and Education*

China has been unable to fully enforce its existing laws on the education of children with disabilities. After the enactment of the LPDP, dramatically increasing numbers of students with disabilities entered school,<sup>121</sup> and the percentage of students with disabilities enrolled in mainstream classrooms increased from 7.55% in 1990 to 67.8% in 1998.<sup>122</sup> Nevertheless, approximately 375,000 Chinese students with disabilities are educated in segregated special education schools.<sup>123</sup> Furthermore, millions of children with disabilities in China are not enrolled in any type of school,<sup>124</sup> and large numbers of those enrolled are in schools that are not meeting their educational needs.<sup>125</sup> This situation illustrates

<sup>120</sup> Convention, *supra* note 11, art. 4(2).

<sup>121</sup> Ellsworth & Zhang, *supra* note 79, at 60.

<sup>122</sup> U.N., UNESCO, *Education For All: The Year 2000 Assessment, Final Country Report: China*, § 2.2.3.3, [http://www.unesco.org/education/wef/countryreports/china/rapport\\_1.html](http://www.unesco.org/education/wef/countryreports/china/rapport_1.html) (last visited Jan. 1, 2008) [hereinafter *EFA Assessment: China*].

<sup>123</sup> Ministry of Education of the People's Republic of China, *Basic Statistics of Special Education* (2003), [http://www.moe.edu.cn/english/planning\\_s.htm](http://www.moe.edu.cn/english/planning_s.htm) (last visited Jan. 1, 2008).

<sup>124</sup> Helen McCabe, *The Beginnings of Inclusion in the People's Republic of China*, 28 RES. AND PRAC. FOR PERSONS WITH SEVERE DISABILITIES 16, 19 (2003).

<sup>125</sup> *Id.*

that China has fallen far short of meeting the LPDP's mandate to provide education to all students with disabilities.

India's existing laws have had an even more limited impact. India struggles to provide compulsory education to all students, including students with disabilities. Approximately forty percent of children with disabilities in India are not enrolled in school, which is more than four times the percentage of non-disabled students out of school.<sup>126</sup> There are also significant regional disparities. Even though the responsibility for education lies with the national government and has been delegated to the states, most of the successful programs for inclusive education have been local in nature and not replicated on a national basis.<sup>127</sup> India, like China, has been unable to enforce existing laws which require that every child with a disability be educated.

## 2. *Inadequate Funding Has Hampered China's and India's Ability to Provide Universal Education to Students with Disabilities, but Should Not Limit Their Commitment to Inclusive Education*

One of the most pervasive protests against the provision of inclusive education is that educating students with disabilities may be prohibitively expensive, particularly in countries that already struggle to provide universal education. Such criticism has merit: in order to comply with the Convention, China and India would need to enroll millions of students with disabilities who are currently out of school.<sup>128</sup> Nevertheless, countries that have committed to educating children with disabilities can provide an inclusive education for the same amount of money (or less) than they would expend on a segregated education.<sup>129</sup>

Neither China nor India devotes a large percentage of its national budget to education expenditures, and both countries acknowledge funding shortfalls. In China, the government aims to commit 4% of its gross national product to education,<sup>130</sup> but has been unable to allocate more than 1.9% to education.<sup>131</sup> The Indian government spends approximately 3.8% of its national budget on education,

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<sup>126</sup> *People With Disabilities in India*, *supra* note 5, at 17.

<sup>127</sup> U.N., UNESCO, *Education For All: The Year 2000 Assessment, Final Country Report, India*, part II, [http://www.unesco.org/education/wef/countryreports/india/rapport\\_1.html](http://www.unesco.org/education/wef/countryreports/india/rapport_1.html) (last visited Jan. 1, 2008) [hereinafter *EFA Assessment: India*]; Nidhi Singal, *Mapping the Field of Inclusive Education: A Review of Indian Literature*, 9 INT'L J. OF INCLUSIVE EDUC. 331, 339 (2005).

