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**A Human Rights-Based Approach to
Augmentative and Alternative Communication:**
Enhancing the Right to Inclusive Education in Italy
in a Digital World and a Post-COVID Era

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Abstract

The right to inclusive education is a fundamental right for children with disabilities since it provides them with the necessary skills to fully exercise their human rights and participate actively in society. Article 24 of the United Nations Convention on the Rights of Persons with Disabilities embodies the principle of ‘inclusive education’, recognizing the right of people with disabilities to access education, the necessity of establishing a consistent ‘inclusive education system’, and aims at ending discrimination and fostering equal education opportunities for students with disabilities. However, nowadays there are still many challenges that children with disabilities face in schools, concerning the lack of access to digital tools and services, as well as the lack of specific and adequate support, in particular with the COVID-19 outbreak. Through the case study of Italy, this thesis focuses on the issues that children with speech, language, and communication needs have faced in primary schools since the COVID-19 pandemic and the increasing digitalization of school materials and contents. Therefore, the purpose of analyzing Article 24 CRPD, is to examine the right to inclusive education in Italy, investigate the extent to which Italian laws and policies are in line with the CRPD, and underline the challenges in the system. To explore such issues, this thesis proposes an interdisciplinary framework that examines the interaction of communication theory and human rights law in today’s digital world, specifically investigating how a human rights-based approach to alternative and augmentative communication in Italian primary schools can enhance the right to inclusive education for children with speech, language and communication needs, facilitating digital participation in a post-COVID era.

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Abbreviations

AAC: Augmentative and Alternative Communication

ADHD: Attention-Deficit / Hyperactivity Disorder

AI: Artificial Intelligence

BAPs: Biennial Action Programmes for the Implementation of the Rights of Persons with Disabilities

CESCR: Committee on Economic, Social and Cultural Rights

CRC: UN Convention on the Rights of the Child

CRPD: United Nations Convention on the Rights of Persons with Disabilities

HRBA: Human Rights-Based Approach

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICF: International Classification of Functioning, Disability, and Health

IEPs: Individualized Education Programs

ISTAT: Italian National Institute of Statistics

LIS: Italian Sign language (Lingua Italiana dei Segni)

MIUR: Ministry of Education, University and Research

SEN: Special Education Needs

SLCN: Speech, Language, and Communication Needs

SLPs: Speech-Language Pathologists

UDHR: Universal Declaration of Human Rights

Chapter 1: Introduction

1.1 Inclusive Education in Italy: Problem Statement

The right to inclusive education has been placed center stage in international human rights law.¹ In this regard, Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006,² underlines the necessity of establishing an ‘inclusive education system’ to ensure the right to education of children with disabilities.³ Inclusive education empowers children with disabilities by providing them with the necessary skills and abilities to be able to fully exercise their human rights and engage actively in society, during their childhood and in the future.⁴ Therefore, this right can be considered a ‘multiplier right’ as, on one hand, it enables children to develop other rights, and on the other, it may have disempowering effects if denied.⁵ On this note, the incorporation of the concept of ‘inclusive education’ in international instruments, as well as domestic ones, has been in response to the frequent denial of children with disabilities of their right to education.⁶ In various parts of the world, among the challenges faced by pupils with disabilities are a lack of access to schools,⁷ or the segregation in special schools that provide lower standards of education and preclude them from receiving equal opportunities.⁸ In addition, there is often a lack or a limited amount of resources to ensure support for students with special needs in regular schools.⁹ Therefore, viewed as unable to integrate into the education system, these children are frequently rejected by mainstream schools or may experience harassment and bullying.¹⁰

In contrast with the difficulties mentioned above, the Italian education system has become well-known globally due to its innovative history of clear anti-discriminatory and de-

¹ Gauthier de Beco, “The Right To ‘Inclusive’ Education” (2022) 85(6) *The Modern Law Review*, <<https://doi.org/10.1111/1468-2230.12742>> accessed 15 April 2024.

² United Nations Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3 (CRPD).

³ CRPD (2006), Article 24(1).

⁴ UN OHCHR, ‘Report on Empowering Children with Disabilities for the Enjoyment of their Human Rights, Including through Inclusive Education’ (22 Jan 2019) UN Doc A/HRC/40/27.

⁵ *Ibid.*

⁶ de Beco (n 1).

⁷ UNICEF, ‘The State of the World’s Children Report 2013: Children with Disabilities’ (May 2013) 27-28.

⁸ UNICEF, ‘Innocenti Diget No. 13 Promoting the Rights of Children with Disabilities’ (2007) 17.

⁹ Inclusion International, *Better Education for all When We are Included Too, ‘A Global Report: People with an Intellectual Disability and their Families Speak out on Education for All, Disability and Inclusive Education’* (October 2009) 65-66.

¹⁰ UNESCO, ‘Violence and Bullying in Educational Settings: The Experience of Children and Young People with Disabilities’ (2021) 2-8.

segregating legislation, as well as for creating personalized educational programs, expanding the concept of ‘inclusion’ to ensure high-quality education for everyone and prioritizing fairness, accessibility, equal opportunities, and rights.¹¹ Therefore, overall, the Italian approach to school integration appears inclusive, at least on the surface.¹² However, in March 2020 all schools in Italy were closed due to the COVID-19 pandemic, and the novelty of distance learning (Didattica a Distanza, DAD) was introduced.¹³ This restructuring posed many difficulties for students, teachers, and parents, disproportionately impacting the learning process of the most vulnerable students, particularly those with disabilities, and raised doubts regarding the extent to which Italy’s “progressive” educational framework could really be classified as inclusive.¹⁴

During the COVID-19 pandemic, the importance of digitalization in education became evident,¹⁵ and the lockdown accelerated the integration of digital technologies into education systems.¹⁶ In particular, research showed that in primary schools, recorded lessons were used very frequently with students with disabilities, more than in other grades.¹⁷ In addition, it also revealed that primary school teachers tended to assign online exercises more frequently than upper secondary school teachers.¹⁸ As a result of all this, the digital gap in Italy became clear in the field of education as e-learning measures have reduced the relational component of the educational process and, for many students with disabilities, especially in primary school, became a discriminatory factor, showing the size and depth of the digital divide.¹⁹ While the

¹¹ Paolo Aiello and Erika Marie Pace, ‘Inclusive Educational Principles, Policies, and Practices in Italy’ (2020) Oxford research Encyclopedias of Education <<https://doi.org/10.1093/acrefore/9780190264093.013.1282>> accessed 23 April 2024.

¹² Ibid.

¹³ Maddalena Colombo and Mariagrazia Santagati, ‘The Inclusion of Students With Disabilities: Challenges for Italian Teachers During the Covid-19 Pandemic’ (2022) 10(2) Social Inclusion <<https://doi.org/10.17645/si.v10i2.5035>> accessed 16 April 2024.

¹⁴ Ibid.

¹⁵ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Elena Vivaldi and Paolo Addis, ‘Digitalisation and Digital Transformation in Italy: Implications for Persons with Disabilities’ (2021) Publications Office of the European Union <<https://data.europa.eu/doi/10.2767/569077>> accessed 16 April 2024.

¹⁶ Abid Haleem and others, ‘Understanding the Role of Digital Technologies in Education: A Review’ (2022) 3 Sustainable Operations and Computers <<https://doi.org/10.1016/j.susoc.2022.05.004>> accessed 17 April 2024.

¹⁷ Colombo and Santagati (n 13).

¹⁸ Ibid.

¹⁹ Vivaldi and Addis (n 15).

degree of the digital gap seems to vary depending on the type of impairment,²⁰ it has been estimated that between April and June 2020, over 23% of students with disabilities were excluded from distance learning activities because of a lack of adequate digital materials at home and school, as well as difficulties in adjusting individualized educational plans for these students.²¹ For example, students with visual or hearing impairments could not use certain digital materials employed by teachers during distance learning because of a lack of adaptation of such learning materials to their specific needs.²² For instance, some digital platforms were not designed with screen reader compatibility, making it difficult for visually impaired students to access the content, and audio materials often lacked captions or transcripts, essential for students with hearing impairments.²³ Moreover, students with ADHD (attention-deficit/hyperactivity disorder) encountered many difficulties in having to work independently and without personalized supports.²⁴ Arguably, children with speech, language, and communication needs (SLCN) experienced some of the most significant issues concerning online learning and the employment of digital tools.²⁵ These children often require tailored, one-on-one interaction and personalized interventions. Online platforms in many cases offered limited opportunities for such individualized attention, making it difficult to address their specific needs effectively.²⁶ Moreover, social distancing measures have had negative effects on school-age children as they have prevented them from having meaningful, in-person interactions with peers, which are fundamental to encouraging the development of their communication skills.²⁷ These difficulties were increased by the fact that Italy seems to be a relative latecomer to the digital world in education and that, despite the Italian Government's implementation of strategic plans to narrow the digital gap, the specific needs of individuals

²⁰ Stefan Johansson, Jan Gulliksen, and Catharina Gustavsson, 'Disability Digital Divide: the Use of the Internet, Smartphones, Computers and Tablets among People with Disabilities in Sweden' (2021) 20 *Univers. Access Inf. Soc.* <<https://doi.org/10.1007/s10209-020-00714-x>> accessed 17 April 2024.

²¹ Censis, 'La scuola e i suoi esclusi: Italia sotto sforzo. Diario della transizione 2020' (2020) <<https://www.censis.it/formazione/1-la-scuola-e-i-suoi-esclusi>> accessed 25 April 2024.

²² UNESCO, 'GEM Report. How is The Coronavirus Affecting Learners with Disabilities? World Education Blog' (2020) <<https://world-education-blog.org/2020/03/30/how-is-the-coronavirus-affecting-learners-with-disabilitie>> accessed 25 April 2024.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Johansson, Gulliksen, and Gustavsson (n 20).

²⁶ Sara A. Charney, Stephen M. Camarata, Alexander Chern, 'Potential Impact of the COVID-19 Pandemic on Communication and Language Skills in Children' (2021) 165(1) *Otolaryngology–Head and Neck Surgery* <10.1177/0194599820978247> accessed 25 April 2024.

²⁷ *Ibid.*

with disabilities to access digital goods and services and to receive the support they require are still not prioritized.²⁸

Based on this context, the issue that this thesis seeks to address is the legal implementation of Italy's obligations under Article 24 CRPD, in primary education.²⁹ Specifically, this thesis will focus on the obligations to ensure that persons with disabilities can access an 'inclusive, quality and free primary education'³⁰, and that children with SLCN can enjoy full and equal participation in education, by learning augmentative and alternative communication (AAC),³¹ which includes various methods and interventions that enable effective communication.

1.2 Objectives of the Thesis and Research Questions

1.2.1 Objectives of the Thesis

This thesis seeks to address the aforementioned challenges regarding the lack of access to digital tools and services, and the lack of specific support faced by children with SLCN in schools, through the proposal of an interdisciplinary framework looking at the interaction of communication theory and human rights law in today's digital world. More specifically this interdisciplinary framework will investigate the extent to which a human rights-based approach to AAC in primary schools can enhance the right to inclusive education of children with SLCN, in order to facilitate digital participation in a post-COVID era.

Therefore, the aim of this thesis is to analyze the most relevant education laws concerning disability rights in the Italian national legislation to detect its gaps and limitations on digitalization. Hence, the outcome of the thesis will be to provide guidelines to the Italian Government for a stronger implementation of strategies that address digitalization and disability. In doing so, the thesis will also analyze the benefits of AAC in ensuring the right to inclusive education and investigate how best to combine the implementation of these tools with a human rights-based approach.

²⁸ Vivaldi and Addis (n 15).

²⁹ CRPD (2006) (n 2).

³⁰ CRPD (2006), Article 24(2)(b).

³¹ CRPD (2006), Article 24(3)(a).

1.2.2 Research Questions

Based on the problem statement and objectives outlined above, the primary research question of this thesis is: how can Italy ensure the right to inclusive education of children with speech, language, and communication needs while promoting digitalization and trying to bridge the digital gap emphasized by the COVID-19 pandemic? The sub-questions to be dealt with are: (1) to what extent can digital tools, like AAC methods, support the learning experience of children with SLCN?; (2) what are the legal obligations of States Parties to the Convention (including Italy) under Article 24 CRPD, on the right to inclusive education?; (3) how can a human rights-based approach to AAC foster inclusive education in the relevant Italian strategies on digitalization and disability?

1.3 Methodology

1.3.1 Doctrinal Legal Analysis

The research methodology employed in this thesis will be a doctrinal legal analysis. In particular, this methodology consists of examining the content of a legal opinion and selecting the most significant legal sources to undertake a systematic analytical study of these current laws or legal provisions, as well as “*travaux préparatoires*, case law, and academic sources”³². In order to conduct this analysis, Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT)³³ will be used as tools for interpretation. More specifically, these two provisions underline the importance of different interpretative tools, namely, the literal (textual) analysis, the systematic (contextual) interpretation, the historical approach, and the teleological (functional) investigation.³⁴ Regarding the textual approach, this thesis will interpret the text of Article 24 CRPD “under its ordinary meaning in good faith”.³⁵ Moreover, under the contextual interpretation, other relevant documents concerning the content of Article 24 will be explored. For this purpose, General Comment No. 4 to the CRPD³⁶ (GC4) on the right to inclusive education will be analyzed, as prescribed by Article 31(3)(b), which highlights that “any

³² Amrit Kharel, ‘Doctrinal Legal Research’ (2018) SSRN Electronic Journal <10.2139/ssrn.3130525> accessed 17 April 2024; Andrea Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities The United Nations Convention on the Rights of Persons with Disabilities* (Maastricht University 2015).

³³ Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331 (VCLT).

³⁴ *Ibid*, Articles 31-32.

³⁵ *Ibid*, Article 31(1).

³⁶ Committee on the Rights of Persons with Disabilities, ‘General Comment No 4’ (2016).

subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation shall be taken into account, together with the context”.³⁷ Indeed, in the context of the CRPD, the above-mentioned “subsequent practice” can be found in the general comments, which can be seen as additional sources and means for interpreting the CRPD and the obligations set by it.³⁸ In its GC4, the Committee on the Rights of Persons with Disabilities underlined that inclusive education has to be conceived as a tool for realizing other human rights, achieving inclusive societies, and by which persons with disabilities could participate fully in their communities.³⁹ While not universally recognized, GC4 provides a highly authoritative interpretative role for States Parties from the UN Committee responsible for monitoring the CRPD implementation and enforcement, as expressed by Article 34 of the CRPD. Finally, the last two approaches, namely the teleological and the historical approaches, will complement the literal and systematic interpretations, drawing from Articles 31 and 32 VCLT, respectively. The teleological method focuses on the objects and aims of a treaty, which are relevant for interpreting human rights treaties. This approach permits both evolutionary and contemporary interpretations, taking into consideration the ongoing social and cultural developments that may affect or alter the purpose and scope of legal provisions.⁴⁰ Therefore, it will be employed to further analyze Article 24 of the CRPD, and better understand its underlying objectives and the outcomes that this provision and the CRPD Committee aim to achieve.⁴¹ The historical approach allows recourse to supplementary means of interpretation and the *travaux préparatoires* of the treaties.⁴² This will be used during the interpretation of Article 24 to complete the comprehension of this provision by providing historical context.

1.3.2 Comparative Methodology

The second methodology that will be employed in this thesis is a comparative analytical approach. This type of research is usually used to gain insight into foreign legal frameworks,

³⁷ VCLT, Article 31(3)(b).

³⁸ Broderick (n 32).

³⁹ UN OHCHR (n 4).

⁴⁰ Broderick (n 32).

⁴¹ Odile Ammann, ‘Interpretative Methods of International Law: What Are They, and Why Use Them?’ in Odile Ammann (eds) *Domestic Courts and the Interpretation of International Law: Methods and Reasoning Based on the Swiss Example* (Brill 2019).

⁴² Broderick (n 32).

but also to find solutions for problems of a particular legal system.⁴³ Moreover, with the increase and strengthening of regimes of international law, for example in the context of the United Nations, comparative research has expanded to include international law.⁴⁴ There is still no clear consensus on the exact approach to conducting comparative legal analysis, leaving space for interpretation when extending such research into the international realm.⁴⁵ Comparative international law involves recognizing, studying, and elucidating similarities and differences in how national and international actors comprehend, interpret, implement, and address international law.⁴⁶ When employing a comparative international law approach, scholars and legal professionals may examine how countries incorporate international treaties and conventions into their domestic legal systems, how they interpret and apply international norms, and how they resolve conflicts between international obligations and domestic laws.⁴⁷ Regarding public international law and the interpretation/application of treaties, it has been suggested that comparative methodology can be employed to compare international and domestic legal systems, enhancing the former and examining how different principles and norms of international law are delineated and implemented across diverse legal frameworks.⁴⁸ In this thesis, a comparative methodology will be employed when assessing the compliance of the Italian system with the obligations at the international level, more specifically under the CRPD.

