



Localization of the Convention on the Rights of Persons with Disabilities Wednesday November 1st, 2023 7:00-9:00 PM ET

DR. FLOYD MORRIS

Colleagues, friends, a pleasant good afternoon to you all and welcome to this special seminar that is focusing on the issue of the localization of the CRPD. This is an event being hosted jointly with The Law, Disability & Social Change Project of the University of Windsor faculty of Law. With my distinguished colleague Prof. Laverne Jacobs who was also my the Convention on the Rights of Persons with Disabilities. We are hosting this seminar as a part of the activity to promote the Convention on the Rights of Persons with Disabilities and to create greater understanding and awareness of its provisions and how it can redound to the greater improvement of the quality of life of persons with disabilities right across the world.

We want to welcome you and how we are going to be operating on this seminar this afternoon, we are going to be having the presentation by 4 eminent persons who understand the subject of disability and have been involved in the practical implementation of the CRPD and also, each person will have 15 minutes maximum to make their presentation and after the 15 minutes then we will go into a Q&A session. You are asked to please write down your questions as the presenters make their presentation because you are going to be treated with a plethora of positive information about the CRPD and its implication for persons with disabilities across the world, you notice it is not just a Caribbean panel we have, we have a distinguished member of the academic community in Canada, and a member of the CRPD so it is a global seminar in its outlook.

Once again, I want to welcome all the participants and remind you to please take notes and ask questions at the appropriate time.

DR. FLOYD MORRIS

We are going to start out with Prof. Laverne Jacobs of the University of Windsor in Canada, and she is with the faculty of Law focusing on the issue of social change project. She is also a member of the UN committee

on the rights of persons with disabilities. She is an established academic and also a distinguished author and researcher. I take this opportunity to welcome my friend, Prof. Laverne Jacobs.

DR. LAVERNE JACOBS

Thank you for the very kind introduction, Dr. Morris, it is a pleasure to be here, and I want to take this moment to also extend warm welcome to you to all of you who are here on behalf of The Law, Disability & Social Change Project at the University of Windsor faculty of Law. We are delighted to be cohosting this event with The Centre for Disability Studies at the Moana campus of the University of West Indies in Jamaica. As Dr. Morris indicated by name is Laverne Jacobs and am joining you today from the University of Windsor which sits on the traditional territories of the 3 fires Confederacy of first Nations. The Ojibway, Ottawa and Potawatomi – I respect the long-standing relationships with Indigenous peoples in the 100-mile Windsor Essex Peninsula and nearby straits of Detroit. I want to acknowledge that today is the first day of Indigenous disability awareness month in Canada and to recognize that Indigenous peoples in Canada, have a much higher disability rate than the rest of the population along with several barriers.

We have been asked to think about the opportunities and challenges for implementing the UN convention on the rights of persons with disabilities and provide recommendations as well on how to localize the CRPD in our jurisdiction. My contribution begins with historical and institutional context both of which are necessary for an understanding of the significance of the CRPD in Canada and to contextualize the recommendations that I will offer. Although I sit as a member of the UN Committee on the Rights of Persons with Disabilities along with Dr. Morris, I note that my views are mine alone as an academic and do not aim to reflect the CRPD Committee.

And in Canada the Convention buttresses a number of existing laws enacted to bring about equality. The story of how these laws came about centers in large part on the historically slow process of relying on the courts to bring about change for persons with disabilities. For example, looking at the Supreme Court of Canada it was not until 1920, 45 years after its establishment that the court saw its first disability related case. This case dealt with access to Worker's Compensation, with industrial revolution occurring at the turn of the 20th century Worker's Compensation regimes were being established in provinces across the country. This first Supreme Court of Canada case dealing with disability, *Montréal Tramways*, is a typical case for its time although it dealt with an individual seeking access to compensation for an unusual claim. In *Montréal Tramways*, an employee of the Tramway company fell off the tram car during his ride home and the question at issue was whether his injury took place at work. The court held the worker Mr. Girard should receive compensation. Although the case dealt with disability, it was not one that served to push disability rights forward in any substantive way. The need for protection of disability rights in the Supreme Court of Canada became much more discernible in the 1980s. Particularly if we fast-forward to the 15 years following the enactment of the Charter in 1982, we see we have several cases of note. During this time we have *Eve* with Supreme Court of rejecting forced sterilization of a woman with disabilities followed by *Eaton* dealing with, a student with cerebral palsy seeking to access mainstream education and *Eldridge*, a case involving sign language interpreters. These cases showed mixed results on disability rights. Some decisions provided language that embodied the social model of disability but did not necessarily yield the results sought by the person with disabilities. Others like *Eldridge* were decided in favor of the applicants with disabilities but the actual outcome, the provision of sign language interpretation, took an inordinate amount of time to be put in place on the ground. At the same time a number of key legal statutes designed