<sup>128</sup> *Supra* Part IV.C.1.

<sup>129</sup> U.N., High Commissioner for Human Rights, *From Exclusion to Equality, Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol*, at 84, U.N. Doc HR/PUB/07/6 (2007) [hereinafter *Convention Handbook*].

<sup>130</sup> *EFA Assessment: China*, *supra* note 122, §1.4.

<sup>131</sup> World Bank, *Summary Education Profile: China*, <http://devdata.worldbank.org/edstats/SummaryEducationProfiles/CountryData/GetShowData.asp?sCtry=CHN> (last visited Mar. 4, 2008) [hereinafter *World Bank Profile: China*].

but relies heavily on non-governmental organizations to supplement its basic educational services.<sup>132</sup> Neither country reports the percentage of its education spending devoted to the education of children with disabilities.<sup>133</sup> However, because of the lack of funding, China and India both struggle to provide universal education.<sup>134</sup>

The lack of funding may disproportionately affect students with disabilities in China and India. Children with disabilities tend to be disproportionately represented among the out-of-school population.<sup>135</sup> It is also reasonable to assume that the disparate impact on students with disabilities is at least partially rooted in finances, because the costs of educating a child with disabilities may be nominally higher than those associated with non-disabled children.<sup>136</sup> Because neither India nor China have universally enrolled students with disabilities, complying with the Convention's requirements may further strain these countries' limited budgets.

Nevertheless, the only way to entirely avoid the costs of educating students with disabilities is to deny them an education, something clearly contrary to the Convention and which may be more economically detrimental to China and India in the long run.<sup>137</sup> Providing an inclusive education to students with disabilities is equal to or less expensive than providing a segregated education.<sup>138</sup> Segregated schools require a separate infrastructure and administration, whereas inclusive education allows children with disabilities enrolled in general schools to take advantage of existing programs.<sup>139</sup> In addition, incentives built into fiscal policies may be as important in affecting the provision of inclusive education as the amounts allocated.<sup>140</sup> Thus, if disabled children are to be meaningfully educated, providing an inclusive education is no more expensive than any alternatives.

### 3. *India and China Will Be Unable to Provide Inclusive Education Without an Appropriately Trained Teaching Force*

In addition to funding shortfalls, China and India are hampered in their efforts to provide inclusive education by the lack of a sufficiently large and

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<sup>132</sup> *EFA Assessment: India*, supra note 127, at 19, 21.

<sup>133</sup> See *World Bank Profile: China*, supra note 131; *EFA Assessment, India*, supra note 127.

<sup>134</sup> *EFA Assessment: China*, supra note 122; *EFA Assessment, India*, supra note 127, at 6.

<sup>135</sup> U.N., Special Rapporteur on Disabilities, *Global Survey on Government Action on the Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities: Results Analysis*, at 47 (October 2006) [hereinafter *Global Survey*].

<sup>136</sup> Jonsson & Wiman, supra note 7, at 2. But see Peters, supra note 45, at 31 (arguing that nearly all case reports indicate that governments regard the integration of children with disabilities in ordinary schools as the ideal and least costly approach).

<sup>137</sup> Jonsson & Wiman, supra note 7, at 1.

<sup>138</sup> *Id.* at 3; *Convention Handbook*, supra note 129.

<sup>139</sup> Porter, supra note 45, at 11.