1.4 Literature Review, Scope, and Limitations of the Thesis

In dealing with the issues mentioned above and answering the research questions, this thesis will encompass a comprehensive examination of existing scholarly work on the right to inclusive education, with a particular focus on Article 24 of the CRPD. This review will also draw from studies on the impact of inclusive education systems on children with disabilities, specifically analyzing the Italian school system's approach and the challenges faced during the COVID-19 pandemic. In this regard, the review will also delve into the digital divide and its

⁴³ Ellen Hey and Elaine Mak, 'Introduction: The Possibilities of Comparative Law Methods for Research on the Rule of Law in a Global Context' (2009) *Erasmus Law Review* 2(3) <<https://ssrn.com/abstract=1498438>> accessed 20 April 2024.

⁴⁴ *Ibid.*

⁴⁵ Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method* <10.5553/REM/.000010> accessed 20 April 2024.

⁴⁶ Anthea Roberts and others, *Comparative International Law* (OUP 2018).

⁴⁷ Hey and Mak (n 43).

⁴⁸ Andrea Carcano, 'Uses and Possible Misuses of a Comparative International Law Approach' (2018) 54 *QIL*.

implications for students with disabilities, drawing from recent research on the implementation of digital tools and e-learning measures, as well the issues faced. Moreover, this thesis will look at studies on AAC methods and strategies and their role in ensuring effective communication for children with SLCN. In doing this, the literature review aims to provide a solid theoretical foundation for assessing Italy's legal obligations and practical measures under the CRPD to support inclusive education for all children, particularly those with SLCN.

On the other hand, this thesis seeks to fill some research gaps which exist with regard to the literature on the human rights-based approach to AAC concerning education. In particular, the case study on Italy aims to fill the literature gaps about the Italian Government's strategies that deal with the relationship between disability and digitalization in the education sector.

Moreover, in order to better clarify the scope of this thesis, it is important to point out a few research limitations. First of all, in Chapter 3, on the analysis of Article 24 CRPD, the thesis will particularly focus on specific States Parties' obligations, namely sub-paragraph 24(2)(b) and 24(3)(a), the most relevant ones for the discussion on alternative and augmentative communication methods. Finally, in Chapter 4 when discussing the development of the right to inclusive education in Italy, just the most pertinent Italian laws and policies, for the purposes of this thesis, will be analyzed.

1.5 Structure of the Thesis

This thesis will be divided into five different chapters. The first substantive chapter will be Chapter 2, which will present the interdisciplinary framework that will constitute the lenses through which this research will be conducted. In this part, the links between communication, human rights, and disability will be addressed. This will be done firstly by exploring the importance of communication for the protection of human rights, in particular the rights of children with disabilities. Then, the discussion on communication, speech, and language disabilities, will be explored by looking at the challenges that children with SLCN have to face, specifically during their learning experience, and by presenting AAC as a method to uphold their right to inclusive education. In this regard, it will explore inclusive education and digitalization, analyzing the relevance of digital tools in education following the Covid-19 pandemic. In this context, this thesis will investigate the importance of combining the AAC system with a human rights-based approach. Therefore, this will serve as a background for the creation of a framework that will apply a human rights-based approach to AAC to the national

case study of Italy in this thesis. Chapter 3 will take a closer look at the right to inclusive education under Article 24 CRPD, give a comprehensive interpretation of this right and investigate whether the framework presented in Chapter 2 is in compliance with the CRPD and whether it can enhance its implementation. Moreover, it will also provide a thorough legal interpretation of the obligations prescribed by Article 24 for the States Parties to the CRPD. Then, in the first part of Chapter 4, there will be an analysis of the development of the right to inclusive education in the Italian legal framework and policies on the evolution of the Italian school system. Finally, the last sub-sections of Chapter 4 will focus on the gaps in the Italian Government's strategies addressing disability and digitalization. In that regard, Chapter 4 will therefore draw on the interpretative framework to highlight the benefits of the HRBA to AAC for the right to inclusive education of children with SLCN and argue for the use of this approach by the Italian Government to develop strategies which are more disability-inclusive and digitalization-oriented. Finally, Chapter 5 will constitute the conclusion of this thesis.

Having looked at the problems and objectives of this thesis, the following chapter will present the interdisciplinary framework according to which this research will be carried out, and the links between communication, human rights, and disability will be analyzed.

Chapter 2: Communication, Human Rights and Disability

Following the introductory chapter, this chapter will present the interdisciplinary framework of the thesis, showing the relationship between communication, human rights and disability. The aim of Chapter 2 is to answer the first sub-question of the thesis: “to what extent can digital tools, like AAC methods, support the learning experience of children with SLCN?”. In doing so, it will be structured as follows: first, it will introduce the concept of communication and clarify how it relates to human rights and specifically to disability rights. The following section will further analyze these connections, focusing on the right to inclusive education of children with SLCN. After that, section 3 will discuss the difficulties that children with disabilities had to face during the COVID-19 pandemic because of an increased digitalization in education. In addition, in section 4, this chapter will look at AAC methods and strategies, in order to explore their benefits in overcoming these issues and enhancing the right to inclusive education. Finally, the last section will be dedicated to presenting the HRBA to AAC and discussing the key elements that characterize this approach.

The interdisciplinary framework presented in this chapter will be relevant throughout the whole thesis and will be crucial for introducing the following chapter, which will explore more in-depth the concept of inclusive education in the CRPD and States Parties’ obligations.

2.1 Communication, Human Rights and Disability: Connecting the Dots

As mentioned in the previous chapter, this thesis will be based on an interdisciplinary framework drawing from communication theory and human rights law. In particular, this framework will, later on, examine the extent to which a human rights-based approach to AAC in primary schools can encourage the development of the right to inclusive education of children with SLCN, and enhance digital participation in a post-COVID era.

In order to explain how communication, human rights, and disability are interconnected, it is important to clarify a few concepts. To begin with, communication, which involves receiving, processing, retaining information, and generating messages, represents an intrinsic human characteristic and need.⁴⁹ Every individual, irrespective of age or ability, can both transmit and receive messages - often in different ways. In most societies, the main means of

⁴⁹ Sharynne McLeod, ‘Communication rights: Fundamental human rights for all’ (2018) 20(1) International Journal of Speech-Language Pathology <<https://doi.org/10.1080/17549507.2018.1428687>> accessed 2 May 2024

communication are speaking, listening, reading, and writing. However, alternative modes of communication can also be used such as sign language, online audio/video communication, or non-verbal methods.⁵⁰ All these techniques can be employed to meet various types of needs, namely ‘physical, instrumental, relational, and identity needs’.⁵¹ For instance, communication can be extremely useful to inform and warn others when our physical needs are not satisfied or to help us accomplish present and future goals, such as receiving information and getting the support we need. Moreover, communication plays a crucial role in nurturing social interactions and connections, as well as allowing us to present ourselves in society, shaping how we are perceived by others. Furthermore, communication is often described as the ‘process of understanding and sharing meaning’.⁵² This process is usually simplified by models of communication, which give a visual illustration of the different elements of an interaction and, therefore, enable us to understand all the steps included in the process. Most models include in the communication process some common aspects, namely the participants, the messages that are sent and received, the actions of encoding (the process of turning thoughts into communication) and decoding (the opposite of encoding), and the communication channels that are employed in the process.⁵³ In addition to these elements, recent studies have highlighted the importance of social, relational, and cultural contexts in the communication process.⁵⁴ In this regard, the new transactional model of communication, by taking into account these contexts, underlines that communication is not limited to exchanging messages, but also facilitates forming relationships and intercultural connections, influences the perception of ourselves and interacts with others in dialogue to form societies. Therefore, being able to communicate is fundamental to the creation of human relationships and engagement, as well as fostering participation - from familial and communal to national and global contexts.⁵⁵

In light of the important role that it plays in society, communication has been included in various human rights treaties and declarations, under the right to freedom of opinion and expression. The Universal Declaration of Human Rights (UDHR)⁵⁶ was one of the first

⁵⁰ Ibid.

⁵¹ Tom Grothe, ‘Exploring Intercultural Communication’ (2023) LibreTexts <[https://socialsci.libretexts.org/Courses/Butte_College/Exploring_Intercultural_Communication_\(Grothe\)](https://socialsci.libretexts.org/Courses/Butte_College/Exploring_Intercultural_Communication_(Grothe))> accessed 2 May 2024.

⁵² Ibid

⁵³ Ibid.

⁵⁴ McLeod (n 49).

⁵⁵ Ibid.

⁵⁶ Universal Declaration of Human Rights (adopted 10 December 1948) (UDHR).

contemporary documents to include this right.⁵⁷ Article 19 UDHR states that every individual “has the right to freedom of opinion and expression”, which includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.⁵⁸ Therefore, every individual - irrespective of their age, position, capability or communication skills - has the right to hold and express their opinions, freely. At the same time, everyone should respect other people’s right to communicate in society to promote ‘equality, justice and human dignity’.⁵⁹ In international law, the right to freedom of opinion and expression is deemed crucial both at an individual level, since it can enhance the full development of a person, as well as being a fundamental element of a democratic society.⁶⁰ This right is essential for the exercise of other rights, such as the right to education, the right to vote, free assembly and freedom of association, and to guarantee the freedom of the press and media.⁶¹

Moreover, it is important to underline that the right to freedom of expression and opinion includes two different perspectives: the ‘fundamental’ and the ‘inclusive’.⁶² Regarding the former, agreement that everyone has the right to freely express their opinions appears to be commonplace, as mentioned above.⁶³ On the other hand, concerning the inclusive perspective, disagreement and debates may arise when dealing with the concept of ‘ability to communicate’ and ‘access’ to adequate communication tools. In this regard, the right to communicate can be fully realized only when the necessary tools are accessible and adequate to fulfill the fundamental communication needs of every individual. When people are free to communicate and express their opinions and ideas, they perceive a sense of fairness and equality. In other words, communication helps affirm and validate human equality.⁶⁴ Hence, ensuring that human rights are upheld according to the values of ‘freedom, equality, solidarity, inviolability, inclusiveness, diversity, universality and participation’, is fundamental to facilitating access to

⁵⁷ Alastair McEwin and Edward Santow, ‘The Importance of the Human Right to Communication’ (2018) 20(1) *International Journal of Speech-Language Pathology* <<https://doi.org/10.1080/17549507.2018.1415548>> accessed 18 June 2024.

⁵⁸ UDHR (n 56), Article 19.

⁵⁹ McLeod (n 49).

⁶⁰ McEwin and Santow (n 57).

⁶¹ *Ibid.*

⁶²A. Fulya Sen ‘Communication and Human Rights’ (2015) 174 *Procedia* <<https://doi.org/10.1016/j.sbspro.2015.01.972>> accessed 2 May 2024.

⁶³ McEwin and Santow (n 57).

⁶⁴ Sen (n 62).

communication. Therefore, protecting and upholding communication rights constitutes a crucial aspect in the respect and implementation of human rights.⁶⁵

Given the intrinsic nature of communication for human beings and its relevance in upholding human rights, it is important to highlight that efficient communication may be hindered for individuals with limited proficiency in the use of conventional communication methods employed in society (speaking, listening, reading, and writing), as well as for those who depend on non-mainstream communication modes such as sign language, braille, AAC, and minority languages and dialects.⁶⁶ For the purposes of this thesis, this research will focus on the challenges of children with speech, language, and communication needs who struggle with the reception and production of messages. This encompasses challenges in ‘speech, language, voice, fluency (such as stuttering), hearing, and/or social interaction’ within the language they acquired since birth.⁶⁷ Individuals with complex communication impairments encounter significant limitations in communication, engagement, and inclusion across various life domains, such as education, healthcare, employment, social interactions, and community engagement.⁶⁸ In the next section, these challenges will be explored in more detail concerning the right to inclusive education.

2.2 Inclusive Education for Children with Speech, Language, and Communication Needs

Having explored the importance of communication for upholding other human rights, this section will focus on children with SLCN in the school environment, looking at challenges and opportunities. In this regard, communication is a fundamental aspect for engagement and participation in all aspects of life, including education.⁶⁹ Indeed, effective communication is crucial in schools to uphold children's right to education. When pupils can freely interact with their teachers and other school members, they can grow in a positive environment and actively

⁶⁵ Ibid.

⁶⁶ McLeod (n 49).

⁶⁷ Ibid.

⁶⁸ David R. Beukelman and Janice C. Light, *Augmentative & Alternative Communication: Supporting Children and Adults with Complex Communication Needs* (5th edn, Brookes Publishing Co, 2020).

⁶⁹ McLeod (n 49).

participate in the learning journey.⁷⁰ Therefore, the involvement of every child in education represents a key place for the implementation of communication rights, as “educational instruction maintains a heavy reliance on linguistic competence as a precondition to free expression”⁷¹. However, before exploring these issues, it is important to clarify what the term ‘speech, language, and communication needs’ entails. This concept was used for the first time in the Bercow report and, since then, it has been employed by many scholars as an umbrella term to describe challenges involving fluency, articulation, word formation, construction of sentences, comprehension of what other people say, and use of the language in social contexts.⁷² Children with SLCN may, for instance, experience issues in expressing their desires, needs, and opinions; they might have difficulty in understanding information communicated verbally, as well as problems using terms in the right context, and they may misuse words with incorrect grammatical structures.⁷³ Therefore, these difficulties impact the child’s development across multiple domains, with a notable focus on literacy skills. Studies indicate that particularly during primary education, children with SLCN frequently encounter obstacles in acquiring fluent reading, decoding, and comprehension skills.⁷⁴ Additionally, a considerable number of children with SLCN may also encounter difficulties in social-emotional development and behaviour.⁷⁵

Scholars often divide children with SLCN into three big groups. The first group comprises children with primary SLCN where ‘language difficulties occur in the absence of any identified neurodevelopmental or social cause’⁷⁶, such as specific speech or language impairment. Hence, these difficulties are characterized by being specific and continuous. The second group includes children with ‘cognitive, sensory, or physical impairment as their primary need and language difficulties as a secondary need’, like, for example, SLCN secondary to autistic spectrum

⁷⁰ Miriana Tankosic and Ana Grbic, ‘The Importance of Effective Communication in Ensuring Children’s Rights: A Study of the Intersection of Communication and Child Rights’ (2023) 13(2) *Human Research in Rehabilitation* <<https://api.semanticscholar.org/CorpusID:262198726>> accessed 17 April 2024.

⁷¹ Jenna Gillett-Swan and Jonathon Sargeant, ‘Assuring Children’s Human Right to Freedom of Opinion and Expression in Education’ (2017) 20(1) *International Journal of Speech-Language Pathology*, <<https://doi.org/10.1080/17549507.2018.1385852>> accessed 13 May 2024.

⁷² McLeod (n 49).

⁷³ Ibid.

⁷⁴ Julie E. Dockrell and Peter Howell, ‘Identifying the Challenges and Opportunities to Meet the Needs of Children with Speech, Language and Communication Difficulties’ (2016) 42(4) *British Journal of Special Education* <<https://doi.org/10.1111/1467-8578.12115>> accessed 25 April 2024.

⁷⁵ Ibid.

⁷⁶ Worcestershire SLCN Pathway, ‘Fact Sheet 2.1 What is SLCN?’ <https://www.hacw.nhs.uk/what-is-slcn>

disorder, hearing impairment, or learning difficulty.⁷⁷ Finally, the third group comprises children with SLCN, characterized by ‘limited experiences’, typically associated with socio-economic disadvantage. Therefore, these difficulties are temporary and children are likely to overcome them with the right support.⁷⁸ Due to these difficulties, for children with SLCN, the learning experience can be challenging.

2.3 Digitalization and Inclusive Education during the COVID-19 Pandemic

Research has shown that the learning experience of students with disabilities is often inferior compared to their peers, due to the aforementioned issues and widely recognized structural injustices and inequalities.⁷⁹ Many children with disabilities, who are among the most marginalized groups in education systems globally, still lack access to educational opportunities. In addition to these challenges, it has been observed that the COVID-19 pandemic has amplified these difficulties, especially for the most vulnerable students, among which pupils with disabilities.⁸⁰ During the pandemic, in several countries, technology-driven solutions were implemented to ensure the continuity of education through alternative delivery methods like online and distance learning. However, numerous students worldwide lacked the essential resources such as equipment, internet connectivity, accessible materials, tailored content, and adequate support systems, which were crucial for engaging in online programs.⁸¹ The COVID-19 outbreak exacerbated educational exclusion and the digital gap in access to devices, electricity, internet connectivity, and the quality of teaching widened the educational disparity in all countries, particularly affecting learners with disabilities, who often encounter the additional challenge of inaccessible learning materials.⁸² Indeed, before the pandemic, these students heavily depended on in-person assistance to complete their tasks, engage in social activities, and enhance adaptive skills. Therefore, during the pandemic, with the replacement of in-person activities with distance learning, their access to specialized support was negatively

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Melissa R. Dvorsky and others, ‘Impacts of COVID-19 on the School Experience of Children and Adolescents with Special Educational Needs and Disabilities’ (2023) 52 *Current Opinion in Psychology* <<https://doi.org/10.1016/j.copsyc.2023.101635>> accessed 26 April 2024.