to support the rights of persons with disabilities also began to emerge in provincial and federal levels, in the 1960s and 70s particular. These included the enactment of the Ontario human rights code in 1962, the Ontario Blind Persons Rights Act in 1970, and the enactment of the Canadian human rights act in 1977. Much of the work supporting disability rights took place and continues to take place under statutes such as these pieces of human rights legislation enacted across the provinces and territories. Finally accessibility legislation that provides standards of accessibility in various social areas such as employment and customer service were first enacted in Ontario in its strongest form in 2005, one year before the CRPD was adopted by the UN Gen. Assembly. While accessibility legislation does not exist in every province and territory it is being picked up across the country. This history of the Canadian legal landscape concerning disability rights protection is brief but important it shows us a backdrop of 3 overlapping currents of activity emerging with the potential to further disability rights. These 3 currents are charter litigation, cases under human rights legislation, and standard development through accessibility legislation.

Currently, the equality rights instruments that provide a right to equality or right to be free from discrimination on the grounds of disability are the Canadian Charter, which forms part of the Constitution, statutory human rights legislation, accessibility legislation, and the CRPD.

In light of this background to of the challenges that occur in localizing the CRPD are to identify when the CRPD is needed and secondly to identify how it should be engaged. Canada's generally very enthusiastic about the CRPD despite being a jurisdiction that requires international treaties to be incorporated through domestic litigation the Supreme Court has indicated that treaties that Canada has ratified should guide the interpretation of our laws, so this provides a significant opportunity for international treaties that have been ratified including the CRPD to be referenced domestically.

Moreover, with respect to the CRPD there have been a few new laws that have been explicitly referenced the convention, such as the Canada Disability Benefits Act and the Accessible Canada Act.

However, the CRPD is not always engaged in policymaking and thus can cause difficulties when policies are later challenged, for example a human rights Tribunal decision from a few years ago dealing with a post-secondary funding program for students with disabilities illustrated how the programs focus on students obtaining jobs and vocational traits and skilled trades had overlooked students with disabilities who wish to pursue a liberal arts postsecondary education. Challenging a program after it is in place will not necessarily result in changing it so that it fulfils the commitments of article 24 of the CRPD even if done with the CRPD as a tool or instrument.

It may only result in a reasonable accommodation for the aggrieved individual. To be more specific, article 24 of the CRPD asks state parties to ensure that they have an inclusive education system directed to the full development of human potential and of the student's sense of dignity and self-worth, as well as developing the student's talents and creativity along with physical and mental abilities to their full potential. If they are brought into the initial development of the policy, or the revision of a policy.

My principal recommendation for localizing CRPD is to ensure that the CRPD, persons with disabilities themselves, organizations dedicated to disability issues, advocates and others to raise the need for the CRPD to be incorporated into policy particularly if the government has not recognized this need itself.

This can place a significant burden for change on persons with disabilities to bring about implementation and I would like to see that change. To think one way to bring about the change is to have greater disability

representation within government leadership. Moreover, to ensure coordination between government and the disability community so I'll leave my comments there, I thank you and I look forward to our further discussion during the Q&A.

DR. FLOYD MORRIS

Thank you Dr. Jacobs and we look forward to the question-and-answer sessions. We know that you have a breadth of knowledge on the subject.

At this point in time I would like to turn our attention to Dr. Christine Hendricks who was the executive director for the Jamaica Council for persons with disabilities that has the responsibility for the disabilities act for the implementation of the programs and policies relating to persons with disabilities in Jamaica.

Dr. Hendricks is a long-standing advocate for persons with disabilities and I invite her to take the floor for the next 15 minutes or so.