<sup>140</sup> Peters, supra note 45, at 5.

appropriately trained teaching corps. Class sizes in both countries make it difficult for teachers to provide reasonable accommodations and individualized support for disabled students.<sup>141</sup> In India and China, the average classroom has one teacher responsible for approximately forty pupils.<sup>142</sup>

Teachers must be trained to include students in the general education classroom and provide appropriate supports. Teachers in China and India are not often trained to work differently with students of varying abilities; they have been trained to address a large group of students.<sup>143</sup> In some instances, teachers are reluctant to admit students with disabilities into their classrooms.<sup>144</sup> In China, teachers are evaluated on the basis of student test results; general education teachers worry that accepting students with disabilities will interfere with the achievement of other students.<sup>145</sup> In India, there is widespread evidence that many people view disabilities as “not natural,” and view disabilities in a way that is negative, discriminatory, and exclusionary.<sup>146</sup> Indian citizens surveyed by the World Bank typically rejected the idea that children with disabilities should always attend regular schools.<sup>147</sup> Teacher education programs can be effective at reducing these and other prejudices against students with disabilities in the classroom.<sup>148</sup> Therefore, appropriate teacher training is a necessary precursor to inclusive education and compliance with the Convention.

However, neither China nor India currently has the means to provide appropriately trained teachers. Teachers and principals in China are concerned that high-quality teacher preparation programs are primarily located in major cities,<sup>149</sup> which would limit the state’s ability to train teachers for rural areas where children with disabilities are not educated. In India, teachers are generally trained in either a “general” or “special” education program, and neither group is fully equipped to confront a fully inclusive school system.<sup>150</sup> Unless both countries are able to

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<sup>141</sup> See David Mitchell & Ishwar Desai, *Diverse Socio-Cultural Contexts for Inclusive Education in Asia*, in CONTEXTUALIZING INCLUSIVE EDUCATION, *supra* note 8, at 172, 182; Yanhui Pang & Dean Richey, *The Development of Special Education in China*, 21 INT’L J. SPECIAL EDUC. 77, 84 (2006).

<sup>142</sup> See *CRC Report: India*, *supra* note 2, at 260 (providing figures for India); Mitchell & Desai, *supra* note 141, at 182 (estimating that the average class size in both India and China is between forty and sixty students); Patricia Potts, *A Western Perspective on Inclusion in Chinese Urban Educational Settings*, 4 INT’L J. INCLUSIVE EDUC. 303, 305-06 (2000) (providing average class size for China).

<sup>143</sup> McCabe *supra* note 124, at 19; Singal, *supra* note 127, at 341 (2005).

<sup>144</sup> See McCabe, *supra* note 124, at 19; Mithu Alur, *Some Cultural and Moral Implications of Inclusive Education in India*, 30 J. MORAL EDUC. 287, 290 (2001).

<sup>145</sup> McCabe, *supra* note 124, at 19.

<sup>146</sup> Alur, *supra* note 144.

<sup>147</sup> *People with Disabilities in India*, *supra* note 5, at 23-24.

<sup>148</sup> McCabe, *supra* note 124, at 19.

<sup>149</sup> Ellsworth & Zhang, *supra* note 79, at 62.

<sup>150</sup> Sharon A. Raver, *India: Training Teachers for Children with Mental Retardation*, 16 INT’L J. SPECIAL EDUC. 2, 4 (2001).

reform teacher education and training policies, any change in the laws around inclusive education will have minimal effect.

In sum, the challenges that India and China will face once they begin to implement the Convention will be tremendous. Both countries will likely need either to dramatically increase funding or to radically alter the ways they use existing funds. They will need to recruit thousands of new teachers and provide additional training to existing teachers. These challenges may deter India and China from fully complying with the Convention. If the United Nations wants to ensure that the Convention makes a real difference in the education of children with disabilities, it must leverage the Convention effectively to influence India's and China's future behavior.

V. THE UNITED NATIONS CAN FACILITATE COMPLIANCE WITH THE CONVENTION BY ENGAGING CHINA, INDIA, AND THE INTERNATIONAL COMMUNITY IN A COOPERATIVE PROCESS TO REVISE EXISTING LAWS AND BUILD THE CAPACITY TO ENFORCE THEM

While the Convention could potentially revolutionize disability rights in signatory countries like China and India, its supporters recognize that no one can take effective implementation of the Convention for granted.<sup>151</sup> In fact, some legal scholars believe that international human rights law has a negligible or even negative impact on actual human rights practices.<sup>152</sup> Thus, the legitimacy and ultimate import of the Convention as international law depends on its ability to effect prompt revision in domestic laws, policy, and practices.<sup>153</sup> China and India, like many signatories to the Convention, lack both appropriate domestic law and the fiscal and human capacity to provide inclusive education to children with disabilities.