⁸⁰ UNESCO, ‘Understanding the Impact of COVID-19 on the Education of Persons with Disabilities: Challenges and Opportunities of Distance Education’ (2021) <<https://unesdoc.unesco.org/ark:/48223/pf0000378404>> accessed 16 May 2024.

⁸¹ Ibid.

⁸² Ibid.

affected.⁸³ Many of the personalized and adapted interventions that were already in place, such as tailored academic assistance, time management training, tutoring, or counseling, were stopped for these students during the pandemic.⁸⁴ These problems were increased by the fact that teachers were not given proper training or support in adapting the curriculum to children with different types of impairments.⁸⁵ As a result of these difficulties in adapting individualized educational plans, data indicates that students with disabilities encountered significant challenges in engaging with digital learning materials during the pandemic.⁸⁶ Indeed, it needs to be highlighted that the extent of the digital gap appears to differ based on the specific type of impairment at issue.⁸⁷ For example, many websites and programs, used by teachers during distance learning, were not accessible to students with visual or hearing impairments.⁸⁸ In addition, “small group and one-on-one instruction” were difficult to recreate online, especially for students experiencing issues with self-regulation, attention, or technological constraints.⁸⁹ For students with ADHD (attention-deficit/ hyperactivity disorder) having to work more independently in front of a computer was a major difficulty.⁹⁰ Individuals with SLCN seem to constitute the group facing the most significant challenges regarding distance learning and the use of digital technologies.⁹¹ Indeed, social distancing measures have had negative effects on school-age children, preventing them from having meaningful, in-person interactions with peers, which are fundamental to encouraging the development of their communication skills. Furthermore, the school setting offers opportunities for students to make friends, explore their creativity, enhance problem-solving, develop critical thinking abilities, and participate in physical activities. While often overlooked in the literature, these aspects play an important role in the learning journey, especially for children with disabilities, protecting them against issues such as disengagement and dropout.⁹²

⁸³ Dvorsky and others (n 79).

⁸⁴ Ibid

⁸⁵ UNESCO (n 80).

⁸⁶ Ibid.

⁸⁷ Johansson, Gulliksen, and Gustavsson (n 20).

⁸⁸ UNESCO (n 22).

⁸⁹ Dvorsky and others (n 79).

⁹⁰ Ibid.

⁹¹ Johansson, Gulliksen, and Gustavsson (n 20).

⁹² Dvorsky and others (n 79).

Therefore, considering the crucial role of digital platforms and digitally mediated communication in education, it is important to tackle and alleviate these obstacles hindering access and assistance for students with disabilities.

Having looked at the challenges faced by children with disabilities in schools during COVID-19, AAC tools present many benefits in tackling these issues, supporting social and academic inclusion in school settings, and therefore ensuring the right to inclusive education.⁹³ Therefore, the next section will focus on this subject.

2.4 Augmentative and Alternative Communication and the Right to Inclusive Education for Children with Speech, Language, and Communication Needs

2.4.1 Augmentative and Alternative Communication in a Nutshell

After exploring the impact of digitalization on inclusive education during the COVID-19 pandemic, this section is now dedicated to AAC strategies and tools. AAC includes different methods and interventions that encourage effective communication in children with speech, language, and communication needs.⁹⁴ It can be seen as a tool to support language learning or as a method of communication for those who do not use spoken language.⁹⁵ Therefore, AAC is composed of both ‘expressive and receptive communication systems’, which help the user’s creation and comprehension of messages.⁹⁶ The main purpose of AAC employment is to empower individuals with SLCN so that they can participate proficiently and productively in various interactions and be free to take part in activities they desire.⁹⁷ Moreover, there are five specific goals that AAC aims at achieving:

1. enabling the communication of needs and wants;
2. facilitating the transfer of information;
3. fostering social bonds;

⁹³ Teresa Iacono and others, ‘A Scoping Review and Appraisal of AAC. Research in Inclusive School Settings’ (2022) 34 *J Dev Phys Disabil* <<https://doi.org/10.1007/s10882-022-09835-y>> accessed 10 May 2024.

⁹⁴ Michael Wahl and Katharina Weiland, ‘Augmentative and Alternative Communication and Digital Participation’ (2023) 8 *Frontiers in Communication* <<https://doi.org/10.3389/fcomm.2023.1180257>> accessed 17 April 2024.

⁹⁵ *Ibid.*

⁹⁶ Tom Griffiths, Michael Clarke, and Katie Price, ‘Augmentative and Alternative Communication for Children with Speech, Language and Communication Needs’ (2022) 32(8) *J. Paediatr* <<https://doi.org/10.1016/j.paed.2022.05.001>> accessed 9 May 2024.

⁹⁷ Beukelman and Light (n 68).

4. facilitating the observance of social etiquette;
5. and fostering internal dialogue.⁹⁸

The aim of conveying wants and needs is to influence the behaviour of one's communication partner towards taking action, like in situations when one asks for help or requests assistance to perform a particular activity. In this case, the vocabulary employed is quite predictable, the content of the message is relevant and concrete, and the accuracy and rate of the production of the messages are paramount. Exchanging information, on the other hand, encompasses conveying messages that are more challenging to articulate since, in this case, the objective is to transfer information rather than influence behaviour. A concrete example of this kind of interaction is a child telling their teacher what they did over the weekend. This type of communication is particularly crucial in realms such as education, employment, and healthcare. Here, the message is important, but, unlike the previous case, it is likely to include new words and sentences. The accuracy of the message remains very relevant, whereas the communication rate differs depending on the AAC user and the situation. Concerning the enhancement of social closeness, communication aims to create, maintain, and foster social interactions to form friendships and cultivate other interpersonal connections, like in the case of a child greeting a classmate. In this type of interaction, the accuracy, rate, content of the message, and the autonomy of the individual communicating are considered less important than the intimacy and connection attained through the communication process. The fourth goal of communication is promoting respect for social etiquette, which means adhering to social norms of courtesy through interactions that are typically brief and present predictable language. A simple example is a child using "please" and "thank you" while talking with their teacher. These messages are similar to those expressing desires and needs, as accuracy and communicative autonomy are the principal elements for achieving effective communication. Finally, the last type of communication process is internal dialogue, employed on a daily basis with organizational purposes, such as making lists, preparing schedules for daily activities or writing journals.⁹⁹

2.4.2 Enhancing Communication: Exploring AAC Tools and Their Impact

AAC tools are generally classified according to their level of technical complexity. For instance, "no-tech AAC" systems involve body language, facial expressions, gestures,

⁹⁸ Ibid.

⁹⁹ Beukelman and Light (n 68).

vocalizations, sign language, muscle tone, etc; whereas, “low-tech AAC’ refers to simple communication supports that are paper-based, like picture boards, books, letter or communication boards.¹⁰⁰ On the other hand, “mid-tech AAC’ tools include simple electronic devices such as buttons for transmitting messages, while “high-tech AAC” systems are more complex and dynamic devices usually based on computer, phone, tablet, or communication applications, or speech-generating devices which allow the user to compose messages.¹⁰¹

With the advent of digitalization, high-tech AAC devices became more and more popular for their affordability and adaptability, and took on an increased role in enabling the digital participation of people with disabilities, allowing them to engage and access information on an equal basis as people without disabilities.¹⁰² In addition, in recent years, new models of AAC, based on Artificial Intelligence (AI), have become increasingly popular. They simplify the process of message production and provide educators with effective instruments to develop individualized educational materials. They adjust to various learning necessities, becoming more and more important in contemporary school settings.¹⁰³ The swift progress of these digital technologies and AI has led to significant advances in mobility and autonomy for individuals utilizing AAC.¹⁰⁴

Furthermore, various groups of children can benefit from AAC.¹⁰⁵ Generally, these tools are considered when there is a discrepancy between a child’s ability to understand language and their ability to express themselves. Specifically, three groups of children with SLCN have been identified as beneficiaries of AAC systems.¹⁰⁶ The first group is the “expressive language group”, which includes children who present difficulties in expressing their ideas, but comprehend when other people communicate with them. Then, there is the “supportive language group”, composed of those who need temporary AAC support to understand or express ideas. The final category is the “alternative language group”, which comprises those children who employ AAC as permanent tools for receiving and conveying messages. These

¹⁰⁰ Wahl and Weiland (n 94).

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ambra di Paola and others, ‘Foundation Models in Augmentative and Alternative Communication: Opportunities and Challenges’ (2024) arXiv preprint arXiv:2401.08866 <<https://doi.org/10.48550/arXiv.2401.08866>> accessed 15 May 2024.

¹⁰⁴ Wahl and Weiland (n 94).

¹⁰⁵ Griffiths, Clarke, and Price (n 96).

¹⁰⁶ Ibid.

groups have distinct needs in terms of AAC systems and support, emphasizing the importance of individualized selection and assistance.¹⁰⁷ Research has shown that AAC systems can bring many advantages to children with SLCN, to facilitate their learning experience.¹⁰⁸ First, emerging data shows that the sooner children start using AAC and receive support in using it, the more positive their long-term communication results will likely be. In addition, studies indicate that children can use AAC successfully without having specific prerequisite skills.¹⁰⁹ AAC systems have an educational value and research in this field shows that young children can develop various skills including visual motor coordination, understanding cause and effect relations, language interpretation, and linguistic skills through the employment of these instruments and techniques.¹¹⁰ Moreover, there is evidence that AAC not only facilitates communication and speech but can also improve language and literacy skills.¹¹¹ Another important advantage that AAC offers is that abundant research is available to assist professionals in establishing effective AAC interactions, guiding them through the steps of the process, such as preparing the environment, involving the child, patiently waiting for their response, and teaching them how to use the AAC system. This means that teachers and other school employees can rely on specific guidelines.¹¹² Therefore, this shows how AAC can be a good response to problems of access and support.

2.5 A Human Rights-based Approach to Augmentative and Alternative Communication

Having discussed how the framework presented in this chapter is interdisciplinary, as it integrates concepts and methodologies from both communication theory and human rights law to address complex issues related to inclusive education, this chapter will now investigate how a human rights-based approach to augmentative and alternative communication can enhance inclusive education.

¹⁰⁷ Ibid.

¹⁰⁸ Emily Jensen, Sarah N. Douglas, and Hope K. Gerde, 'Dispelling Myths Surrounding AAC Use for Children: Recommendations for Professionals' (2023) 2(1) Inclusive Practices <<https://doi.org/10.1177/27324745221144308>> accessed 17 April 2024.

¹⁰⁹ Beukelman and Light (n 68).

¹¹⁰ Sarah E. Maue, 'The Effects of Augmentative & Alternative Communication on Children with Autism Spectrum Disorder: A Meta-Analysis' (2022) 25 Linguistics Senior research Projects <https://digitalcommons.cedarville.edu/linguistics_senior_projects/25> accessed 15 May 2024.

¹¹¹ Jensen, Douglas and Gerde (n 108).

¹¹² Ibid.

First of all, as demonstrated above, AAC provides great opportunities and has many advantages for improving the communication skills of children with SLCN.¹¹³ Yet, this potential has not been fully realized and research has indicated that the use of AAC technologies is still quite limited for several reasons, namely ‘poor usability, high learning demands, a lack of professional expertise and difficulty in physical access’.¹¹⁴ Indeed, implementing AAC methods and tools effectively is not easy as these instruments might have restricted applicability or could heavily rely on the context or the knowledge of the communication partners with the child’s desires and needs.¹¹⁵ Moreover, research has shown that when AAC tools are used, they are still often employed in separate settings, outside the classrooms. For this reason, this thesis underlines that, for AAC systems and methods to be effective and efficient, it is necessary to underpin their use with a human rights-based approach, to encourage the development of communication skills of children with SLCN and ensure their right to inclusive education. Combining innovative AAC methods with this approach can encourage the development of significant changes in AAC usage, and bring about new educational and practical opportunities. Generally, a human rights-based approach can be defined as such if it is people-centered and characterized by a holistic approach and principles of participation and self-determination, equity/equality, non-discrimination, and coordinated efforts (collaboration).¹¹⁶ In the context of AAC, these principles translate into central elements that characterize the human rights-based approach to AAC. First of all, AAC is not a ‘one-size-fits-all solution’, but it necessitates a tailored approach. Symbols, techniques, and instruments must be selected to align with the individual’s needs and communication skills. This approach involves an ongoing assessment and adaptation as the individual’s communication abilities progress and it requires teachers to be flexible, consistently refining the AAC system to optimize its effectiveness.¹¹⁷ Making reasonable accommodations with regard to curriculum content, practices, and structures should be prioritized, rather than asking students to acquire specific prerequisite skills before being

¹¹³ Beukelman and Light (n 68).

¹¹⁴ Anna Waller, ‘Telling Tales: Unlocking the Potential of AAC Technologies’ (2019) 54(2) *Int J Lang Comm Disord* <10.1111/1460-6984.12449> accessed 17 May 2024.

¹¹⁵ Griffiths, Clarke and Price (n 96).

¹¹⁶ Morten Broberg and Hans-Otto Sano, ‘Strengths and Weaknesses in a Human Rights-Based Approach to International Development – An Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences’ (2018) 22(5) *The International Journal of Human Rights* <<https://doi.org/10.1080/13642987.2017.1408591>> accessed 14 May 2024.

¹¹⁷ di Paola and others (n 103).

granted access to the same learning opportunities as their classmates without disabilities.¹¹⁸ Therefore, a crucial element of the human rights-based approach to AAC is actively listening to children with SLCN, as a “dynamic process which involves children and adults discussing meanings”.¹¹⁹ Educators, parents and speech-language pathologists (SPLs) play important roles in this process.¹²⁰ In this regard, it is important to encourage children’s skills development, using a capabilities approach.¹²¹ First of all, this approach was developed by Amartya Sen, who transformed it into a bridging theory between economics and human rights.¹²² Sen’s capabilities approach focused on positive freedoms, the individuals’ ability to be or do something with the skills or capabilities that they have, and ‘practical opportunities’. Then, Sen called ‘functionings’ the actual achievement of these capabilities.¹²³ This approach was further developed by Martha Nussbaum. While Sen’s approach was more theoretical and did not define disability, Nussbaum’s capabilities approach was more practical and focused on individual cases, such as women and people with disabilities.¹²⁴ According to Nussbaum, capabilities ‘should be pursued for each and every person’, making the approach universal, and each person should be treated as an end and not as a mere tool to the ends of others, reflecting the individuality of human rights.¹²⁵ According to the capabilities approach, the role of education is to provide the opportunities for achieving these capabilities, hence the ‘functionings’, while taking into account the individuality of each student.¹²⁶ Indeed, the HRBA to AAC, by highlighting the importance of fostering the individuality and specific needs of each student, embraces the capabilities approach. Moreover, the ability to convert capabilities into functionings is for children largely dictated by adults, therefore through listening to children and understanding their values, practitioners can support children to become fulfilled in their

¹¹⁸ Iacono and others (n 93).

¹¹⁹ Aoife L. Gallagher, Haley Tancredi and Linda J. Graham, ‘Advancing the Human Rights of Children with Communication Needs in School’ (2018) 20(1) *International Journal of Speech Language Pathology* <<https://doi.org/10.1080/17549507.2018.1395478>> accessed 17 April 2024.

¹²⁰ di Paola and others (n 103).

¹²¹ Gallagher, Tancredi and Graham (n 119).

¹²² Sophie Mitra, ‘The Capability Approach and Disability’ (2006) 16(4) *Journal of Disability Policy Studies* <<https://doi.org/10.1177/10442073060160040501>> accessed 10 June 2024.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Gustavo Arosemena and Bart Kleine Deters, ‘Conflicts in Rights Based Development’ in Jan Wouters and others (eds), *Can We Still Afford Human Rights?* (Edward Elgar Publishing, 2020).