Dr. Hendricks?

CHEVELLE

She is saying that she is not hearing – one moment.

DR. FLOYD MORRIS

We can sort out the problem with Dr. Hendricks – is Kerryann Ifill on?

What I will do – Ms. Ifill?

I heard a voice.

In the meantime, until Chevelle assists Dr. Hendricks with voice I will go ahead and make my presentation.

The topic for this afternoon's presentation is the localization of the CRPD and when we speak of the localization of the CRPD, we are talking about how we can get the Convention on the Rights of Persons with Disabilities implemented at every facet of society, talking about its implementation nationally, its implementation regionally, its implementation locally and in the communities.

In 1966 in the seminal thesis on the social construction of reality highlighted, sought to highlight how meaning is formulated, and in that regard highlighted that meaning has been formulated by individuals in society and handed down from generation to generation. Over time, these meanings become institutionalized.

The term they used in the book is, meaning becomes habitualized.

I make reference to the book published by Burger and Lockman, because for centuries meanings have been fashioned and formulated about persons with disabilities and these meanings have been handed down from generation to generation. In other words, they have become habitual in society. And here we

see that this habitualization has resulted in various attitudes, various barriers being placed in the pathways of persons with disabilities resulting in their marginalization in society.

Over the past 60 or so years there have been different responses to try and transform the negative attitude towards persons with disabilities.

We have seen for example the formulation of the standard rules for the equalization of opportunities for persons with disability to ensure that persons with disabilities receive equal treatment within their society.

The standard rules which were formulated in 1993 never had any binding effect and so there had to be some changes to make sure that whatever programs and policies at the international level that were formulated were binding on state parties. Hence in 2000, Mexico moved a resolution calling for the establishment of a convention to protect the rights of persons with disabilities.

That resolution was adopted and for some 5 years there was a robust debate in the United Nations about the Convention on the Rights of Persons with Disabilities!

By 2006 the convention was ready and adopted by the United Nations Gen. assembly and opened for signature on 30 March 2007.

The treaty came into force in 2008 after receiving the requisite number of signatories for the realization of the convention.

The CRPD in the negotiation was negotiated primarily on the social model of disability which advocates for the removal of barriers in society that restrict the participation of individuals with impairment on a day-to-day basis.

However, because there was a recognition that the barriers placed in the ways of persons with disabilities restrict the fundamental human rights of persons with disabilities, over time we see where the convention has been accepted and treated as a human rights document that shapes and seeks to protect fundamental rights of persons with disabilities.

The good thing about the CRPD is that enhances, it conflates the rights that is designated for all citizens into a centralized document specific to persons with disabilities. So, it does not create any new rights for persons with disabilities but rather it seeks to conflate all those rights that are in the Universal declaration of human rights, the international covenant on civil and political rights. All those rights have been conflated into this document that we have called the CRPD.

The CRPD seeks to promote the participation, inclusion, non-discrimination and equalization of opportunities for persons with disabilities. That is what I call, time to remember the fundamental aims of the CRPD, to promote participation, promote inclusion, non-discrimination and equalization of opportunities for persons with disabilities.

That is one of the first major opportunities where the CRPD is concerned, it is a rights-based instrument that recognizes persons with disabilities as rights holders and rejects the antiquated notion of persons with disabilities being objects of charity, so the medical model and the charity models of disabilities have been rejected based on the construct of the CRPD.

The other thing that is very positive about the CRPD is that it seeks to empower persons with disabilities. And when we talk about empowerment, we are talking about creating opportunities for individuals to

participate in society on an equal basis, so it seeks to ensure that persons with disabilities have access to work and employment. It seeks to ensure that persons with disabilities have access to education. It seeks to ensure that public facilities are accessible to persons with disabilities. It seeks to ensure that persons with disabilities are able to participate in politics on an equal basis with others and there are a number of other articles in the convention that relates to the empowerment of persons with disabilities.

As it relates to the challenges of persons with disabilities, the challenges of the CRPD, just to point, as I articulated earlier, the CRPD is a human rights-based instrument. Over the years the models of disability that drove the disability agenda were primarily the medical model and the charity model which presented persons with disabilities in a negative light. And these models have been institutionalized, according to Berger and Lockman they have been habitualized. Persons with disabilities are recognized as rights holders. We see a potential, or we see conflicts emerging between the established practices or models of disability with that of a more progressive approach to disability as espoused in the CRPD.