International law scholars disagree about the mechanisms by which international law influences the behavior of states.<sup>154</sup> However, scholars have identified two primary mechanisms by which international treaties might influence

<sup>151</sup> See Lawson, *supra* note 33, at 618.

<sup>152</sup> See generally Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

<sup>153</sup> See Robert O. Keohane, *The Contingent Legitimacy of Multilateralism*, in MULTILATERALISM UNDER CHALLENGE? POWER, INTERNATIONAL ORDER, AND STRUCTURE CHANGES 56, 61 (Edward Newman, Ramesh Chandra Thakur & John Tirman, eds., UN University Press 2006).

<sup>154</sup> See THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, eds., Cambridge University Press 1999); Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT'L L. 121, 125-26 (2001); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 625-26 (2004); Hathaway, *supra* note 152; Harold Hongju Koh, *How is International Human Rights Law Enforced?*, 74 IND. L.J. 1397, 1407 (1998); Rodger A. Payne, *Persuasion, Frames, and Norm Construction*, 7 EUR. J. INT'L REL. 37, 38 (2001).

the behavior of states: coercion and persuasion.<sup>155</sup> International treaties coerce states by providing other states and international organizations with the means to escalate the benefits of compliance with international treaties or the costs of non-compliance through material rewards and punishments.<sup>156</sup> Treaties can persuade states by engaging them in argument, dialogue, and deliberation in an effort to have states internalize international law and redefine their interests accordingly.<sup>157</sup> Both of these mechanisms interrelate in a dynamic fashion,<sup>158</sup> but the Convention is most geared towards persuasion.

The Convention, as ratified by India and signed by China, does not include any coercive measures, but can be used to facilitate persuasion. The Convention does not create any international or domestic legal sanctions or collateral consequences that could force China and India to revise domestic law or increase the monetary and human capital invested in inclusive education. However, the Convention can be used to persuade India and China to provide inclusive education by encouraging the involvement of transnational advocacy systems and non-governmental organizations that can assist China and India in lawmaking, resource allocation, and technical training. If the United Nations uses the Convention to help India and China address the major barriers to providing inclusive education, it could persuade those nations to fully comply with the Convention.

A. *The Convention Does Not Include Any Punitive Sanctions That Could Coerce India and China to Provide Inclusive Education*

At a fundamental level, China's and India's compliance with the Convention, like most international law, is voluntary.<sup>159</sup> The Convention does not include coercive measures such as international investigations of human rights violations, enforcement of the Convention through domestic legal processes, or imposition of collateral consequences for failure to comply.<sup>160</sup> As such, if China and India refuse to comply with the Convention, either in word or deed, there is very little in the text of the Convention that can be used to force them to do so.

The Convention's primary enforcement mechanism is the monitoring and evaluation of state submitted reports by a committee with the power to make recommendations, but not to conduct independent investigations or impose

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<sup>155</sup> See Goodman & Jinks, *supra* note 154, at 625-26 (though Goodman and Jinks identify a third method, acculturation, their explanation of the concept is primarily theoretical and is not, as of yet, clearly supported with case studies that could illuminate the effect of acculturation in this particular circumstance).

<sup>156</sup> *Id.* at 633.

<sup>157</sup> *Id.* at 635.

<sup>158</sup> See Jose E. Alvarez, *Do States Socialize?*, 54 DUKE L.J. 961, 968 (2005).

<sup>159</sup> See Oona Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 489 (2005).