¹²⁶ Anne Kellock, ‘Children’s Well-being in the Primary School: A Capability Approach and Community Psychology Perspective’ (2020) 27(2) *Sage Journals* <<https://doi.org/10.1177/0907568220902516>> accessed 15 May 2024.

present circumstances as well as having implications for their future well-being.¹²⁷ The capacity to listen and respond to the needs of children with SLCN in schools has to rely upon a fruitful collaboration between teachers and speech-language therapists, who are often well-positioned to support school-aged children with SLCN, in order to increase their participation during their learning experience. In this context, collaboration can be defined as an “evolving process, grounded in the concepts of equality, sharing, partnership, power and interdependence”.¹²⁸ By collaborating, SPLs and teachers are more likely to be able to recognize and reduce obstacles to children with SLCN in accessing the communication or curricular content, empower them and promote their right to communication and inclusive education.¹²⁹ At the same time, there is a need to create a wide and diverse group of capable and qualified AAC stakeholders, including teachers, SPLs, and therapists, but also technology designers and developers, engineers, policymakers, and researchers who study AAC usage patterns and explore communication dynamics when AAC tools are employed.¹³⁰ Collaboration among professionals and members of the AAC community encourages sharing resources and the development of up-to-date solutions, thereby improving the accessibility and quality of AAC devices and tools.¹³¹ Another important element of the human rights-based approach to AAC is encouraging Peer-Mediated Interventions (PMIs).¹³² In this regard, classmates can play a crucial role in facilitating the use of AAC, by becoming important communication partners for children with SLCN.¹³³ Peers can help children with SLCN learn AAC methods, and therefore foster social interactions, equality, non-discrimination, and inclusivity.¹³⁴ Moreover, research indicates that when children are surrounded by their peers who utilize AAC strategies and communicate with them through these systems, they show greater language development

¹²⁷ Ibid.

¹²⁸ Gallagher, Tancredi and Graham (n 119).

¹²⁹ Ibid.

¹³⁰ Beukelman and Light (n 68).

¹³¹ di Paola and others (n 103).

¹³² Kathy S. Bourque, ‘Peer-mediated Augmentative and Alternative Communication Interventions for Young Children with Autism Spectrum Disorder and Limited to No Spoken Communication’ (2020) 5(3) Perspectives <https://doi.org/10.1044/2020_PERSP-20-10001> accessed 17 April 2024.

¹³³ Ibid.

¹³⁴ Kathy Thiemann-Bourque, ‘Peer-mediated AAC instruction for young children with autism and other developmental disabilities’ (2012) 21(4) Perspectives, <<https://doi.org/10.1044/aac21.4.159>> accessed 17 April 2024.

compared to those lacking peer support.¹³⁵ Therefore, instead of using AAC tools in segregated school settings or outside the classroom to teach them how to use these systems, their potential to promote inclusion is better realized when students and their peers collaborate within an inclusive environment. Subsequently, supports should be provided based on these observations to facilitate complete educational and social inclusion.¹³⁶ All these elements should be integrated in a manner which goes beyond the mere implementation of AAC instruments. For example, since several people who use AAC tools may encounter significant obstacles related to policy, practice, attitudes, education, and skills, dedicated advocacy efforts are necessary to break down these barriers and guarantee access to AAC and valuable communication opportunities.¹³⁷

2.6 Conclusion

In conclusion, the objective of this chapter was to give an overview of the relation between communication, human rights and disability, focusing in particular on children with speech, language and communication needs and their right to inclusive education. In doing so, this chapter has presented the increasing relevance of digitalization in this field, as shown by the COVID-19 pandemic, as well as the importance of AAC methods and tools for children with SLCN in the primary school setting. After having described these tools, its purposes, benefits, and challenges, this chapter proposed a human rights-based approach to AAC to overcome these barriers and enhance the right to inclusive education for children with SLCN, by providing a people-centered approach, characterized by participation, equality, non-discrimination, and collaboration.

In order to show the relevance of this interdisciplinary framework in the context of the CRPD, the following chapter will discuss in detail Article 24 CRPD on the right to inclusive education to analyse whether this framework is in compliance with the CRPD. Furthermore, Chapter 3 will also provide a thorough legal interpretation of CRPD obligations in relation to Article 24 for States Parties to the Convention.

¹³⁵ R. Michael Barker and others, ‘Support for AAC Use in Preschool, and Growth in Language Skills, for Young Children with Developmental Disabilities (2013) 29(4) Augmentative and Alternative Communication <<https://doi.org/10.3109/07434618.2013.848933>> accessed 17 April 2024.

¹³⁶ Iacono and others (n 93).

¹³⁷ Beukelman and Light (n 68).

Chapter 3: Unlocking Inclusive Education - An In-Depth Analysis of Article 24 CRPD

3.1 A First Look at Article 24 CRPD

Following the previous chapter on the interdisciplinary framework of the thesis, this chapter will present a thorough analysis of Article 24 CRPD on inclusive education and States Parties' obligations under this provision. In doing so, this chapter will employ the methodological treaty interpretation framework of Articles 31 and 32 VCLT, as introduced in Chapter 1. The aim of Chapter 3 is, in fact, to answer the second sub-question: "what are the legal obligations under Article 24 CRPD, concerning the right to inclusive education?". In order to answer this question, this chapter will be structured as follows: first, in sub-section 3.1, the background of the CRPD will be discussed to give an overview of the main concepts inherent to Article 24 CRPD. Then, in sub-section 3.2, the analysis of Article 24 will firstly focus on paragraph 1 as an introduction to the right of persons with disabilities to education, and sub-section 3.3 will then focus on Article 24(2) on States Parties' obligations. This sub-section will specifically focus on the obligation to ensure that "persons with disabilities can access an inclusive, quality and free primary education", as expressed in subparagraph 2(b).¹³⁸ After that, in sub-section 3.4 the analysis will continue with the discussion on Article 24(3) on appropriate measures. It will deal especially with the obligation to enable persons with disabilities to "learn life and social development skills to facilitate their full and equal participation in education, by facilitating the learning of augmentative and alternative methods, means and formats of communication", as underlined in subparagraph 3(a).¹³⁹ Next, after the analysis, in sub-section 3.5 some criticisms and ambiguities of Article 24 and the CRPD will be explored. Finally, sub-section 3.6 will discuss how the HRBA to AAC fits within the CRPD and Article 24, and investigate whether this approach can offer new perspectives on inclusive education.

This analysis will be relevant for the next chapter, which will look at the evolution of the right to inclusive education in Italy, investigate whether Italian laws and policies are in line with the CRPD, and how the HRBA to AAC can help foster inclusive education overcoming possible gaps in the Italian school system.

¹³⁸ CRPD (2006), Article 24(2)(b).

¹³⁹ CRPD (2006), Article 24(3)(a).

The right to education has been referred to as “a pre-requisite to the exercise of many other rights”.¹⁴⁰ This is especially relevant to the educational rights of people with disabilities, since these rights are fundamentally connected to empowerment and inclusion.¹⁴¹ Article 24 CRPD acknowledges the right of people with disabilities to access education and therefore embodies the fundamental principle of inclusive education.¹⁴² The concept of inclusive education has been defined as “an ongoing process aimed at offering quality education for all, while respecting diversity and the different needs and abilities, characteristics and learning expectations of the students and communities, eliminating all forms of discrimination”.¹⁴³ Inclusive education aims at eliminating exclusion within and from education and therefore requires “transforming education systems in all their elements and processes across formal and non-formal education, including their organization and structure, legal, financing and administration frameworks, teachers and textbooks, curriculum and assessment, teaching and learning processes, and infrastructure”.¹⁴⁴

Moreover, Article 24 outlines the responsibilities of States Parties to the CRPD to ensure that this right is realized. In this regard, it has been suggested that “Article 24 arguably provides [a stronger] mandate for States Parties to provide inclusive education than any previous human rights document”.¹⁴⁵ Aligned with the entire Convention and other human rights instruments, the purpose of Article 24 is to end discrimination and promote equal educational opportunities for individuals with disabilities.¹⁴⁶ Although several human rights treaties, such as the Universal Declaration of Human Rights (UDHR),¹⁴⁷ the International Covenant on Economic, Social and

¹⁴⁰ Conor O’Mahony, *Education Rights in Irish Law* (Thomson Roundhall Dublin 2006).

¹⁴¹ Andrea Broderick and Shivaun Quinlivan, ‘The Right to Education: Article 24 of the CRPD’, in Charles O’Mahony & Gerard Quinn (eds.), *Disability Law and Policy: An Analysis of the UN Convention* (Clarus Press 2017).

¹⁴² Dimitris Anastasiou, Michael Gregory and James M. Kauffman, ‘Article 24: Education’, in Ilias Bantekas, Michael Ashley Stein, Dimitris Anastasiou (eds.) *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP 2018).

¹⁴³ UNESCO-IBE, ‘Inclusive Education: the Way of the Future, Conclusions and Recommendations of the 48th Session of the International Conference on Education (ICE)’ (International Conference on Education, 48th, Geneva, November 2008)

¹⁴⁴ UNESCO, ‘Inclusive Education’ (2013) 28 Education Sector Technical Notes <<https://unesdoc.unesco.org/ark:/48223/pf0000222124>> accessed 17 June 2024.

¹⁴⁵ Fatima Ahmad, Suraj Girijashanker and Mariam Kemple, ‘The Convention on the Rights of Persons with Disabilities: The Right to Education and the Obligations of States’ (2011) SOAS School of Law Research Paper No. 06/2011 <<https://ssrn.com/abstract=1895726>> accessed 23 May 2024.

¹⁴⁶ Anastasiou, Gregory and Kauffman (n 134); UNESCO Constitution (1945).

¹⁴⁷ UDHR (n 56).

Cultural Rights (ICESCR),¹⁴⁸ and the UN Convention on the Rights of the Child (CRC),¹⁴⁹ had already incorporated the right to education for all children, it was still evident that the number of students with disabilities who were enrolled and completed both compulsory primary and secondary education was significantly lower than people without disabilities worldwide.¹⁵⁰ For this reason, the inclusion of Article 24 in the CRPD was important to try and fill this gap, by highlighting that the general right to education and lifelong learning also refers specifically to individuals with disabilities. Therefore, Article 24 constitutes an invaluable and crucial requirement for enabling people with disabilities to actually access education, and actively engage in society with a view to achieving their full potential.¹⁵¹

The right to education falls within the category of economic, social and cultural rights, as delineated in Article 4(2) CRPD. These rights require that “... each State Party undertakes to take measures to the maximum of its available resources ... within the framework of international cooperation, with a view to achieving progressively the full realization of these rights ...”.¹⁵² The notion of ‘progressive realization’ acknowledges that the full realization of these rights can only be achieved in the long term, while also requiring States Parties to continuously work towards its achievement as swiftly and efficiently as possible.¹⁵³ Indeed, as highlighted by the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child, and the CRPD Committee, although the complete realization of rights may be attained gradually, actions toward that goal must be initiated within a reasonably short period after the Convention becomes effective for the respective Member State.¹⁵⁴ States Parties have certain obligations that must be implemented immediately, regardless of the resources available. An example of these immediate obligations is ensuring non-discrimination in the exercise of rights. In fact, Article 4(2) CRPD clearly states that the progressive realization of economic, social, and cultural rights does not affect those obligations in the Convention that are immediately applicable under international law.¹⁵⁵ Moreover, in its

¹⁴⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR), Article 23.

¹⁴⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) (CRC).

¹⁵⁰ Anastasiou, Gregory and Kauffman (n 142).

¹⁵¹ Ibid.

¹⁵² CRPD (2006), Article 4(2).

¹⁵³ Anastasiou, Gregory and Kauffman (n 142).

¹⁵⁴ Broderick and Quinlivan (n 141).

¹⁵⁵ CRPD (2006), Article 4(2).

GC4 on the right to inclusive education, the CRPD Committee explicitly urged States Parties to dedicate “sufficient financial and human resources ...” and to “allocate budgets using mechanisms available under public procurement processes and partnerships with the private sector ...”.¹⁵⁶ Ensuring the realization of the right to education for persons with disabilities involves more than mere formal equality, but it also requires inclusive equality, through the development of innovative, quality and substantial educational opportunities.¹⁵⁷ Consequently, States Parties are required to undertake positive actions to enhance the implementation of this right, such as “providing interpreters and other appropriate support services, ensuring adequate accessibility and tailored support services for various disabilities, offering flexible and adaptive curricula, and supplying quality materials, continuous teacher training, and support teachers”.¹⁵⁸

3.2 Understanding the Right to Inclusive Education through the *Travaux Préparatoires* and Article 24(1) CRPD

Having discussed the background of Article 24 CRPD, the analysis of this article will now be the focus of this sub-section and the following sub-sections. In particular, this sub-section will focus on paragraph 1. In doing so, this sub-section will employ the textual, contextual, historical, and teleological interpretations as prescribed in Articles 31 and 32 VCLT, by presenting a literal analysis of the text of Article 24, a contextual interpretation, especially commenting on GC4, an analysis of the drafting history of Article 24, and exploring the aims of inclusive education.¹⁵⁹

In paragraph (1), Article 24 outlines both the recommended methods and intended goals of education for people with disabilities.¹⁶⁰ Article 24(1) reads as follows:

¹⁵⁶ CRPD GC4 (n 36).

¹⁵⁷ Anastasiou, Gregory and Kauffman (n 142); Committee on the Rights of Persons with Disabilities ‘General Comment No 5’ (2017), para 88.

¹⁵⁸ The Standard Rules, UNGA A/RES/48/96 (20 December 1993) Rule 6 paras 2, 6(b), 6(c), and 8.

¹⁵⁹ VCLT, Article 31.

¹⁶⁰ Gauthier de Beco, ‘The Right to Inclusive Education according to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’ (2014) 32(3) *Netherlands Quarterly of Human Rights* <<https://doi.org/10.1177/016934411403200304>> accessed 11 June 2024.

States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

First of all, this paragraph provides that “States Parties shall ensure an inclusive education system at all levels and lifelong learning”, introducing from the beginning the key concept of Article 24, namely ‘inclusive education’. Since from a legal perspective, there is no clear definition of inclusive education,¹⁶¹ in order to present a comprehensive analysis of this concept, as well as other States Parties’ obligations, it is interesting to outline the drafting history and the relevant debates that took place during the *travaux préparatoires* of Article 24. In fact, as previously mentioned in sub-chapter 1.3.1, under Article 32 VCLT, conducting a historical analysis allows recourse to the *travaux préparatoires*, to offer a more complete interpretation of the Convention.¹⁶² Therefore, providing the drafting history of Article 24 allows to better explain some important concepts included in this Article, namely those of ‘inclusive education system’, ‘free primary education and secondary education’, ‘reasonable accommodation’, ‘individualized support measures’, ‘in environments that maximize academic and social development’, and ‘the goal of full inclusion’. In particular, during the drafting of the CRPD, there was much debate about the notions of inclusive education and special education. In the beginning, the Ad Hoc Committee allowed persons with disabilities the right

¹⁶¹ de Beco (n 160).

¹⁶² VCLT, Article 32.

to choose the terminology they preferred.¹⁶³ The initial draft of what would later become Article 24 was presented by the Chair of the Ad Hoc Committee in December 2003. This document, which was clearly influenced by earlier UN conventions, particularly the CRC and ICESCR, as well as the non-binding Standard Rules on the Equalization of Opportunities for Persons with Disabilities¹⁶⁴, included both ‘the right of all children with disabilities to inclusive education’ but also the need for ‘special and alternative forms of learning under specific circumstances’.¹⁶⁵ In January 2004, the final draft of the Working Group Report included the right to education under Article 17.¹⁶⁶ In particular, in its subparagraph (3), Draft Article 17 CRPD underlined that ‘where the general education system does not adequately meet the needs of persons with disabilities, special and alternative forms of learning should be made available’.¹⁶⁷ This draft differed from the final Article 24 CRPD as it specifically mentioned ‘special and alternative learning methods’, included a reference to the free and informed choice between mainstream and special education systems, and explicitly cited ‘Individualized Education Programs’ (IEPs) connected to the child's best interests.¹⁶⁸ Draft Article 17(3) is a clear expression of the different views of the drafters and Member States concerning the right to inclusive education.¹⁶⁹ In fact, some members considered that students with disabilities should always be included in the mainstream education systems, except for cases in which this system was considered inadequate and therefore required specialist education services.¹⁷⁰ However, others believed that 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”.¹⁷¹ These debates were mitigated by the proposals by Australia, after which the draft article more closely resembled the final version of Article 24, in which the mention of ‘special education’ was less emphasized.¹⁷² This text underlined that students with disabilities should be provided with the necessary support in the mainstream

¹⁶³ de Beco (n 160).

¹⁶⁴ The Standard Rules (n 158), Rule 6.

¹⁶⁵ Anastasiou, Gregory and Kauffman (n 142).

¹⁶⁶ Ibid.

¹⁶⁷ Report of the Working Group to the Ad Hoc Committee (2004) UN Doc A/AC.265/2004/WG/1, Annex 1 <<https://www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm>> accessed 21 May 2024.

¹⁶⁸ Anastasiou, Gregory and Kauffman (n 142).

¹⁶⁹ de Beco (n 160).

¹⁷⁰ Anastasiou, Gregory and Kauffman (n 142).

¹⁷¹ Ibid.