You find that for example, once a person with a disability in the community decides that they are going to go to the hospital to be treated or they seek sexual and reproductive health services, they are treated and looked at in a particular way because the conventional view is that these individuals should not be engaged in sexual activities.

You have a disability – you should not be engaged in sexual activities. They are stared at and looked at in wonderment as if, what is it that they are doing?

A person with disabilities would respond in a particular way and therein lies the conflict that emerges who are persons with disabilities are concerned.

The other challenge that we see emerging from the implementation of the CRPD is that there is a lack of resources where persons with disabilities are concerned for the implementation of the convention.

It is again pointing to the negative attitude that has been established over the years in terms of treating issues relating to persons with disabilities because if the CRPD is to be implemented in its structures it will require serious resources. It will require resources to make educational institutions accessible, and inclusive of persons with disabilities it is going to require resources to make public facilities, sidewalks, etc., accessible for persons with disabilities. And so, resources are needed in significant amounts, in order to transform society and communities for the CRPD to become a reality. What are some of the recommendations that I want to perform? For the CRPD to be localized, it is going to require significant resource allocation from government. And the government has to make sure that it allocates resources that is required for the convention to be implemented. The other thing that has to take place is there has to be a massive public education program to sensitize all the stakeholders in society, at the national regional local and the community level as it relates to the provisions of the CRPD, and to try and change the negative attitudes that have been built up over the years as it relates to persons with disabilities, because individuals must realize that gone are the days when persons with disabilities are treated as objects of charity as we are now in the era where persons with disabilities are legitimate rights holders.

Thank you very much.

As I complete my presentation I hope we have sorted out the problem with Dr. Hendricks, and that she can join us – is Dr. Hendricks ready?

CHEVELLE

Yes, she was able to rejoin.

DR. FLOYD MORRIS

So we have –

CHEVELLE

Dr. Hendricks?

DR. CHRISTINE HENDRICKS

I am barely hearing but I have joined.

DR. FLOYD MORRIS

We hear you loud and clear so just let me refresh the introduction, Dr. Christine Hendricks has been Executive Director of the Jamaica Council for persons with disability, which under the new disabilities act of Jamaica is a statutory entity. What they call a body corporate. They have overall responsibility for the implementation of the programs and policies relating to persons with disabilities and that includes Convention on the Rights of Persons with Disabilities. Dr. Hendricks is a long-standing advocate for persons with disabilities and understands very well the subject of disability and so I turn over now with pleasure to Dr. Christine Hendricks.

DR. CHRISTINE HENDRICKS

Thank you so much. Good evening everybody. It is a pleasure to be here this evening to share Jamaica's experience, to look at the challenges and opportunities and make some recommendations for localization of the CRPD, not only in Jamaica but I believe other countries could benefit.

Although I had to squeeze my ears to hear I think the Sen. provided a backdrop to where Jamaica is in terms of its implementation of the CRPD. The CRPD for Jamaica having ratified in 2007 began the process of making or having disabilities come into effect, 2014 being passed in the parliament and 2022 coming into effect in terms of the implementation of the disabilities act, which in essence pulls on the Convention on the Rights of Persons with Disabilities as its foundation, and principles of the convention are what have been adopted as part of the principles that undergird the disabilities act

In terms of the Jamaican experience you would have noted based on the timelines provided, having ratified the convention in 2007, disability act passed in 2014, and becoming effective in 2022, where it

takes time to implement matters pertaining to disabilities and the convention in particular as we work through it through our disabilities act and so we continue I would say to work through the implementation process being almost a little over a year old having gotten to a year in February of this year and getting to the two-year mark in 2024 recognizing that appreciating and seeing coming to reality what the convention calls, recognizing that a disability is not something that, it is not a Sprint it is not a journey that is a short-term journey but a long-term journey that will take quite a bit of commitment, quite a bit of political will and commitment to ensure resources are in place so in Jamaica there is the concept of persons with disability becoming a statutory body. We are currently in the process of transitioning out of the ministry on the ground so by law, in law we are a statutory body but still are in the process of transitioning and enabling that full implementation of the entity as a body corporate or a statutory body and recognizing it takes much resources in place, financial resources in place, which we still have not gotten all that we require to implement in the way needed to be implemented, but still committed to the process of what it takes.