<sup>160</sup> Goodman & Jinks, *supra* note 154, at 690-91.



sanctions.<sup>161</sup> States collect and disseminate information on the development of implementation policies, and develop comprehensive reports every four years on the measures taken to implement the Convention.<sup>162</sup> Then, the Committee on the Rights of Persons with Disabilities (“Committee”) receives and reviews state reports.<sup>163</sup> After receiving reports, the Committee will make suggestions and recommendations to states, as well as cooperate with those states as they seek to fulfill their mandates.<sup>164</sup> The Committee will also report to the General Assembly every two years.<sup>165</sup> Because India and China did not sign on to the Optional Protocol, which would allow the Committee to conduct inquiries into individual complaints filed directly with the Committee to determine whether a particular country is committing violations of the Convention,<sup>166</sup> the United Nations has no power to enforce the Convention outside of the reporting and recommendations structure.

The Convention may empower international or domestic actors to impose consequences on China and India if they do not comply, but that is far from certain.<sup>167</sup> Some scholars recognize the coercive power of international actors who use treaties to justify “collateral consequences,” such as conditioning political support, trade policy, or foreign aid on the state’s decision to accept and implement international legal rules.<sup>168</sup> However, it is not likely that any countries will condition foreign aid on China’s or India’s decision to provide inclusive education to students with disabilities, particularly when thirty of the countries that signed the Standard Rules have yet to take any action to provide inclusive education to children with disabilities, and the majority of countries have not fully lived up to their obligations.<sup>169</sup> Furthermore, there is no indication that domestic actors will be able to use the Convention to coerce India and China. Individual enforcement can occur when there is a sufficiently independent judiciary that can adjudicate the claims of litigants who believe that the state has failed to meet its legal obligations, and where there are sufficient protections for civil rights such that individuals and groups frequently bring enforcement actions against the government.<sup>170</sup> There is no evidence that groups or individuals have brought legal enforcement actions to

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<sup>161</sup> Convention, *supra* note 11, arts. 31-36.

<sup>162</sup> *Id.* arts. 31, 35(1).

<sup>163</sup> *Id.* arts. 34, 36(1).

<sup>164</sup> *Id.* arts. 36-37.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* Optional Protocol.

<sup>167</sup> *See id.* art. 33 (requiring states to maintain or establish a framework, including at least one independent mechanism, to promote implementation of the Convention, but requiring states to do so only in accordance with existing legal and administrative systems).

<sup>168</sup> *See* Hathaway, *supra* note 159, at 502-04.

<sup>169</sup> *See Global Survey, supra* note 135, at 12, 47-50.

<sup>170</sup> *See* Hathaway, *supra* note 159, at 497.

enforce either the LPDP in China or the PDA in India, even though both countries have failed to comply with those laws.<sup>171</sup> Therefore, it is unlikely that either domestic or international actors will be able to use the Convention to coerce compliance in India or China.

*B. The United Nations Can Use the Convention to Persuade India and China to Provide Inclusive Education by Facilitating the Involvement of Non-Governmental Organizations in Lawmaking and Capacity-Building*

The United Nations can persuade China and India to comply with the Convention if they help the states engage in a cooperative process with local and international non-governmental organizations to define the meaning of the Convention and to work towards its implementation. Persuasion occurs when state actors internalize international norms and rules of appropriate behavior and redefine their interests and identities accordingly.<sup>172</sup> It is particularly necessary when, in order to comply with a Convention, the state must take on sharply defined short- and long-term costs.<sup>173</sup> China and India may first be persuaded to internalize the Convention's rules on inclusive education if their governments work with local and international activists to define inclusive education in a way that resonates with local beliefs and practices, and incorporate those definitions into domestic law. They may be further persuaded to comply with the Convention if, through partnerships with non-governmental organizations, China and India are able to develop effective means to address the challenges to providing inclusive education to students with disabilities, particularly lack of funding and human resources. The Indian and Chinese governments have already cooperated with non-governmental organizations to make and implement laws around inclusive education, and the United Nations should use the Convention to encourage further cooperation.