¹⁷² de Beco (n 160).

education system to ensure adequate education and that only in particular cases where this system cannot adequately meet their needs, States Parties must provide effective alternative support measures, enhancing their full inclusion.¹⁷³ The ambiguity was further reduced after the proposals by Australia and the European Union of the new draft Article 17(1), which clearly required States Parties to commit to ‘the goal of inclusiveness of their general education systems’.¹⁷⁴ Finally, following Panama’s proposal, what became final Article 24(1) underlined that inclusive education had to be ensured for all students with disabilities.¹⁷⁵ Therefore the concept of inclusiveness stands out as one of the main themes of this Article and permeates the CRPD as a whole.¹⁷⁶

Hence, although from a legal perspective, there is no clear definition of inclusive education, drawing from the historical analysis, it is clear what this concept does not entail under Article 24.¹⁷⁷ Inclusive education clearly differs from special education, which could lead to the creation of a segregated system. However, it is also different from integration, which would merely give students with disabilities access to regular schools without ensuring that their educational needs are properly addressed.¹⁷⁸ In this regard, in GC4, the CRPD Committee clearly distinguishes the concept of integration from that of inclusive education.¹⁷⁹ While the former denotes simply the placement of students with disabilities in a mainstream setting, without implying the provision of further specialized supports or services, the latter indicates the personalized supports and services required to enable these students to achieve relevant educational progress within a mainstream setting.¹⁸⁰ In other words, inclusive education constitutes a process that requires a structural and holistic reform, involving changes and adjustments in school curriculum, teaching methods, and strategies to eliminate barriers, and offers all students an equitable and engaging educational experience in an environment that best meets their needs.¹⁸¹ Therefore, simply placing pupils with disabilities in mainstream systems

¹⁷³ Sixth Session, Consolidation of Proposals Submitted by the Facilitator <<https://www.un.org/esa/socdev/enable/rights/ahcstata24ssf facilitator.htm>> accessed 23 May 2024.

¹⁷⁴ Australia, ‘Draft Article 17 EDUCATION’, accessed 16 June 2014; EU, ‘European Union Proposal for Article 17’ accessed 16 June 2024.

¹⁷⁵ Panama, ‘Suggested Modifications to Art. 24’, accessed 16 June 2024.

¹⁷⁶ Anastasiou, Gregory and Kauffman (n 142).

¹⁷⁷ de Beco (n 160).

¹⁷⁸ Ibid.

¹⁷⁹ CRPD GC4 (n 36), para 11.

¹⁸⁰ Anastasiou, Gregory and Kauffman (n 142).

¹⁸¹ CRPD GC4 (n 36), para 11.

without making such necessary changes, does not constitute inclusion. Additionally, integration alone does not automatically ensure a shift from segregation to inclusion.¹⁸²

Moreover, Article 24(1) presents the goals that inclusive education aspires to. As clearly expressed in its text, it aims for nothing less than ‘the full development of human potential’, encompassing the growth of an individual's ‘sense of dignity and self-worth’, ‘personality, talents, and creativity’, as well as ‘mental and physical abilities’, all ‘to their fullest potential’ with the goal of allowing people with disabilities ‘to participate effectively in a free society’.¹⁸³

Having clarified the concept of inclusion, as opposed to that of integration, and looked at the goals of inclusive education, the next sub-section will focus on States Parties’ obligations under Article 24(2).

3.3 Shedding some Light on States Parties’ Obligations under Article 24(2)

After introducing the right to inclusive education in Article 24(1), the main objective of Article 24(2)¹⁸⁴ is to put into action the core idea of an inclusive education system. In order to do so, this sub-section will also rely on the VCLT, using the tools of interpretation previously mentioned in Chapter 1.3.1, particularly the literal, systematic, and teleological interpretations.¹⁸⁵

To give an overview of Article 24(2), the first two sub-paragraphs focus on two key features of the inclusive education system, namely non-exclusion and accessibility. In particular, sub-paragraph 2(a) prohibits States Parties from excluding individuals with disabilities from the mainstream education system, which include both primary and secondary education, based on their disabilities.¹⁸⁶ Sub-paragraph 2(b), instead, prescribes that States Parties shall ensure that people with disabilities have access to ‘inclusive, quality, and free primary and secondary education on an equal footing with others in their communities’.¹⁸⁷ In addition, sub-paragraph 2(c) presents the importance of ‘reasonable accommodation’,¹⁸⁸ while sub-paragraph 2(d) hints at the need for students with disabilities to receive support within the

¹⁸² Ibid.

¹⁸³ CRPD (2006), Article 24(1).

¹⁸⁴ CRPD (2006), Article 24(2).

¹⁸⁵ VCLT, Articles 31-32.

¹⁸⁶ CRPD (2006), Article 24(2)(a).

¹⁸⁷ CRPD (2006), Article 24(2)(b).

¹⁸⁸ CRPD (2006), Article 24(2)(c).

mainstream school system.¹⁸⁹ Finally, sub-paragraph 2(e) mentions the relevance of providing ‘effective individualized support measures’ to achieve the goal of ‘full inclusion’.¹⁹⁰

The following sub-section will now discuss States Parties’ obligations and specifically analyze Article 24(2)(b) on the accessibility to ‘inclusive, quality and free primary education’. After discussing the drafting history of Article 24 and analyzing its paragraph (1), this sub-section will look at States Parties’ obligations under Article 24(2)(b). Article 24(2)(b) reads as follows:

In realizing this right, States Parties shall ensure that:

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

Using a textual interpretation, it can be underlined that this sub-paragraph states that all individuals with disabilities have the right to inclusive, quality and free primary education, as well as secondary education on an equal footing with others in their local communities. In order to better explain the concept of accessibility to inclusive, quality and free primary education, the interpretation of Article 24(2)(b) also demands a contextual analysis.¹⁹¹ In this regard, in GC4, the CRPD Committee, drawing on the CESCR recommendation,¹⁹² underlines that in order to fulfill their obligations, States Parties must ensure that the education system is characterized by four interrelated elements: availability, accessibility, acceptability and adaptability.¹⁹³ Since these elements are connected and reinforce each other,¹⁹⁴ it is important to discuss them.

First of all, States Parties must ensure that education is available.¹⁹⁵ In GC4, the CRPD Committee clarifies this concept stating that schools, both public and private, and all

¹⁸⁹ CRPD (2006), Article 24(2)(d).

¹⁹⁰ CRPD (2006), Article 24(2)(e).

¹⁹¹ VCLT, Article 31(3)(b).

¹⁹² Committee on Economic, Social and Cultural Rights, ‘General Comment No. 13’ (1999).

¹⁹³ CRPD GC4 (n 36) para 20.

¹⁹⁴ Ibid.

¹⁹⁵ Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to education primers no. 3 2001).

educational plans must be provided in adequate quantity and quality. Moreover, States Parties must ensure a wide availability of “educational places for learners with disabilities at all levels throughout the community”.¹⁹⁶

The concept of ‘accessibility’ is characterized by different dimensions: social or attitudinal accessibility, economic accessibility or affordability, physical accessibility, information accessibility and communication accessibility.¹⁹⁷ The social dimension of accessibility involves eliminating stigma and other negative social attitudes that individuals with disabilities, their families and caregivers might encounter throughout their lives. The economic dimension, instead, refers to the idea that “facilities, goods and services must be affordable to people with disabilities”.¹⁹⁸ Then, physical accessibility means that all physical spaces must be adapted to be accessible and meet the needs of individuals with disabilities. Moreover, accessibility has also an information dimension, which provides that people with disabilities have the same rights as people without disabilities to obtain and share information and opinions. Finally, communication accessibility refers to the provision of information in alternative modes and means of communication and for all types of persons with disabilities.¹⁹⁹ In the context of education, to give a few examples and better grasp the meaning of ‘accessibility’, it is useful to look at Article 9 CRPD and the Committee’s General Comment No. 2 (GC2),²⁰⁰ which highlight that educational institutions and programmes must be made accessible to everyone, without discrimination. In addition, the CRPD Committee explains that the whole school system must be accessible, including “buildings, information and communications tools (comprising ambient or frequency modulation assistive systems), the curriculum, educational materials, teaching methods, assessments and language and support services”.²⁰¹ The school environment must be structured to promote inclusion and ensure the equality of students with disabilities throughout their learning experience.²⁰² Furthermore, in GC4, the CRPD Committee underlines that ‘accessibility’ is a dynamic concept, which comprises various obligations and requires continuous regulatory and technical changes and

¹⁹⁶ CRPD GC4, (n 36) para 21.

¹⁹⁷ Stelios Charitakis, *Access denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities* (Maastricht University 2018).

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Committee on the Rights of Persons with Disabilities, ‘General Comment No 2’ (2014).

²⁰¹ *Ibid.*, para 39.

²⁰² *Ibid.*, para 39.

adjustments.²⁰³ In the first place, accessibility requires the educational setting to be physically accessible and safe for individuals with disabilities, and ensuring reliable and secure transportation options.²⁰⁴ Additionally, States Parties must make sure that the swift advancement of innovations and new technologies aimed at improving learning is accessible to all students, including pupils with disabilities.²⁰⁵ In this regard, the CRPD Committee underlined the widespread lack of textbooks and learning materials in formats and languages that are accessible, including sign language.²⁰⁶ Therefore, governments have been called on to invest in the creation of resources in multiple formats, such as in Braille and digital formats, and enhanced by the development of new technologies.²⁰⁷ On the other hand, accessibility, in its economic dimension, also means that all levels of education must be affordable for all students, including those with disabilities and that reasonable accommodation should not incur further costs.²⁰⁸ In this respect, it is important to underline that, although the right to education entails the concept of progressive realization, providing “compulsory, quality, free, and accessible primary education” constitutes an immediate obligation.²⁰⁹ Therefore, States Parties must guarantee that individuals with disabilities have equal access to education in both public and private academic settings.²¹⁰

In addition to being available and accessible, the education system must be acceptable. Acceptability entails the responsibility to develop and employ learning materials, teaching methods and other education-related services that are pertinent, culturally suitable, inclusive and of good quality.²¹¹ Inclusion and quality are complementary as an inclusive environment and approach can greatly enhance the quality of education.²¹²

Finally, the last crucial element that characterizes education is adaptability. Adaptability requires education to be flexible in order to meet the needs and capabilities of every student, the best interests of the child and adapt to different contexts and evolving societies.²¹³ In other

²⁰³ CRPD GC4, (n 36) para 22.

²⁰⁴ CRPD GC4, (n 36) para 27.

²⁰⁵ CRPD GC4, (n 36) para 22.

²⁰⁶ CRPD GC4, (n 36) para 23.

²⁰⁷ Ibid.

²⁰⁸ CRPD GC4, (n 36) para 24.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Tomaševski (n 195).

²¹² CRPD GC4, (n 36) para 25.

²¹³ Tomaševski (n 195).

words, education should take into account that every student learns in a distinctive way and should entail: establishing flexible learning paths, fostering participation in the classroom; setting ambitious standards for all students while accommodating various methods of meeting these standards; encouraging educators to try different and new teaching methods; and supporting students in achieving good educational outcomes. Therefore, curricula should be developed, structured, and delivered to respond to the needs of each student and offer suitable educational solutions. Traditional assessments should be substituted with versatile and diverse assessment methods, acknowledging individual advancement towards overarching objectives that offer alternative pathways for learning.²¹⁴

Having looked at States Parties' obligations delineated in Article 24(2) and specifically focused on the concept of accessibility, the next sub-section will deal with Article 24(3) on the 'appropriate measures' that States Parties are required to take to enhance inclusive education.

3.4 Explaining 'Appropriate Measures' under Article 24(3)

This sub-section will analyze the 'appropriate measures' under Article 24(3), employing again the tools of interpretation described in the VCLT.²¹⁵ Like in paragraph (2), the theme of 'accessibility' is also implied in Article 24(3) CRPD. In GC2, the CRPD Committee made it clear that education must be fully accessible, encompassing not only buildings but also information and communication systems, including assistive technologies, support services, and reasonable accommodations in schools.²¹⁶ Therefore, to promote accessibility and improve school curricula, instruction and assessments should be provided in sign language, Braille, alternative scripts, and various modes, means, and formats of communication and orientation, as outlined in Article 24, paragraphs 3(a) and 3(b).²¹⁷ Moreover, from a teleological interpretation, paragraph (3), together with paragraph (4), specifically underlines the aim of implementing 'appropriate measures', which is to facilitate the 'full and equal participation' of individuals with disabilities in education. In addition, such measures aim to create changes that permeate the whole system and that provide a foundation for effectively delivering individualized support. Therefore, they should be integrated into and become inherent aspects

²¹⁴ CRPD GC4, (n 36) paras 26-27.

²¹⁵ VCLT, Articles 31-32.

²¹⁶ CRPD GC2 (n 200), para 39.

²¹⁷ Anastasiou, Gregory, and Kauffman (n 142).

of the entire education system.²¹⁸ Among these ‘appropriate measures’, are augmentative and alternative methods, means and forms of communication, educational techniques and learning materials to support students with disabilities.²¹⁹ They will now be analyzed in further detail.

Article 24(3)(a) reads as follows:

States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring

A textual reading of paragraph 3(a) reveals examples of ‘appropriate measures’ that States Parties are required to take to enable a complete and equal engagement in education and community life. ‘Facilitating the learning of Braille’ and ‘alternative script’ ensures that individuals with visual impairments have access to written communication through specialized scripts; ‘augmentative and alternative modes, means and formats of communication’ refers to providing various communication methods that cater to those speech, language and communication needs; ‘orientation and mobility skills’ indicates the need for training to be able to get around in physical environments independently and safely; finally ‘facilitating peer support and mentoring’ emphasizes the importance of social support systems and most probably indicates peer-mediated interventions or peer tutoring, which is a research-based educational method to promote inclusion.²²⁰

In order to better understand the meaning of paragraph 3(a), it is also important to clarify what the concept of ‘reasonable accommodation’²²¹ entails as opposed to that of ‘access’ to the ‘appropriate measures’, mentioned in Article 24(3). In GC4, the CRPD Committee underlines that the main difference between the general accessibility obligation and the duty to provide

²¹⁸ Ibid.

²¹⁹ CRPD (2006), Article 24(3)(a).

²²⁰ Anastasiou, Gregory and Kauffman (n 142).

²²¹ CRPD (2006), Article 24(2)(c).

reasonable accommodation is that, while the former can be interpreted as being ‘group-focused’ and characterized by progressive realization, the latter can be defined as ‘individually-focused’ and is complementary to the accessibility obligation.²²² A person can rightfully request reasonable accommodation supports and services, even if the State has already met its accessibility responsibilities.²²³ Focusing specifically on the accessibility to augmentative and alternative modes, means and formats of communication, the CRPD Committee highlights that students with SLCN should have the freedom to express themselves and the opportunity to employ AAC methods and other formats of communication to support their learning journey.²²⁴ Providing such formats and methods of communication involves, for instance, offering sign language, as well as low- or high-tech communication tools like speech-output tablets, voice-output communication devices, or communication books. Therefore, governments should allocate resources to develop the necessary knowledge and expertise, technology, and services to enhance access to suitable technology and alternative communication systems that support education.²²⁵ Moreover, students experiencing social communication challenges should receive aid and assistance through adjustments to classroom organization. These adaptations can include working in pairs, ‘peer support and mentoring’, and establishing a structured, comfortable and stable environment.²²⁶ Regarding reasonable accommodation, this concept has been defined in Article 2 CRPD as the “means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.²²⁷ Therefore, in regards to education, such measures aim to address the unique needs of an individual with a disability in a specific situation and focus on eliminating the particular disadvantage that a student with disabilities would otherwise have to face due to standard educational practices.²²⁸ Moreover, the CRPD Committee underlined that reasonable accommodations can involve various adjustments, such as offering different types of in-class communication, providing materials and subjects in sign

²²² CRPD GC4, (n 36) para 29.

²²³ Ibid.

²²⁴ CRPD GC4, (n 36) para 35.

²²⁵ CRPD GC4, (n 36) para 35.

²²⁶ Ibid.

²²⁷ CRPD (2006), Article 2.

²²⁸ Delia Ferri, ‘Unveiling the Challenges in the Implementation of Article 24 CRPD on the Right to Inclusive Education. A Case-Study from Italy’ (2017) 7(1) *Laws* < <https://doi.org/10.3390/laws7010001> > accessed 6 June 2024.

language, supporting students with a note-taker or language interpreter, or permitting the use of assistive technology in learning and assessment contexts.²²⁹ In addition, the Committee highlighted the importance of providing an adequate number of trained teachers and educators, psychologists and counselors, as well as access to financial resources.²³⁰ These support measures seem to be means that add a human rights aspect to the right to education of students with disabilities.²³¹

Furthermore, another important clarification that needs to be made is about the concept of ‘individualized support measures’.²³² In GC4, the CRPD Committee underlines that in order to realize Article 24(2)(e), consistent and effective personalized support needs to be offered to students with disabilities.²³³ Individualized education plans are crucial in identifying reasonable accommodations and specific support needed by each student. In particular, these plans should include the provision of assistive compensatory aids, learning materials in accessible formats, various modes of communication, communication aids, and assistive technology, as well as support by ‘qualified learning support assistants’.²³⁴ Such plans should also deal with transitions from segregated to mainstream school settings and across different educational levels. The plans' effectiveness should be regularly monitored and evaluated with the active involvement of the students. Finally, the nature of the support must be determined collaboratively with the student and, when appropriate, with parents, or caregivers.²³⁵

This analysis has touched upon various relevant concepts contained in Article 24 and the CRPD as a whole. Therefore, it is now interesting to note a few ambiguities that some scholars have highlighted in order to better clarify some aspects concerning the right to inclusive education.