So the challenges and barriers for effective implementation. First of all it is the length of time that begins the implementation process. And we spoke about, we look at the timeline so far, and when the time it takes this long to begin the implementation process, sometimes people begin to lose faith in the system sometimes people get away with acts of discrimination and for some persons they might not be feeling the significant difference that this act should be making in their lives. And this lag also impacts with awareness, it impacts the provision of the codes and also impacts the very professionals that should be in place to ensure effective implementation. So the Council being in place has of course, and a structure, a new structure, and as part of this structure it has varying units and branches and one that is responsible for access compliance and investigation and we also have a legal unit, so what persons are able to make their complaints to the Council if it is that they feel aggrieved and discriminated against. However, as I indicated a lag in putting all the human resources in place will impact that investigation process. The investigation has to jump a couple notches up from officers on the ground to the legal unit, and so the process, the lag impacts as I indicated the process. Additionally, the act provides for the provision of a disabilities rights Tribunal to whom cases can be referred once it is that the parties decide either that they will not go, not agreeing to go to mediation, or they go to mediation but the matter is not resolved and the matter is sent to the tribunal for adjudication.

The tribunal members are in place but the Secretariat to support the tribunal is yet to be in place and so the lag also impacts the implementation and if so those are some of the things, some of the barriers that impact effective implementation.

On another matter that impacts effective implementation is inadequate funding. Inadequate funding impacts the support to enable access, and I think I heard it, the senator indicated earlier that the government and any government would have to be willing to invest significant resources in ensuring that persons with disabilities have that access and if it is that the adequate funding is not put in place, then it will impact that accessibility and inclusion that is to be guaranteed as the right of persons with disabilities.

If it is that government is not putting in the resources and demonstrating that political will and commitment then the private sector will demonstrate some unwillingness to put measures in place to enable this participation and inclusion in a fulsome way, because they are looking to the government to lead in this regard and so that is one of the areas that will be impacted by inadequate funding.

Inadequate funding will also impact adequate staffing, qualified and fully and adequately remunerated because that tool if it is, places like the Jamaica Council for persons with disabilities and other such councils in other jurisdictions and in other countries, if it is that the resources are inadequate, financial resources are inadequate, and thus staff that are recruited are not fully qualified or fully remunerated or adequately remunerated then some will not remain and so recruitment will be an ongoing process and that will result in delays in the implementation.

Professionals have hesitated because they have served in other areas before and have faced lawsuits, so they are unwilling to serve on a disabilities rights tribunal because they do not want to be part of making decisions and then having to face lawsuits based on decisions that they would have made.

However despite the challenges that there are, there are significant opportunities to implementing the Convention on the Rights of Persons with Disabilities because having the convention guarantees that our policies will now have some teeth, and that legislation, bringing the teeth, undergirding the process of implementation will be able to hold people to a code, if it is that they do not adhere to the tenets of non-discrimination.

Despite the challenges that government might not have all the resources, particularly for developing countries like Jamaica, there are opportunities for resource support from international developing partners who have committed as part of the UN system to ensure that inclusion and full participation of persons with disability take place and of course with implementing the CRPD and ratifying the optional protocol, the accountability framework would be strengthened. Additionally on the ground universal design would be part of the undergirding principles and tenets in implementing the convention on the disabilities act. Which universal design, if adopted and once adopted, benefits not only persons with disabilities but benefits the entire society as a whole, from cradle-to-grave one might see better service provision because once you begin to serve persons with disabilities and putting in all the measures in place to ensure effective service, service excellence will result and others will be a spinoff benefit to the rest of society.

In this regard my recommendation for the implementation of the Convention on the Rights of Persons with Disabilities and those disabilities act in countries in Jamaica and other countries ensure that there is full commitment and political will at the highest level to facilitate full implementation, ensure that there is financial and other resources, and commitment in that area to a limitation of the CRPD and the legislation. Ensure that there is a full understanding of what is required to facilitate inclusion and participation of persons with disabilities and a willingness to move the country towards a cultural shift, a cultural mindset shift because that is what it will take to ensure and guarantee the full inclusion.