*1. The United Nations Can Use the Convention to Involve Local and International Non-Governmental Organizations in Effectively Changing Domestic Law to Comply with the Convention*

The United Nations can use the Convention to encourage local and national organizations to engage in a dialogue that will translate the Convention's provisions on inclusive education into domestic law in China and India. However,

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<sup>171</sup> See generally Daniel Sorid, *India's Downtrodden Disabled Find Power in the Law*, (Reuters Sept. 8, 2006), available at <http://v1.dpi.org/lang-en/resources/details?page=721> (stating that while the Indian courts have heard some cases dealing with the rights of persons with disabilities, India's disability movement is in a nascent stage); McCabe, *supra* note 124, at 21 (noting that parental advocacy through litigation in the United States has been crucial to advancing inclusive education, but that equivalent Chinese laws are not complete).

<sup>172</sup> See Goodman & Jinks, *supra* note 154, at 635.

<sup>173</sup> See Alvarez, *supra* note 158, at 970.

changing domestic legislation is not as simple as mirroring the language of the Convention in domestic law. “Norm-based” theorists of international law argue that countries begin to comply with international law when they incorporate and internalize it in domestic law.<sup>174</sup> This occurs when transnational organizations (such as various United Nations bodies), executive entities, international publicists, and international and domestic non-governmental organizations form an “interpretive community” that helps to define and shape a treaty’s meaning.<sup>175</sup> The appeal of international law, and the extent to which it is accepted in a state, often depends on the extent to which the issue is framed to coincide with already accepted norms.<sup>176</sup> Therefore, China and India will be more likely to internalize any definition of inclusive education that incorporates already existing practices and understandings.

The United Nations should be careful to utilize the provisions of the Convention that encourage the involvement of local community leaders and activists. Local leaders play a crucial role in translating ideas from the global arena down and from local arenas up, thus facilitating the incorporation of international law in domestic practices.<sup>177</sup> Such organizations already have an established presence in India and China. In China, the Disabled Persons Federation works closely with the government to implement the LPDP.<sup>178</sup> In India, there are more than 600 organizations that work on the education of persons with disabilities.<sup>179</sup>

China can more effectively revise the LPDP, and India can more effectively implement its Action Plan for Inclusive Education, if both governments involve local community leaders and activists in defining inclusive education as it will apply to their communities. The Convention can be used to facilitate that process.

The Convention specifically requires that non-governmental organizations, in particular those that represent persons with disabilities, be “involved and participate fully” in the process of monitoring national compliance with the Convention.<sup>180</sup> The United Nations can and should reference this article in encouraging China’s and India’s governments to consult with local organizations.

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<sup>174</sup> See, e.g., Koh, *supra* note 154, at 1400; Payne, *supra* note 154, at 40.

<sup>175</sup> Koh, *supra* note 154, at 1410.

<sup>176</sup> MARGARET E. KECK & KATHERINE SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 17-18 (Cornell University Press 1998).

<sup>177</sup> Sally Engle Merry, *Transnational Human Rights and Local Activism, Mapping the Middle*, 108 *AM. ANTHROPOLOGIST* 38, 44-45 (2005).

<sup>178</sup> LPDP, *supra* note 3, art. 8.

<sup>179</sup> See Disability India Network, <http://www.disabilityindia.org> (last visited Dec. 29, 2007) (click on “Search Disability Organizations” and choose the “Education” option under services).

<sup>180</sup> Convention, *supra* note 11, art. 33(3).

2. *The United Nations Can Use the Convention to Involve Non-Governmental Organizations in Addressing the Barriers to Effective Enforcement of Inclusive Education Laws in India and China*

Even if China and India were to revise existing laws with the assistance of non-governmental organizations, they would still need to address the enforcement of their laws, which is currently hampered by a lack of funding and human resources. Many governments accept the validity of human rights norms but fail to engage in “rule-consistent behavior.”<sup>181</sup> Both China and India have demonstrated willingness over the past twenty years to affirm the human rights of children with disabilities, particularly in the education context,<sup>182</sup> but have been unable to realize those rights.

