

INCLUSIVE BASIC EDUCATION IN SOUTH AFRICA: ISSUES IN ITS CONCEPTUALISATION AND IMPLEMENTATION

LN Murungi*

SUMMARY

Education is one of the most topical issues in South Africa. In recent years, particularly in the period after the adoption of the *UN Convention on the Rights of Persons with Disabilities* (2006) (hereinafter CRPD), the discourse on the education of children with disabilities has mainly focused on the potential of White Paper 6 on Special Needs Education (2001) (hereinafter WP 6) and its implementing programmes to facilitate the realisation of the right to education for children with disabilities. The CRPD proposes inclusive education as the appropriate way of ensuring the right to education for children with disabilities, and sets out a framework for the implementation thereof. In addition, the CRPD sets out other principles which essentially redefine the approach to the interpretation and implementation of the rights of persons with disabilities. One such principle is the principle of non-discrimination, which demands that all rights be implemented on a basis of equality between all people, disability notwithstanding.

Arguably, the legal and policy frameworks on education in South Africa reflect the standards proposed under the CRPD to some extent, and other instruments on the right to education. However, there are still considerable challenges in the conceptualisation and implementation of inclusive education, especially at the basic education level. These challenges are not unique to South Africa, and are mainly attributable to the evolutionary background of the concept of inclusive education at the international level. Hence for instance, the understanding of inclusive education often tends to focus exclusively on the education of persons with disabilities as

* Lucylne Nkatha Murungi. LLB (Moi), LLM (UP), LLD (UWC). Research fellow at the Community Law Centre, University of the Western Cape. E-mail: nkatha.murungi@gmail.com. Parts of this Article are drawn from the author's LLD thesis titled *The Significance of Article 24(2) of the CRPD for Primary Education of Children with Disabilities: A Comparative Study of Kenya and South Africa* which was submitted to the University of the Western Cape in May 2013.

opposed to the inclusion of all marginalised and excluded groups. This narrow understanding is replicated in South African law, policy, and practice of education.

Challenges to the realisation of inclusive basic education in South Africa are compounded further by the pertinent issues underlying the implementation of basic education in South Africa such as the question of equality in education, the financing of basic education, the nature of the state's duties pertaining to the provision of basic education, and the interpretation of the notion of basic education. The understanding of inclusive education in South Africa has also been impacted by historical factors, such as the apartheid exclusion of the masses from mainstream basic education, and the subsequent need to "include" everyone in post-apartheid education. All of these factors point to the need to interrogate the current approaches to inclusive basic education in South Africa as against the *Constitution of the Republic of South Africa, 1996* (hereafter the *Constitution*), and international standards that South Africa has committed to through the ratification of the CRPD and the *UN Convention on the Rights of the Child* (1989) (hereafter the CRC). For instance, there is a need to establish the extent to which the differentiated obligations with respect to basic education as distinct from other levels of education apply to inclusive education. Hence, is there a difference between the nature of the state's obligations in respect of "basic education" and those relative to "inclusive basic education"? Further, it is imperative to establish the convergence or divergence between inclusive education as set out in the CRPD and as implemented through WP 6.

KEYWORDS: children with disabilities; basic education; inclusive education; special education; special needs education; right to education.