Consistent and deliberate public education and disability sensitization at all levels of society and all of society, recognizing that every single aspect of the society has a part to play. The church has a part to play, private sector has a part to play, government ministries, agencies and departments have a part to play and it is not just about the organization that is there to serve persons with disabilities but disability inclusion must be and all of society approach and that is the way that it will have to work.

And so working towards progressive realization, ensure there is a call to action so that everyone knows their place and knows what they are called to do and to ensure that they participate in all the ways that they have been called to.

The act of the convention and the act exist to facilitate basic human rights and uphold the dignity of persons with disabilities who are by rights of citizens of Jamaica and citizens of any of the countries that we are seeking to implement this convention and if implementation fails, if this implementation fails whether in Jamaica or any other country as a nation, Jamaica and as other nations, we would have failed. And development status and further development status that we aspire to, would remain an elusive dream!

All of society has to commit to ensuring that each plays its part to ensure that persons with disabilities are included on an equal basis with others.

Thank you very much for this opportunity.

DR. FLOYD MORRIS

Thank you. I was checking back – we who are blind and operating these systems, we take a little time.

Thank you very much Dr. Hendricks for your presentation. Giving an insight into the Jamaican experience.

We have been having some difficulties in terms of getting Ms. Ifill on, while she is having some difficulties from her end in Barbados. She will not be able to join us at this time, unfortunately.

But I think we have had 3 very good presentations from Prof. Jacobs, Laverne Jacobs, from Dr. Hendricks, and from myself, and it is now time for us to go into the question-and-answer session from individuals and you can raise your hands, and my able assistant Ms. Gerson will assist me by recognizing the queue and who will come first in the Q&A.

Before I take the questions, just to remind you that this seminar is a joint collaborative effort between The Centre for Disability Studies at the University of the West Indies, Mona, and The Law, Disability & Social Change Project of the University of Windsor faculty of Law. This is just one of many collaborative efforts that will be spearheaded between The Centre for Disability Studies and The Law, Disability & Social Change Project of the University of Windsor Faculty of Law. With my colleague and friend Prof. Jacobs.

We are open for questions and any of the panellists can answer the questions that are being posed.

Are there any questions?

EMAD

yes please but I don't know how to raise my hand in Zoom.

Good evening and thank you for your invitation and thank you Dr. Jacobs. My name is Emad, how can we apply disability analysis in legislation or case law and in regards to implementation for CRPD in legislation to be created? How can we realize the disability as applied to this new legislation or new case law? Thank you.

DR. LAVERNE JACOBS

Thank you, if I understand the question, if we have new legislation how can we analyze the legislation to see whether or not the conventions requirements have been met, is that correct?

EMAD

Yes

DR. LAVERNE JACOBS

It is a very good question and I think that one of the principal things to do is think about the ways people with disabilities have been perceived within the legislation as well as what the impacts might be on persons with disabilities as a result of the legislation. If you take a new law from those 2 perspectives, it can help you to determine whether or not the convention's dictates have been met. So, as a practical on the ground reality, in order to do these things, it is sometimes necessary to engage quite a bit with those in the disability community -so disability rights groups for example-, sometimes it is not always automatically evident what the impact might be but it could be that somebody who has been part of a disability rights group can explain some of the experiences that they have had and how legislation may have an impact on them, going contrary to the rights that are protected. The human rights that they have as persons with disabilities.

DR. FLOYD MORRIS

Just to give you some support, as well, the CRPD has some guiding principles, I think there are 8 or 9 of them, along with some obligations for state parties. If a country signs and ratifies the CRPD they are now duty-bound to honour all the tenets of the CRPD and one way to assess if the legislation that is formulated, or any policy that is formulated fits within the criteria of the CRPD is to look at the principles that are articulated in the CRPD along with the obligations to the state parties because, each state party that signs and ratifies the CRPD has to report to the committee on the rights of persons with disabilities on the progress that they are making or the implementation of the CRPD. We use those guiding principles and the obligations of the state parties to do the assessment. It would be a good thing to look at the principles and the obligations to match those against the legislation or policies or programs that are being implemented locally to see if they fit within the framework of the CRPD.