In order to persuade India and China to comply with the Convention, the United Nations must assist non-governmental organizations in addressing the barriers to providing inclusive education. It can do so by encouraging them to partner with China and India to provide technical support in program design and teacher training for inclusive education. Over the past thirty years, non-governmental organizations have substantially increased their involvement in education.<sup>183</sup> Many, including the United Nations Educational, Scientific and Cultural Organization and the World Bank, have begun to identify best practices in the provision of inclusive education.<sup>184</sup> In fact, non-governmental organizations have already been able to work with local governments to successfully provide inclusive education on a small scale in India and China.<sup>185</sup>

Non-governmental organizations have been able to work with local organizations in India to implement inclusive education at the local level,<sup>186</sup> their increased involvement could further assist India in providing inclusive education to all students with disabilities. Generally, model projects help states identify best practices and provide a useful framework for how to spend scarce resources.<sup>187</sup> For example, the United Nations Children’s Fund, working with the Indian government and local non-governmental organizations, was able to implement an

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<sup>181</sup> Thomas Risse & Kathryn Sikknik, *The Socialization of Human Rights Norms*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1, 31 (Thomas Risse, Stephen C. Ropp & Kathryn Sikknik, eds., Cambridge University Press 1999).

<sup>182</sup> *Supra* Parts IV.A, IV.B.

<sup>183</sup> Karen Mundy & Lynn Murphy, *Transnational Advocacy, Global Civil Society? Emerging Evidence from the Field of Education*, 45 *COMP. EDUC. REV.* 85, 85-86 (2001).

<sup>184</sup> See Lynch, *supra* note 8; Peters, *supra* note 45; UNESCO, *Making It Happen: Examples of Good Practice in Special Needs Education and Community-Based Programs*, <http://unesdoc.unesco.org/images/0009/000968/096884ev.pdf> (last visited Jan. 3, 2008).

<sup>185</sup> See ALUR, *supra* note 116, at 45; Deng & Holdsworth, *supra* note 101, at 520-21.

<sup>186</sup> See ALUR, *supra* note 116, at 45; Singal, *supra* note 127, at 337-39.

<sup>187</sup> See Porter, *supra* note 45, at 21.

effective inclusive education program in six primarily rural areas through an initiative called "Project Integrated Education for the Disabled" ("PIED").<sup>188</sup> By 1990, the program had trained over 7000 teachers in curriculum and instructional modification, and resulted in the provision of inclusive education to over 13,000 Indian children with disabilities at a cost comparable to regular education.<sup>189</sup> The Indian government is currently implementing programs similar to PIED.<sup>190</sup> PIED illustrates that when members of the international community bring resources and expertise and cooperate with local organizations in India, it is possible to use limited resources efficiently to address the major barriers to inclusive education.

Similar collaborations between international, national, and local organizations have created inclusive education systems in parts of rural China. The Gansu Basic Education Project ("GBEP"), an attempt from 2002 to 2005 to provide good learning opportunities for children with special educational needs in a rural Chinese province, produced some successful results.<sup>191</sup> The project involved national and local organizations collecting data about the needs of the disabled student population and designing the project goals.<sup>192</sup> Initially, international organizations identified pilot schools and provided training to staff at those schools.<sup>193</sup> However, in the second phase of the program, local personnel took responsibility for writing special education curriculum materials and training over 6000 teachers in the provision of inclusive education.<sup>194</sup> International organizations then collected data and analyzed results.<sup>195</sup> The program was successful at changing attitudes and approaches to inclusive education in China, but such changes may be sustained in the long term only if, among other factors, international organizations provide a minimum of technical support while continuing to develop local expertise during the course of implementation.<sup>196</sup> The Convention may provide necessary impetus to create and foster similar capacity-building projects in China.