3.5 Critical Analysis of the CRPD and Article 24 CRPD

From the analysis of Article 24 CRPD and the approach employed by the CRPD in dealing with the right to education, some criticisms have been underlined. This sub-section will,

²²⁹ CRPD GC4, (n 36) para 30.

²³⁰ CRPD GC4, (n 36) para 32.

²³¹ de Beco (n 160).

²³² CRPD (2006), Article 24(2)(e).

²³³ CRPD GC4, (n 36) para 33.

²³⁴ Ibid.

²³⁵ Ibid.

therefore, address such concerns expressed by some scholars. Discussing these elements is important to further clarify the concept of inclusive education under the CRPD and the legal obligations under Article 24, as well as investigate the extent to which the HRBA to AAC, rooted in the CRPD, may provide solutions to these issues.

First, some authors claim that, in contrast to earlier international instruments and declarations, which adopt a needs-based approach, Article 24 CRPD employs an anti-discrimination approach, which emphasizes ‘equal access and sameness of educational treatment’ for persons with disabilities.²³⁶ Although this anti-discrimination approach may seem quite straightforward, these scholars state that it might still present some risks for people with disabilities. For instance, it may favour the homogenization of individuals with disabilities and may emphasize the sameness of treatment.²³⁷ In this way, focusing on this kind of paradigm can lead to the risk that, despite the requirement to provide accommodations in a mainstream school setting, some students may not receive adequate support and might have to settle for solutions that do not align with their individual learning needs.²³⁸ Therefore, this type of approach, may tend to neglect a more exhaustive understanding and examination of students’ specific educational needs, especially when these needs are too complex to be met solely through accommodations. As a result, this approach may also shift attention away from important questions about the quality and suitability of education, which include considerations about classroom placements and specialized teaching methods, crucial for making sure that learning opportunities genuinely support people with disabilities to fully develop their unique and individual potentials.²³⁹ Therefore, in the context of this anti-discrimination paradigm, which prioritizes the inclusion of persons with disabilities in mainstream educational settings, the nature of the ‘appropriate measures’²⁴⁰ that States Parties need to take to encourage the full and equal engagement of students with disabilities in education, is considered to be general and ‘system-wide’, and may end up being too vague.²⁴¹

²³⁶ Anastasiou, Gregory and Kauffman (n 142).

²³⁷ Ibid.

²³⁸ Dimitris Anastasiou and James M Kauffman, ‘Disability as Cultural Difference’ (2012) 33 Remedial and Special Education <10.1177/0741932510383163> accessed 6 June 2024.

²³⁹ Anastasiou, Gregory and Kauffman (n 142).

²⁴⁰ CRPD (2006), Article 24(3).

²⁴¹ Anastasiou, Gregory and Kauffman (n 142).

In addition, according to other scholars, the phrase ‘appropriate measures’ in Article 24(3)’s appears to focus only on a handful of teaching methods and techniques. They underline that Article 24(3) does not discuss the essence and process of more comprehensive school-wide and system-wide changes, which are essential for transforming the mainstream education system into a fully accommodating environment for students with disabilities, thus increasing the potential for a significant number of individuals with disabilities to benefit from inclusive education.²⁴²

Similarly, another concern that a few authors have highlighted about Article 24 is that it does not explicitly acknowledge the complete range of educational requirements linked to different types of impairments. Therefore, they believe that the CRPD’s definition of ‘persons with disabilities’ is very general and encompasses only individuals with ‘long-term physical, mental, intellectual, or sensory impairments’.²⁴³ By not elaborating on the broad definition of people with disabilities, these scholars claim that Article 24 missed an important chance to enhance educational outcomes for all students with disabilities. In conclusion, these authors highlight that Article 24’s limited presentation of disability-related educational needs, as well as an unclear differentiation between physical and intellectual disabilities, risks creating unequal educational opportunities and socio-economic justice for students with disabilities.²⁴⁴

Highlighting these elements was important for this thesis to see how the HRBA to AAC fits within the CRPD, and specifically Article 24, and how it can offer solutions to some of these critical elements. The next section will further discuss these matters.

3.6 Beyond the Criticisms: the HRBA to AAC and the CRPD

Building upon the analysis of Article 24 CRPD, and the concerns pointed out by some authors in that regard, this thesis will now investigate the extent to which the HRBA to AAC, underpinned by the CRPD, and argue that this approach can help shed some light on these issues. Therefore, this thesis presents counter-arguments to the points of view presented in the previous sub-section.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

As was mentioned above, some scholars have argued that the CRPD follows a paradigm focused on anti-discrimination, as opposed to the needs-based approach.²⁴⁵ However, although the CRPD partly follows an anti-discrimination approach, it also underlines the importance of employing an approach based on inclusive equality.²⁴⁶ In particular, in GC5, the CRPD Committee highlights that the inclusion of students with disabilities in the mainstream school system leads to further inclusion of people with disabilities in the community, and therefore encourages States Parties to consider the importance of the right to inclusive education in “building the strengths, skills and competencies necessary for all persons with disabilities to enjoy, benefit from and contribute to their communities”.²⁴⁷ In this context, the HRBA to AAC, in line with the CRPD, encourages the creation of a balanced approach that maximizes inclusion, equality and full participation and aims at improving mainstream settings and social attitudes towards students with disabilities. At the same time, it also ensures the provision of appropriate support and a range of services and placements to avoid the uniform treatment of people with disabilities and maximise educational achievements for each individual person, based on their specific learning needs.²⁴⁸ Indeed, through encouraging peer-mediated interventions in the classroom, this approach fosters complete educational and social inclusion. In addition, by recognizing that education cannot be based on ‘one-size-fits-all’ strategies, it enhances a tailored approach, characterized by ongoing assessment and adaptation according to the students’ communication skills and progress. Furthermore, another aspect in which the HRBA to AAC can provide some more clarity with regard to the ambiguities highlighted in the previous sub-section, concerns the issue of the limited range of teaching methods and techniques discussed in the Convention. Some scholars have highlighted that in Article 24, paragraph (3)’s idea of ‘appropriate measures’ appears to be restricted only to a few specific teaching strategies, without addressing the comprehensive changes needed for a complete transformation of the entire school and education system.²⁴⁹ In this regard, the HRBA to AAC, by prescribing a close collaboration between educators, teachers, speech-language therapists as well as the students themselves, favours in fact the creation of a strong AAC community that has the potential to continuously offer new ideas, solutions and practices to make schools more

²⁴⁵ Ibid.

²⁴⁶ CRPD GC5 (n 157).

²⁴⁷ CRPD GC5, (n 157) para 88.

²⁴⁸ Anastasiou, Gregory and Kauffman (n 142).

²⁴⁹ Ibid.

and more inclusive. Thirdly, the HRBA to AAC also shows that the CRPD does include a range of disability-related educational needs and clarifies the differences of educational paths linked to various types of disabilities, as it employs a capabilities approach, which takes into account the capabilities of each student and reflects both the individuality and universality of human rights.²⁵⁰ Indeed, the CRPD endorses not only reasonable accommodations but also individualized supports to tailor general accessibility measures to the individual needs of learners with disabilities. Moreover, the HRBA to AAC highlights the importance of dealing with these issues in policy, practice, education and through advocacy efforts. Finally, acknowledging the importance of inclusion in mainstream settings as well as the provision of other appropriate measures, such as AAC methods and strategies, is crucial for a continuous development of a substantial and effective inclusive education system.²⁵¹ And the implementation of a HRBA to AAC in educational settings is consistent with this idea.

In conclusion, looking at the HRBA to AAC, which is embraced by the CRPD, has been useful to conclude the analysis of the concept of ‘inclusive education’ and the States Parties’ obligations under Article 24 CRPD.

3.7 Conclusion

This chapter analyzed Article 24 CRPD on the right to education, focusing on the key elements of inclusive education and States Parties’ obligations under this provision. Then, it presented some criticisms that have emerged in relation to the CRPD and Article 24. Finally, this chapter looked at how the HRBA to AAC is rooted in the CRPD and helps further clarify inclusive education.

Drawing on this analysis, the following chapter will focus on the case study of Italy, a State Party to the CRPD, which is bound by the legal obligations in the Convention. It will specifically look at the development of the right to inclusive education in the Italian legal framework and policies and examine whether they are in compliance with the CRPD obligations under Article 24.

²⁵⁰ Arosemena and Deters (n 125).

²⁵¹ Anastasiou, Gregory and Kauffman (n 142).

Chapter 4: The Evolution of the Right to Inclusive Education in Italian Laws and Policies

4.1 Overview of the Right to Inclusive Education in Italy: An Introduction

As briefly discussed in section 1.1 of Chapter 1, overall the Italian approach to primary school is inclusive due to its foundation in clear anti-discriminatory and de-segregating legislation, which prioritizes fairness, accessibility, equal opportunities, and rights.²⁵² This approach formally aligns with the ‘social-contextual model of disability’, as the support offered to students extends beyond the limits of the school setting, intersecting with health and social services.²⁵³

This chapter builds on the interdisciplinary framework and the HRBA to AAC discussed in the previous chapters, as well as the analysis conducted on Article 24 CRPD and States Parties’ obligations, to present the case study of Italy. This chapter will answer the third and final sub-question of this thesis: “how can the human rights-based approach to augmentative and alternative communication foster inclusive education in relevant Italian strategies on digitalization and disability?”. To do so, this chapter will be structured as follows: first, sub-section 4.1 will look at the Italian approach to inclusive education, clarifying the concept of ‘social-contextual model of disability’ that characterizes it. Then, sub-section 4.2 will discuss the most relevant Italian laws and policies on the right to inclusive education. Building up on this discussion, sub-section 4.3 will investigate whether the Italian legal framework is in line with the CRPD, and especially Article 24. After that, in sub-section 4.4, the relationship between inclusive education in Italy and the COVID-19 pandemic will be discussed to highlight the consequences that the restrictions and the digitalization process had on the development of the Italian Government’s strategies to deal with the situation. This analysis will, therefore, provide an opportunity to discuss the possible weaknesses and gaps of these strategies, specifically on digitalization and disability, in sub-section 4.5. Finally, the last sub-section will investigate the extent to which the HRBA to AAC can foster inclusive education in relevant Italian strategies on digitalization and disability, and will conclude by giving recommendations.

²⁵² Simona D'Alessio, *Inclusive Education in Italy: A Critical Analysis of the Policy of Integrazione Scolastica* (Brill 2011).

²⁵³ Colin Barnes, ‘The Social Model of Disability: Valuable or Irrelevant?’ in Nick Watson, Alan Roulstone, and Carol Thomas (eds), *The Routledge Handbook of Disability Studies* (Routledge 2012).

Several scholars have underlined that the Italian approach to education aligns with the social-contextual model of disability.²⁵⁴ This sub-section will therefore briefly discuss what this model entails, clarifying some differences with the individual model of disability.

Concerning the individual model, this approach views disability as a medical condition caused by a disease, injury or health issues, and therefore needs medical attention, including treatment and rehabilitation.²⁵⁵ For this reason, at the political level, the main concern of this model is to offer medical care and rehabilitation services to help people with disabilities perform activities in the same way as people without disabilities.²⁵⁶ Various scholars, including disability scholars and self-advocates, have frequently criticized this model, primarily for focusing on functional limitations, and instead proposed the alternative ‘social-contextual model’ of disability.²⁵⁷

Therefore, in opposition to the individual model is the social-contextual model of disability. The Italian approach to inclusive education is considered to be in line with the latter.²⁵⁸ This model considers disability as a socially constructed idea. According to this framework, disability is the interaction between individuals’ impairments and the environment (such as attitudinal barriers, legislative barriers, barriers to mobility, etc). In this regard, scholars argue that change is required particularly to stop the exclusion of people with disabilities from social, economic, political and community life.²⁵⁹ Within this model, there is an important distinction between the concepts of ‘impairment’ and ‘disability’.²⁶⁰ The former refers to an individual’s condition, whereas the latter is related to “social disadvantage, discrimination, and exclusion”.²⁶¹ These disadvantages stem from social neglect, oppression, and discrimination, making the environment the main focus of a policy agenda concerning disability, both at national and international levels. Indeed, the social-contextual model of disability has significantly influenced policy, underpinning advancements in human rights, such as the

²⁵⁴ Barnes (n 253).

²⁵⁵ Sophie Mitra, ‘The Human Development Model of Disability, Health and Wellbeing’ in *Disability, Health and Human Development* (Palgrave Pivot, 2018).

²⁵⁶ Ibid..

²⁵⁷ Andrew J. Hogan, ‘Social and Medical Models of Disability and Mental Health: Evolution and Renewal’ (2019) 191(1) CMAJ <10.1503/cmaj.181008> accessed 20 June 2024.

²⁵⁸ Barnes (n 253).

²⁵⁹ Mitra (n 255).

²⁶⁰ Marno Retief and Rantosa Letšosa, ‘Models of Disability: A Brief Overview’ (2018) 74(1) HTS Theologies Studies/ Theological Studies <<https://doi.org/10.4102/hts.v74i1.4738>> accessed 3 June 2024.

²⁶¹ Mitra (n 255).

adoption of the CRPD, which has shaped disability laws globally.²⁶² As analyzed in the previous chapter, in a short period of time, the CRPD has become a crucial conceptual framework in disability and development research.

4.2 Italian Laws and Policies on the Right to Education

The Italian education system is known for its longstanding tradition of inclusive education, dating back to the 1970s when initial efforts were made to simply integrate (not necessarily include) students with disabilities into mainstream schools. Over time, several laws have been adopted to ensure that students with disabilities have access to individualized and personalized learning opportunities.²⁶³ However, since the Italian school system is grounded in the principles established by its Constitution,²⁶⁴ this section will discuss the development of the right to inclusive education starting from the Constitution, and then it will look at the most relevant national laws and policies concerning this right.

4.2.1. The Italian Constitution

In the Italian Constitution of 1948, as amended in 2012,²⁶⁵ there are various provisions regarding the right to education.²⁶⁶ In this regard, a relevant provision is Article 34, which states that “schools are open to everyone”,²⁶⁷ that “primary education, given for at least eight years, is compulsory and free of tuition”,²⁶⁸ and that “capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education”.²⁶⁹ In addition, Article 33 of the Constitution prescribes that entities and private organizations have the right to create schools and educational institutions without financial burden to the State, guaranteeing that private schools operate with complete freedom and provide education and qualifications that meet the same standards as state schools.²⁷⁰ Moreover, Article 38 makes

²⁶² Ibid.

²⁶³ Dario Ianes, Heudrun Demo and Silvia Dell’Anna, ‘Inclusive Education in Italy: Historical Steps, Positive Development, and Challenges’ (2020) 49 *Prospects* <<https://doi.org/10.1007/s11125-020-09509-7>> accessed 30 May 2024.

²⁶⁴ Italian Constitution (1948).

²⁶⁵ Ibid.

²⁶⁶ UNESCO, ‘Universal Periodic Review (34th session, October–November 2019): Italy (Right to Education)’.

²⁶⁷ Italian Constitution (1948), Article 34(1).

²⁶⁸ Italian Constitution (1948), Article 34(2).

²⁶⁹ Italian Constitution (1948), Article 34(3).

²⁷⁰ Italian Constitution (1948), Article 33.

direct reference to people with disabilities, and provides that they “have the right to education and vocational training”.²⁷¹ This Article needs to be read in conjunction with Article 2,²⁷² which emphasizes the protection of inviolable human rights, mandates the fulfillment of essential duties regarding political, economic, and social solidarity, and recognizes individuals within social groups.²⁷³ Furthermore, another important provision included in the Italian Constitution is Article 3,²⁷⁴ which provides for the principles of equality before the law and non-discrimination (formal equality) and places significant emphasis on the duty of the State to eliminate any economic and social obstacles that might hinder personal growth or the ability to engage in social activities (substantive equality).²⁷⁵

Considering that Italy operates as a regional State, it needs to be underlined that educational responsibilities are divided between the State and the Regions.²⁷⁶ However, Article 117(1)(n) of the Italian Constitution specifies that the State has the exclusive authority to establish ‘general provisions on education’.²⁷⁷ Furthermore, the Constitutional Court has clarified that such ‘general provisions on education’ include: establishing the overall structure of the system; safeguarding and enhancing the independence of schools and learning centers; the possibility of setting up private schools, while ensuring parity between public and private educational institutions; establishing minimum annual school hours, the teacher-to-student ratio; and finally guaranteeing the inclusion of students with disabilities.²⁷⁸

4.2.2. The Italian Laws on ‘School Integration’ (Integrazione Scolastica)

Besides the Italian Constitution, the right to inclusive education has been developed through national legislation. Until the 1970s, students with disabilities were not included in the mainstream education system. However, with the rise of the Basaglia de-institutionalization movement (Basaglia 1968), schools started to admit students with disabilities.²⁷⁹ In addition,

²⁷¹ Italian Constitution (1948), Article 38(3).

