



McGill Centre for Human
Rights and Legal Pluralism

Centre sur les droits de la personne
et le pluralisme juridique de McGill

SEMINAR SERIES

BUILT ENVIRONMENTS AND ACCESSIBILITY OF PERSONS WITH DISABILITIES 2014-15

Inclusive Education: Implementing the CRPD in Canada and the Global South

September 22, 2014

Moderator: Frédéric Mégret (Associate Professor of Law at McGill, Canada Research Chair in the Law of Human Rights and Legal Pluralism)

Resource Persons: Futsum Abbay (Research Associate, CHRLP); Charles Ngwena (O'Brien Fellow in Residence); Roberta Thomson (Accessible and Inclusive Education Course Instructor, UDL Faculty Toolkit Project Coordinator)

Organized by: Centre for Human Rights and Legal Pluralism (CHRLP); McGill Human Rights Working Group – Disability and the Law Portfolio

Summary of Seminar

Moderator Frédéric Mégret began by introducing the topic for this first seminar in the series, which examines the institution of education as a built environment. The resource persons were asked to provide insight into how the right to education in article 24 of the CRPD could be implemented in the domestic context and improve education outcomes for persons with disabilities.

The first speaker, Charles Ngwena, focused on the challenges of implementing the mandate of article 24 of the CRPD in the Global South. Article 24 recognizes redistributive justice as an important goal and highlights the close link between poverty and disability. Mr. Ngwena framed the exclusion of persons with disabilities from mainstream academic institutions as a human rights violation, and noted that rights are an important currency for challenging this deep-seated injustice. As we have seen since the Convention was enacted, ratification of a human rights instrument does not necessarily translate to the enjoyment of rights. The socioeconomic system in South Africa was constructed on an assumption of able-bodiedness, and persons with disabilities continue to experience major challenges in achieving equality in the realm of education. Inclusive education challenges the very first meaning of education. We must return to the discourse of traditional education and the traditional values of education, which are based on the principle of inclusion. Gradually, administrative practices have led to discrimination and exclusion. For example, the South African Department of Education recognized categories of severe intellectual disabilities, and children in these categories are assumed to be non-educable. We have used these categories for reasons of convenience, but in the process, we have imposed stereotypes which separates some children from others. When these issues are placed before the courts of South Africa, judges must provide remedies to address the systemic and structural issues that underlie the discrimination that children with disabilities face.

Roberta Thomson, the second speaker, explored the point of view of an educator in Quebec and the challenges they are face with regard to implementing inclusive education in practice. Quebec is an example of a jurisdiction in Canada that still maintains a large number of segregated institutions. In some

cases, parents support this segregation and feel like mainstream institutions are not equipped to support their children's needs. Ms. Thomson noted that, in Quebec's inclusive schools, educators are often unprepared to teach children with disabilities because too few courses are offered to train them. In her experience, teachers in inclusive schools are very open to learning the skills needed to teach children with disabilities, but they criticize the lack of adequate training and support to do so effectively. There are also administrative hurdles to accommodating some students' specific needs. At one point, a school rented an FM microphone system (which broadcasts the teacher's voice) to accommodate one student. Yet, school officials decided to discontinue the use of the microphone for seemingly arbitrary reasons, claiming that it was unnecessary. Having worked in a private, early intervention center for children with disabilities in Montreal, Ms. Thomson also observed that many families do not receive financial support to ensure their children receive the intervention they require at an early enough age to prepare them to attend inclusive institutions.

Futsum Abbay, the third and final speaker, discussed the lack of improvement for persons with disabilities in the education sphere in the Global South. Despite strong support for the CRPD and its Optional Protocol, a number of states have failed to implement the Convention in Africa. Mr. Abbay noted that there is a major lack of political will to implement inclusive education. There is an assumption that inclusive institutions are more expensive and that the lack of resources is a major impediment. There are very few statistics, and a lack of information that establish how low the enrolment of people with disabilities in formal education systems truly is renders policymaking on the basis of this issue more difficult. Classrooms in Africa, even in schools with adequate funding, are still widely inaccessible, and there has been little effort to adapt teaching methodologies to children who learn differently. In addition, children with disabilities are unable to get to schools that would accept them because public transportation systems are inaccessible. Improving transportation alone, Mr. Abbay asserts, would result in an increase rate of attendance and enrolment of students with disabilities in mainstream schools. Widespread poverty also means that families cannot afford critically-important assistive devices. Misconceptions and prejudice continues to impede positive change, which many people believing that persons with disabilities are incapable of learning and less worthy of receiving an education.

When the panel opened up the floor, seminar participants asked a range of questions about practical measures for implementing inclusion education, and how courts and legislators have attempted to implement the protections enshrined in the CRPD. Mr. Ngwena noted that education is one of the most difficult institutions to transform, because it depends on changing our views about the role of academic institutions in society and how we think about scholastic achievement more generally. We praise traditional scholastic achievement, but we all must ask ourselves how we ended up in this room for this seminar. We reproduce ourselves and praise each other for writing papers, yet we exclude others for not being able to do so in the same way. Mr. Ngwena also added that historically, courts have a weak track record of proposing effective systemic remedies. We must ask ourselves how best to monitor such remedies, as well as how to monitor the protection of the socioeconomic rights that are linked so closely with exclusion in education. Mr. Ngwena was asked whether the court, in one of the cases that had been discussed earlier, had provided justification for its unwillingness to accommodate persons with profound mental disabilities. He replied that the judges believed persons with severe disabilities to be uneducable as a matter of "common sense." The traditional South African paradigm of education dictates that it is the responsibility of families to educate persons with severe disabilities at home if they want them to learn. Ms. Thomson was asked to clarify whether, in her example, the child or the child's family had been consulted in making the decision to discontinue the FM microphone use and she clarified that they had not; the decision was made entirely at an administrative level. It is common practice and symptomatic of larger systemic issues for the voices of individuals who may benefit from an assistive device not to be taken into account when determining whether to use the device. Commenting on Mr. Abbay's discussion of the practical challenges in South Africa, Mr. Mégret noted that the cost argument is often used as an excuse for the lack of progress in developing contexts.