The Convention includes many provisions that could be used to involve non-governmental organizations in programs like PIED and GBEP to build the capacity of China and India in providing for students with disabilities. Article 32 of the Convention requires states to recognize the importance of cooperation between states and relevant international and regional organizations, in particular

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<sup>188</sup> See World Bank, *Provision for Children with Special Education Needs in the Asia Region*, Technical Paper No. 261 at 46-47 (1994) (prepared by James Lynch).

<sup>189</sup> See *id.*

<sup>190</sup> *CRC Report: India*, *supra* note 2, at 207-08.

<sup>191</sup> See Deng & Holdsworth, *supra* note 101, at 508.

<sup>192</sup> *Id.* at 510.

<sup>193</sup> *Id.* at 511.

<sup>194</sup> *Id.* at 512.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 520-21.

organizations of persons with disabilities.<sup>197</sup> The article also requires states to undertake appropriate measures to further that cooperation, including, but not limited to, facilitating and supporting information sharing, engaging in collaborative research, and providing technical assistance.<sup>198</sup> Under Article 33, each state must designate government officials responsible for matters related to implementation of the Convention and make every effort to coordinate efforts with other governmental agencies, persons with disabilities, and their representatives.<sup>199</sup> The Convention also allows the Disability Committee to transmit state reports to appropriate agencies and ask for expert advice on implementation.<sup>200</sup> The Disability Committee should begin the process of facilitating cooperative projects like PIED and the GBEP, where non-governmental organizations and local governments work to address the barriers (including funding and capacity) to enforcing laws on the provision of education to students with disabilities. By doing so, the United Nations could persuade India and China that providing inclusive education in compliance with the Convention is attainable, and that the states should alter their behavior to do so.

## VI. CONCLUSION

The Convention has galvanized disability rights advocates and their supporters who believe that the Convention is necessary to achieve lasting realization of the rights of persons with disabilities. Because the Convention focuses on a social model of disability rather than a medical model, it calls on states not only to recognize the equality of persons with disabilities, but also to adopt policies that will ensure equality in practice. The Convention's provisions on education exemplify this approach, requiring states to guarantee the rights of persons with disabilities to an inclusive education, which includes nondiscriminatory access to general schools, reasonable accommodations, and individualized supports designed to nurture the full potential of the child. The United Nations and the international community now have a responsibility to effectively leverage the Convention to create lasting change and would be well served to direct attention to countries like India and China that have large populations of disabled persons, political will to make changes, and an inability to fully realize that will.

India and China have taken steps to provide education for children with disabilities, but do not fulfill their obligations as state parties to the Convention to

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<sup>197</sup> Convention, *supra* note 11, art. 32.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* art. 33(1), (3).

<sup>200</sup> *Id.* arts. 35(4), 38.

provide inclusive education. Nevertheless, the United Nations can effectively use the Convention to encourage change in these countries. Because the Convention does not give the United Nations or any international or state actors the power to coerce compliance, it will be enforced in India and China primarily through cooperative processes involving United Nations organizations, state actors, and international, national, and local non-governmental organizations. The United Nations can help persuade China and India to comply with the Convention and change both their laws and practices accordingly by removing the barriers to compliance. To do so, the United Nations should use the Convention to involve transnational actors, including non-governmental organizations, in defining the Convention in a domestic context and in building capacity to enforce domestic laws.

Nevertheless, questions remain about the ability of transnational advocacy groups and domestic actors to persuade a state to change its behavior; much of the research in this area has focused on specific case studies. While the United Nations may hope, based on past experience, to influence China and India's commitment to inclusive education by connecting those states to non-governmental organizations that can provide technical assistance, it should not structure its treaties or their enforcement mechanisms based on hope alone. The United Nations and international observers should carefully monitor the involvement of transnational actors in inclusive education in India and China and document specific ways in which those organizations can use their resources to influence states and ensure compliance with international law.