²⁷² Italian Constitution (1948), Article 2.

²⁷³ Sara Carnovali, ‘The Right to Inclusive Education’ (2017) 4(4) Athens Journal of Education <<https://doi.org/10.30958/aje.4-4-1>> accessed 30 May 2024.

²⁷⁴ Italian Constitution (1948), Article 3.

²⁷⁵ Ianes, Demo and Dell’Anna (n 263).

²⁷⁶ Ferri (n 228).

²⁷⁷ Italian Constitution (1948), Article 117(1)(n)

²⁷⁸ Ferri (n 228), citing ‘Italian Constitutional Court, Judgment No 200/2009’.

²⁷⁹ Ianes, Demo and Dell’Anna (263).

this shift was favoured by laws on “Integrazione Scolastica” (promoting school integration), specifically Law 118/1971 and Law 517/1977.²⁸⁰ Regarding the former, Law 118 of 1971 dismantled the previous system that segregated students with disabilities into special schools and classes, and introduced the principle of inclusion and educational integration into national law.²⁸¹ However, this principle did not apply when a disability was considered so severe that attending school with students without disabilities was considered impossible or excessively challenging.²⁸² On the other hand, Article 28(1) stated that in order to guarantee inclusive education, appropriate measures had to be implemented to provide free transportation from home to school, to eliminate barriers that hinder access to school building, and offer support for students with severe disabilities.²⁸³ Therefore, this law still represented a fundamental step towards a cultural change in approaching disability in the education system.²⁸⁴ After Law 118, in 1977 the adoption and entry into force of Law 517 saw another step taken towards inclusive education, with the abolition of special classrooms.²⁸⁵ This Law encouraged the active participation of students with disabilities in school life and sought to achieve substantive equality by implementing special education programs in mainstream classes, involving all teachers and establishing the role of special education teachers.²⁸⁶

After these two important laws, special attention needs to be given to Law 104 of 1992, still considered one of the most relevant provisions concerning the right to education of people with disabilities.²⁸⁷ This Law guarantees the right to inclusive education and vocational training for individuals with disabilities.²⁸⁸ Article 12 of Law 104 explicitly recognizes the importance of inclusive education for the full development of each individual and of their potential in “in learning, communication, relationships, and socialization”.²⁸⁹ In this regard, Law 104 also mentions the importance of the ‘Individualized Education Programs’ (IEPs), a document that specifies all the integrated interventions in education, socialization and learning, and is tailored

²⁸⁰ Ibid.

²⁸¹ Carnovali (n 273).

²⁸² Law 118 of 1971, Article 28(2).

²⁸³ Law 118 of 1971, Article 28(1).

²⁸⁴ Carnovali (n 273).

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Law 104 of 1992, Article 8 (d) and (f).

²⁸⁹ Law 104 of 1992, Article 12(3).

to the specific characteristics and capabilities of individual students with disabilities. Its purpose is to ensure their engagement and inclusion in the classroom, thereby upholding their fundamental right to education provided by public institutions.²⁹⁰ In addition to the IEPs, another significant measure adopted to further enhance inclusive education was the Ministry of Education's Directive, passed on the 27th of December in 2012.²⁹¹ This Directive categorizes Special Education Needs (SEN) students into three different sub-groups. The first group is composed of students with one or more disabilities; the second comprises those with learning difficulties (such as ADHD and dyslexia); the last one includes students facing socio-economic and/or linguistic difficulties due to ethnic background, economic disadvantage, or family poverty. The purpose of this distinction was to create more tailored and personalized interventions.²⁹²

Together with national laws, through the years the Italian Government has also developed policies to ensure the right to education for students with disabilities. These will be explored in the next section.

4.2.3. Challenges in Italian Educational Policies

Despite the progressive legislative framework discussed above, there are several issues that characterize the Italian school system. Such problems need to be pointed out, while also clarifying how the Italian educational policy system works.²⁹³ First of all, important 'territorial differences'²⁹⁴ can be observed as the education policy system is significantly decentralized, and guided by the principles of 'subsidiarity' and 'autonomy' of schools and educational institutions.²⁹⁵ Educational policies are typically handled at the national level by the Ministry of Education, University, and Research (MIUR), whereas at the regional and local levels, Regional School Offices (RSOs), local authorities and schools significantly contribute to the implementation of educational services and bear the ultimate responsibility for guaranteeing inclusive education.²⁹⁶ In particular, it is up to schools to establish curricula, educational

²⁹⁰ Carnovali (n 273).

²⁹¹ Directive available at: e1ee3673-cf97-441c-b14d-7ae5f386c78c (miur.gov.it)

²⁹² Colombo and Santagati (n 13).

²⁹³ Ferri (n 228).

²⁹⁴ ISTAT, 'L'integrazione Degli Alunni con Disabilità Nelle Scuole Primarie e Secondarie di Primo Grado: Anno Scolastico 2015–2016' (2016) <<https://www.istat.it/it/archivio/194622>> accessed 17 June 2024.

²⁹⁵ Ferri (n 228).

²⁹⁶ Ibid.

programs, and teaching activities, as well as to assign support teachers, provide support hours and develop individualised education plans.²⁹⁷ Empirical studies have indicated that school autonomy has *de facto* resulted in widely varied inclusive practices throughout the regions.²⁹⁸

Moreover, with the ratification of the CRPD in 2009, MIUR implemented new “Guidelines on School Inclusion of Pupils with Disabilities”²⁹⁹ to support RSOs and schools in guaranteeing inclusive education for students with disabilities. In spite of this attempt at having a more centralized plan of action, scholars highlighted that ‘inclusive education’ continued to heavily depend on schools, and that the interpretation of this concept still varied greatly between schools, and sometimes among classes within the same institution.³⁰⁰

Another challenge identified by statistical data concerns a ‘lack of continuity’ in the services offered by support teachers in schools.³⁰¹ This gap can be attributed to the fact that around 30% of support teachers request reassignment as main classroom teachers within five years of acquiring their qualifications.³⁰² Among the reasons why this happens, research has highlighted that the main ones are due to the fact that often these teachers lack adequate support from other teachers and school professionals.³⁰³

Furthermore, other gaps in the legislation have been observed, particularly concerning obstacles with regard to accessibility to information and communication tools and educational content, a lack of legal recognition of alternative communication methods,³⁰⁴ and Italian Sign Language (Lingua Italiana dei Segni, LIS), as well as a lack of availability of learning materials and assistive technological devices.³⁰⁵ The most significant issues stem from the inadequate

²⁹⁷ Ibid.

²⁹⁸ Dimitris Anastasiou, James M. Kauffman, and Santo Di Nuovo, ‘Inclusive education in Italy: Description and reflections on full inclusion’ (2015) 30 *European Journal of Special Needs Education* <<https://doi.org/10.1080/08856257.2015.1060075>> accessed 17 June 2024.

²⁹⁹ Ferri (n 228).

³⁰⁰ Fabio Dovigo, ‘None Excluded. Transforming Schools and Learning to Develop Inclusive Education’ (Conference Proceedings, University of Bergamo, 2016).

³⁰¹ ISTAT (n 294).

³⁰² Cristina Devecchi and others, ‘Inclusive Classrooms in Italy and England: The Role of Support Teachers and Teaching Assistants’ (2012) 27(2) *European Journal of Special Needs Education* <<https://doi.org/10.1080/08856257.2011.645587>> accessed 20 June 2024.

³⁰³ Dario Ianes, Heidrun Demo and Francesco Zambotti, ‘Integration in Italian Schools: Teachers Perceptions Regarding Day-To-Day Practice and its Effectiveness’ (2014) 18(6) <<https://doi.org/10.1080/13603116.2013.802030>> accessed 20 June 2024.

³⁰⁴ CSS, ‘Coordinamento Nazionale Famiglie di Disabili Gravi e Gravissimi. Shadow Report on Italy’ (2016) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>> accessed 21 June 2024.

³⁰⁵ Ferri (n 228).

and insufficient support provided to students with SLCN, mainly due to the poor implementation of existing legislation, as emphasized in the shadow report by the Italian Disability Forum to the CRPD Committee.³⁰⁶

4.2.4. From ‘School Integration’ to ‘School Inclusion’: A Modernization of the Italian School System

In order to improve the efficiency of the Italian school system, a modernization of the educational system was initiated in 2014, under the Matteo Renzi Government.³⁰⁷ In particular, with Law 107 of 2015 (Riforma del Sistema Nazionale di Istruzione e Formazione e Delega per il Riordino delle Disposizioni Legislative Vigenti), known as “La Buona Scuola” (The Good School), a series of reforms started to enhance the autonomy of schools and improve the overall quality of education. Moreover, this Law allowed the Government to adopt a legislative decree on inclusive education, which resulted in the Legislative Decree 66 of 2017.³⁰⁸ This section, therefore, will focus on the innovations, but also the challenges, brought by Law 107 of 2015 and Legislative Decree 66 of 2017.³⁰⁹

Law 107 followed the path of previous educational legislation and therefore should be interpreted alongside Law 104 of 1992, considered the benchmark for any legislative reform on the rights of persons with disabilities.³¹⁰ The main objective of Law 107 was to guarantee the non-exclusion of students with disabilities from the regular education system and the provision of appropriate support for their inclusion.³¹¹ In particular, Article 1(24) of Law 107 explicitly provides that students with disabilities, and especially children with SLCN, will be supported through teaching methods relying on different modes of communication.³¹² This Article seems to be more innovative than Law 104, which in Articles 13(1)(a) and 13(3) referred to “assistive and technical devices to ensure the right to education”,³¹³ and the duty of schools to provide “assistance for the autonomy and personal communication of pupils with physical or sensory

³⁰⁶ IDF, ‘First Alternative Report to the UN Committee on the Rights of Persons with Disabilities’ (2016) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>> accessed 21 June 2024.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Law 107 of 2015

³¹² Law 107 of 2015, Article 1(24).

³¹³ Law 104 of 1992, Article 13(1)(a)

handicaps”,³¹⁴ respectively, without mentioning AAC. These measures are, instead, present in Law 107, aligning with the obligations underlined in Article 24(3) CRPD.³¹⁵ Moreover, Law 107 provides a clear directive for innovating and improving inclusive education,³¹⁶ empowering the Government to adopt legislative decrees promoting the inclusion of students with disabilities in schools, establish specific norms for inclusive education, redefine the roles of support teachers and teaching staff, and reform training systems to foster inclusion.³¹⁷

Legislative Decree 66 of 2017 on ‘school inclusion’ for students with disabilities (Norme per la Promozione dell’Inclusione Scolastica degli Studenti con Disabilità), consisting of a Preamble and 20 articles, aims to enhance inclusive education, defined in alignment with the CRPD, by regulating school inclusion performance, certification procedures for school inclusion, resource allocation, and teacher training.³¹⁸ In particular, Article 1 of the Decree defines ‘inclusive education’ and states that it “concerns all pupils and students, meets the different educational needs and is accomplished through educational and teaching strategies aimed at developing the potential of each individual”.³¹⁹ Moreover, this Article replaces the expression ‘school integration’ (integrazione scolastica) used in previous legislation, with ‘school inclusion’, aligning the terminology used by Italian law with that of the CRPD. In this way, the Decree seeks to eliminate the confusion and interchangeable use of these terms in Italian laws and policies.³²⁰ In addition, the Decree affirms that inclusive education is a “fundamental commitment” in education, aligning with the words of the CRPD Committee that defined inclusive education as “the result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education”.³²¹ Furthermore, Article 1(1) of the Decree also includes the concept of ‘reasonable accommodation’, not mentioned in previous laws, as an essential component of inclusive education.³²² However, the decree has limitations, including unclear training requirements for curricular teachers, insufficient systemic solutions

³¹⁴ Law 104 of 1992, Article 13(3)

³¹⁵ Ferri (n 228).

³¹⁶ Ferri (n 228).

³¹⁷ Law 107 of 2015, Article 1(181)

³¹⁸ Ibid.

³¹⁹ Legislative Decree 66 of 2017, Article 1(1)(a)

³²⁰ Ferri (n 228).

³²¹ CRPD Committee, ‘Concluding Observations on the Initial Report of Italy’ (2016) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>> accessed 21 June 2024.

³²² Ferri (n 228).

for support teacher turnover, and limited funding for implementation, which may hinder its effectiveness.³²³

Starting from this analysis, the following section will investigate whether the Italian Laws and Policies are in line with the CRPD.

4.2.5 The Italian Framework and the CRPD

Based on the framework just described, it can be stated that, through the years, Italy has developed laws and policies with the aim of placing students at the center of a careful consideration of their specific needs, with full respect for their individuality and capabilities.³²⁴ This approach therefore aligns - at least in theory - with the CRPD. Moreover, in the drafting process of the CRPD, the official Italian delegation played an important role in the development of Article 24, on the right to education.³²⁵ While in many countries there are special schools for students with disabilities, Italy, among other States, has instead advocated successfully and succeeded in including the right to full education of students with disabilities in mainstream schools. As analyzed in the previous chapter, States Parties to the CRPD are required to guarantee that people with disabilities have access to an ‘inclusive education system at all levels and a lifelong learning’, on an ‘equal basis with others’, including the adoption of individualized methods and formats of communication and supporting measures, with the ‘goal of full inclusion’ and within the general education system.³²⁶ Furthermore, education should also encourage social engagement and promote dignity, self-esteem and the full development of capabilities of people with disabilities.³²⁷ This idea also aligns with the Italian Constitutional Court’s long-standing view since its 1987 ruling no. 215, which states that “the participation in the educational process with teachers and able-bodied companions is (...) an important factor of socialization”. Moreover, it states that “(participation) can significantly contribute to stimulating the potential of the disadvantaged, i.e. the unfolding of the psychological stresses and improvements to their processes of learning, communication and relationship (...). Furthermore, it underlines that “the school attendance is thus a key factor of recovery of the person (...) and overcoming his exclusion, in a complex weave in which each of those elements

³²³ Ibid.

³²⁴ Carnovali (n 273).

³²⁵ Ibid.

³²⁶ CRPD (2006), Article 24.

³²⁷ CRPD (2006), Article 24.

interacts on the other”. Finally, it highlights that “if there is a positive evolution, it can operate in a synergistic function for the purpose of overall development of the personality”.³²⁸

However, throughout the years, several complaints have been raised by parents and caregivers of children with disabilities about an inadequate or incorrect implementation of the existing legislation.³²⁹ In this regard, the CRPD Committee, in its Concluding Observations (COs) on the Italian Initial Report regarding the implementation of the Convention,³³⁰ while recognizing the long-standing commitment in enhancing inclusive education for students with disabilities in Italy, has also underlined the presence of legislative gaps and practical obstacles to full implementation of Article 24 CRPD.³³¹

Such issues will be explored in the next sub-section particularly with regard to the challenges that emerged in the Italian school system during the COVID-19 pandemic.

4.3 Unveiling the Challenges of Inclusive Education in Italy during the COVID-19 Pandemic

As has been outlined in the previous section, the Italian legal and policy framework has shown a sustained effort to advance inclusive education for children with disabilities, there are still some important gaps and issues that need to be addressed.³³² This sub-section will explore such issues specifically in relation to the challenges that emerged during the COVID-19 pandemic and the increased digitalization of teaching methods and learning materials.

In this context, as previously presented in the introduction, many difficulties in accessing digital goods and services and receiving adequate support for children with disabilities were amplified during the COVID-19 pandemic. The report of the Italian National Institute of Statistics (ISTAT) on educational inclusion of pupils with disabilities,³³³ revised in December 2020, clearly revealed how the lockdown, and the subsequent widespread adoption of distance

³²⁸ Italian Constitutional Court, ‘Sentence no. 215 of 1987’, in Law No. 5.

³²⁹ Ferri (n 228).

³³⁰ CRPD Committee (n 321).

³³¹ Ferri (n 228).

³³² Ferri (n 228).

³³³ ISTAT, ‘Scholastic Inclusion of student with disabilities: school year 2020-2021’ (January 2021).

learning, has exacerbated the challenges in the educational inclusion process.³³⁴ These difficulties were increased by the fact that Italy seems to be a latecomer to a digital world. Although the Italian Government has enacted a number of strategic plans to reduce the digital divide, the particular needs of people with disabilities to access digital goods and services and to obtain the support they need, are still not a priority.³³⁵ Scholars have underlined that in order to better understand these issues, it is necessary to look at whether the Italian Government's strategies on digitalization and digital transformation are disability-inclusive, on one hand, and if the Government's strategies on disability inclusion address digitalization and digital transformation, on the other hand.³³⁶

Regarding the first category, from a regulatory standpoint, over the years Italy has developed various laws on digitalization and digital transformation. In particular, the Italian legal framework for digital accessibility is delineated in Law 4 of 2004, known as the 'Stanca Law',³³⁷ whose objective is to establish an inclusive digital environment through public procurement. In Article 1, the Stanca Law not only does it acknowledge and ensure the right of every person to access all sources of information, including those provided through IT and telematic tools, but it also specifically addresses individuals with disabilities in its second subparagraph. Here, it underlines that 'in particular, the right of access to the IT and telematic services of the public administration, as well as to the structures and services open or provided to the public through the new systems and technologies of information and communication on the network and the services of public utility by people with disabilities, in compliance with the principle of equality pursuant to Article 3 of the (Italian) Constitution'.³³⁸ After the Stanca Law, in 2005, the Digital Administration Code was adopted through Legislative Decree 82 of 2005,³³⁹ where in its Article 3 reasserts the right to use technologies, and under Article 8 on 'Digital Literacy' stipulates that the state, regions, and local authorities are called to promoting the spread of digital knowledge among citizens, especially focusing on minors and vulnerable groups. These two initial regulatory actions have been succeeded by a multitude of subsequent

³³⁴ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Elena Vivaldi and Paolo Addis (2022) 'COVID-19 and people with disabilities : assessing the impact of the crisis and informing disability-inclusive next steps: Italy' Publications Office of the European Union <<https://data.europa.eu/doi/10.2767/5778>> accessed 16 April 2024.

³³⁵ Vivaldi and Addis (n 15).

³³⁶ Vivaldi and Addis (n 15).

³³⁷ Law No 4 (2004).

³³⁸ Law No 4 (2004), Article 1.

³³⁹ 'Digital Administration Code', Legislative Decree No 82 (2005).

plans, guidelines, and strategies, yet their expected implementation has not occurred. This situation was caused by a series of factors such as inadequate institutional governance that failed to define priorities and coordinate investments. Additionally, there has been a lack of a unified strategy among both public and private entities, alongside discontinuity in planning and execution. Therefore, it has not been possible to compile a cohesive national strategy, and this framework has proven insufficient to promote a full and inclusive digital transformation.³⁴⁰

To address whether the Italian Government's strategies on disability inclusion adequately take into consideration digitalization and digital transformation, the *Biennial Action Programmes regarding the implementation of the rights of persons with disabilities* (BAPs) need to be mentioned.³⁴¹ Italy implemented two versions of the BAPs, first in 2013 and then in 2017. The 2013 BAP focused on digital technologies and accessibility challenges, emphasising that Italian law considers accessibility of IT tools crucial for the implementation of the constitutional principle of equality,³⁴² and it prescribes the rules that ICT tools must follow in order to be considered accessible.³⁴³ Such rules refer to public administration, public bodies and public service providers, who are called to:

1. acquire IT tools accessible to people with disabilities;
2. provide accessible teleworking tools for employees with disabilities;
3. ensure the accessibility of teaching and training tools.³⁴⁴

In particular, concerning education, the BAP highlights the importance of providing training for all teaching staff aimed at the use of the latest customizable technological tools and software, ensuring constant updates.³⁴⁵ In addition, it stresses the need to reverse the slowdown in implementing the 2004 legislation,³⁴⁶ reactivating efforts at all levels to address digital inclusion. Finally, the 2013 BAP, despite focusing on digitalization, as highlighted by disability activists, saw minimal implementation, especially regarding digital technologies.³⁴⁷ The second BAP, adopted by Italy in 2017,³⁴⁸ instead, was more detailed and broader in scope concerning

³⁴⁰ Vivaldi and Addis (n 15).

³⁴¹ Ibid.

³⁴² Italian Constitution (1948), Article 3.

³⁴³ Vivaldi and Addis (n 15).

³⁴⁴ Vivaldi and Addis (n 15).

³⁴⁵ Ibid.

³⁴⁶ Law No 4 (2004)

³⁴⁷ Vivaldi and Addis (n 15).

³⁴⁸ Ibid.

digitalization and technologies than its predecessor. In particular, it emphasised a significant lack of knowledge in Italy regarding accessibility, assistive technologies, home automation, etc. This deficiency has led to a limited capacity for both public and private entities to accommodate individuals with specific needs. Therefore, to address this, the 2017 BAP called for ongoing training and awareness-raising for various personnel, including those in transport, public service, education, cultural heritage, security, emergency services, and tourism. Furthermore, this BAP also underlined the need to “[raise awareness about] a culture of accessibility since the early years of school”.³⁴⁹ Such need for awareness is crucial in order to establish a digital and technological environment that is accessible to everyone. Despite these initiatives, scholars agree that the 2017 BAP is now outdated. After the drafting of the BAPs, the National Observatory on the Condition of Persons with Disabilities experienced a slowdown in activity until 2019, when it introduced a three-year work plan (2019-2022). However, even this plan lacked detailed references to digitalization.

This overview clearly shows that, at a national level, Italy lacks specific disability-related strategies that properly address digitalization, which has consequences on the learning experience of children with disabilities.³⁵⁰ This analysis has revealed that although over the years the Italian Government has implemented strategies to regulate the relationship between disability and digitalization, there are still some gaps and challenges that need to be addressed.

4.4 The HRBA to AAC: Providing Solutions?

In Chapter 2, this thesis highlighted the importance of applying a human rights-based approach to AAC in order to better ensure the right to inclusive education for children with SLCN. Then, in Chapter 3, this thesis argued that the HRBA to AAC is in line with the CRPD and helped clarify the concept of ‘inclusive education’ and States Parties’ obligations under Article 24 CRPD. Starting from this analysis and the challenges highlighted in the present chapter about Italy, this section will focus on the extent to which the HRBA to AAC can promote inclusive education in relevant Italian strategies on digitalization and disability discussed above.

³⁴⁹ Vivaldi and Addis (n 15).

³⁵⁰ Ibid.

First of all, as discussed in Chapter 2, AAC includes different methods and tools, among which are “high-tech AAC” systems, based on technological and digital devices such as laptops, mobile phones, tablets, etc.³⁵¹ Therefore, effective and consistent employment of such instruments in schools would require and encourage a better formulation of strategies that focus both on disability inclusion, as well as digitalization and digital transformation, to ensure that these measures are well implemented. Then, applying an HRBA to AAC, which is student-centered and focused on actively listening to students and addressing their capabilities and individual needs, would also encourage the Italian Government to prioritize the development of strategies on disability and digitalization, thereby reducing the lack of planning and implementation.

Moreover, the HRBA to AAC is also characterized by peer-mediated interventions, which foster collaboration between students with disabilities and their classmates. In this way, these interventions encourage all students, not just those with disabilities, to learn and use AAC strategies and methods. Therefore, the implementation of such interventions would promote a better understanding of accessibility and assistive technologies throughout the entire Italian school system, reducing the lack of knowledge in Italy regarding these measures, as underlined by various scholars.³⁵²

Furthermore, the HRBA to AAC, as previously mentioned, is characterized by coordinated efforts which include teachers, SPLs, and therapists, as well as technology designers and developers, engineers, policymakers, and researchers who study AAC usage patterns and explore communication dynamics when AAC tools are employed.³⁵³ At the same time, the HRBA to AAC also requires efforts in various areas, namely education, policy, practice and advocacy to eliminate obstacles and guarantee access to AAC and valuable communication opportunities.³⁵⁴ Collaboration between experts and individuals of the AAC community promotes resource sharing and the creation of new solutions, enhancing the accessibility and quality of AAC devices and tools.³⁵⁵ In this way, implementing an HRBA to AAC in Italian schools would also encourage the Italian Government to take important steps

³⁵¹ Wahl and Weiland (n 94).

³⁵² Vivaldi and Addis (n 15).

³⁵³ Beukelman and Light (n 68).

³⁵⁴ Ibid.

³⁵⁵ di Paola and others (n 103).

and adjustments also in other fields, building a more unified strategy to favour the right to inclusive education of students with SLCN. At the same time, having a unified strategy would also reduce some of the territorial differences that still characterize education, favouring coordination between schools, policymakers and the Government. Finally, another important advantage is that abundant research is available to assist professionals in establishing effective AAC interactions, guiding them through the steps of the process, such as preparing the environment, involving the child, patiently waiting for their response, and teaching them how to use the AAC system. This means that teachers and other school employees can rely on specific guidelines.³⁵⁶ Therefore, this shows how AAC, through a human rights-based approach, can be a good response to problems of access and support.

In conclusion, this analysis reveals how the adoption of an HRBA to AAC would encourage the development of better strategies dealing with digitalization, digital transformation and disability inclusion, in the education sector. In this regard, the sub-section will present some final guidelines to the Italian Government on how to deal with these matters.

4.5 Recommendations to the Italian Government

The previous sections have highlighted some critical missing aspects of the relevant Italian laws and policies concerning the right to inclusive education, as well as the opportunities offered by the HRBA to AAC in solving such issues. Therefore, this last section will give some recommendations to the Italian Government to tackle these issues and favour a stronger implementation of strategies that address digitalization and disability.

The Italian Government and, in particular the Minister for Technological Innovation and Digital Transition and the Minister of Education, should:

1. Develop a comprehensive and unified national strategy that integrates digital accessibility within all educational policies and initiatives, as well as a cohesive policy framework to ensure alignment and consistency across various laws, plans, and guidelines to promote full and inclusive digital transformation.
2. Ensure that digital tools are accessible, including through special assistive technologies, and provide comprehensive training to both teachers and students to enhance digital and

³⁵⁶ Jensen, Douglas and Gerde (n 108).

technical skills. This will, in fact, enable individuals with disabilities to navigate changes in the education field and be able to embrace new opportunities.³⁵⁷

3. Update the funding system, including the purchase of technological devices for students with disabilities in schools. Indeed, in order to achieve digital inclusion, it is not sufficient to provide advanced and accessible infrastructures and services – a significant and focused investment, including financial resources, is essential for the spread of adequate skills and the improvement of digital competencies;³⁵⁸
4. Create a stable, inclusive, and sustainable digital education system that provides students with disabilities with the essential resources to participate in a digital society;³⁵⁹
5. Raise awareness and promote a culture of accessibility, introducing for example awareness programs about digital accessibility from the early years of schooling to foster a culture of inclusivity;
6. Address digital literacy gaps through the creation and incorporation of digital literacy programs, tailored for students with disabilities, in the school curriculum, in order to enhance the development of digital skills for these students.
7. Encourage the development of digital skills for teachers and support teachers by providing adequate training and support to favour quality education and continuity in the services offered by support teachers.
8. Acknowledge the unique needs of learners with disabilities, and ensure that online learning platforms and e-learning measures are fully accessible and compliant with accessibility standards. For instance, video lessons ought to include captions, audio descriptions, and sign language interpretation panels. Text-based resources should be accessible through software with built-in accommodations, while assignments and teaching support should be personalized to match students' individual abilities and strengths;³⁶⁰
9. Encourage the gradual adoption in all schools of an HRBA to AAC in order to favour inclusion and social participation in schools of children with SLCN. This approach should be student-centered, then it should actively engage children with SLCN and let

³⁵⁷ Vivaldi and Addis (n 15).

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Instituto Rodrigo Mendez, 'Protocols on inclusive education during the COVID-19 pandemic: An overview of 23 countries and international organizations' (2020) <research-pandemic-protocols.pdf (institutorodrigomendes.org.br)> accessed 25 April 2024.

- them express their opinions, it should also rely on the capabilities approach, encourage peer-mediated interventions, and finally should be characterized by coordinated efforts;
10. Monitor and evaluate the implementation of this approach, through the establishment of feedback mechanisms that allow students, parents, and educators to report challenges, as well as suggest improvements related to digital accessibility and disability inclusion.

This thesis argues that the implementation of such recommendations would favour the development by the Italian Government of strategies that could effectively address the intersection of disability and digitalization, thereby enhancing the right to inclusive education for children with disabilities in Italian primary schools.

Chapter 5: Conclusions

Inclusive education is a fundamental right for children with disabilities as it ensures that they are offered the essential skills and abilities they need to exercise their human rights and actively participate in society, both during their childhood and as they grow into adulthood.³⁶¹ However, nowadays, many mainstream schools still lack the resources to support students with special needs, leading to rejection, harassment, and bullying of children with disabilities.³⁶² In particular, in Italy, the COVID-19 pandemic exposed weaknesses in the school system, particularly with the shift to distance learning, which disproportionately affected students with disabilities.³⁶³ Addressing these gaps was crucial to analyze how inclusive education can be ensured for children with disabilities.

This has been the foundation and starting point of this thesis, which has analyzed the current challenges that children with disabilities still face in primary schools, regarding the lack of access to digital tools and services, as well as the lack of specific and adequate support, in particular with the COVID-19 outbreak. To tackle such issues, this thesis has offered added value with regard to the existing literature, through the proposal of an interdisciplinary framework, looking at the interaction of communication theory and human rights law in today's digital world. More specifically, this interdisciplinary framework has investigated the extent to which an HRBA to AAC in primary schools can enhance the right to inclusive education of children with SLCN, in order to facilitate digital participation in a post-COVID era. The analysis and the discussion on the HRBA to AAC has, therefore, been the common thread that has accompanied the drafting of each chapter of the thesis.

While exploring the challenges and opportunities that the advent of digitalization in schools - especially with the COVID-19 pandemic - brought to the right to inclusive education, this thesis has argued for the importance that an HRBA to AAC plays in enhancing this right, particularly for children with SLCN. By integrating important elements like a student-centered approach, participation, equality and non-discrimination, peer-mediated interventions, and coordinated efforts, the HRBA to AAC not only has the potential to improve communication skills but can also support the overall well-being and future opportunities for children with

³⁶¹ UN OHCHR (n 4).

³⁶² UNICEF (n 8); Inclusion International, *Better Education for all When We are Included Too* (n 9); UNESCO (n 10).

³⁶³ Colombo and Santagati (n 13).

SLCN within an inclusive educational framework. Such analysis has, therefore, provided an answer to the first research question on the extent to which digital tools, like AAC methods, can support the learning experience of children with SLCN.

Subsequently, this thesis has explored the right to inclusive education, under Article 24 CRPD, and employed the HRBA to AAC to shed some light on this concept and on States Parties' obligations, providing in this way the answer to the second research question. In this regard, the HRBA to AAC, grounded in the principles of the CRPD, clarifies that inclusive education means finding an equilibrium between anti-discrimination and inclusive equality, therefore promoting mainstream inclusion and the provision of specific support based on the students' needs, and encourages States Parties to adopt such a balanced approach. At the same time, it also expresses the importance for States Parties to employ a capabilities approach taking into consideration the individuality of each student, as well as enhancing the right to inclusive education, through policy, practice, education and advocacy efforts.

Finally, in order to provide a practical example and answer the last research question on how an HRBA to AAC could foster the right to inclusive education and encourage the development of relevant strategies that address disability and digitalization, this thesis has focused on the case study of Italy. First, it has been analyzed how Italy has not properly implemented such strategies, resulting in several challenges for students with disabilities in today's education system, as it relies more and more on digitalization and digital tools. Then, this thesis has argued that the implementation of an HRBA to AAC would solve some of these issues. Here, it has been highlighted how, first of all, the incorporation of "high-tech AAC systems" into Italian schools, together with a student-centered approach, would encourage the Italian Government to plan and implement adequate strategies focusing on disability inclusion and digitalization, as well as define priorities to ensure that each student is given the same learning opportunities. This approach promotes inclusive education, reduces planning and implementation gaps, and fosters collaboration among various stakeholders. Hence, this discussion illustrated more clearly the gaps that characterize the Italian strategies on disability and digitalization, and therefore, helped define some guidelines for the Italian Government to follow to enhance a better implementation of these strategies and the right to inclusive education.

In conclusion, thanks to this analysis, it is possible to answer the primary research question of this thesis concerning how Italy can ensure the right to inclusive education of

children with SLCN, while promoting digitalization and trying to bridge the digital gap, emphasized by the COVID-19 pandemic. This thesis argues that by employing a HRBA to AAC, Italy would enhance the right to inclusive education for children with SLCN as high-tech AAC tools, used in line with a human rights-based approach, enhance communication skills and social engagement in society. At the same time, with this approach, Italy would be able to better define what inclusive education means, what its obligations under this right entail, and therefore encourage a better implementation of this right in the Italian school system, through coordinated efforts and a unified strategy, and reducing territorial differences. Finally, adopting this approach would encourage the Italian Government to develop and implement relevant and consistent strategies addressing disability inclusion and digitalization. In this way, the Italian school system would be better prepared to embrace the digital transformation that increasingly characterizes education, while making sure that children with disabilities are not left behind.

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