DR. LAVERNE JACOBS

Yes –

DR. FLOYD MORRIS

Dr. Hendricks did you want to share anything on the point?

Any other questions?

CHEVELLE

I have a question here in the chat from Elizabeth Portman – she is asking can the optional protocol be used to spur adoption of the CRPD. For example can the UN force compliance with ruling under the OP – if so, how?

DR. FLOYD MORRIS

You are the lawyer, I will take my cue from you

DR. LAVERNE JACOBS

Can repeat the question if I understand, it is whether or not the optional protocol can spur compliance, was that it?

CHEVELLE

Yes but I can repeat – can the optional protocol be used to spur adoption of the CRPD for example, can the UN force compliance with the ruling under the OP? And if so how?

DR. LAVERNE JACOBS

Under the optional protocol there are 2 things that can be done, one is individualized complaints or communications and the other is inquiries. With the individual complaints or communications, the result is a decision rendered by the committee. The question is whether or not there can be enforcement of the decision, and really the question asked is part and parcel of a larger question dealing with international law and how much international law can be enforced. Given that states have their sovereignty, etc. Once states have ratified a convention, they should be following the commitments and obligations that are outlined within that convention, but really there is not a way, and this is all of international law, there is not a way to enforce international law in the sense of absolutely forcing a country to do things. There is pressure, pressure that is put on, reviews that are done, country reviews are done to see what has been done and has not been done, there are ways of putting pressure through shadow reports on the country. But there is not really a way to absolutely force a country to do anything under international law. I think having a decision from the committee that can be shared and can be used can be quite effective especially as a starting point. I think people often like to think of international law as a place to spark additional changes as opposed to an endpoint and a hammer coming down. So that is what I can offer in terms of what the optional protocol can do in terms of forcing countries to comply – I don't know if Dr. Morris has additional ideas that he would like to contribute.

DR. FLOYD MORRIS

What I understood from the question, how the optional protocol can force countries to sign or ratify the CRPD, and I don't think that is how it works in terms of mechanisms or provisions from the OP to get countries to sign and ratify the CRPD.

The optional protocol really came about because of the establishment of the CRPD and it was a mechanism that creates some opportunities where individuals can make complaints to the committee on the rights of persons with disabilities but there are some conditionalities that have to be met and in my – and this is neither myself nor Laverne is speaking on behalf of the Convention on the Rights of Persons with Disabilities, we are speaking in our own professional capacity as experts in the field of disability at the University of Windsor and at the University of the West Indies, and I want to make that lucid, the fact that the matter is that for the OP to be effective it is prudent for countries to sign and ratify the CRPD because what the CRPD is ratified and signed by the state it will require certain things to be done. And then that will bolster some of the things that are there in the optional protocol.

I am seeing increasingly seeing more and more cases coming to the committee from countries bought these are countries that have signed and ratified the treaty, the CRPD, and have signed optional protocol. So for example, we have seen a lot of cases coming from Australia, a lot of cases coming from European countries. These are countries that have signed and ratified the CRPD and also signed the optional protocol so both of them, it works best when we have both signed and ratified by state party.

DR. LAVERNE JACOBS

Those are wonderful points, the only other thing I would add, it is important to sign and ratify the optional protocol as well. Yes, certainly Australia has brought a large number of cases forward but another piece of the puzzle is to have the resources within the domestic home country in order to bring these cases forward. Australia has done an excellent job, I don't know exactly how they are doing it but there is funding available and clinics available for individuals to bring their individual communications to the CRPD committee, not every country is in that situation and when I think of Canada, for example, there are not as many opportunities for individuals to find legal resources, find the help to bring matters forward even within the country let alone to the CRPD.

There is definitely -Dr. Hendricks talked about political will and resources -- I think this is a recurring theme and one that we see in many different contexts in many different ways when it comes to the CRPD.

DR. FLOYD MORRIS

I think a big piece of the puzzle is to make sure domestic governments put forward the resources so that complaints can be brought to the CRPD committee. I want to add that as well there are some questions in the chat can you highlight them for us

CHEVELLE

Our next question is from Abi Begho, once the CRPD has been signed by a country, what are your recommendations for the next steps to be in terms of implementation, and what role can civil society play in this process?

DR. FLOYD MORRIS

I will start there, once the country signs the CRPD, the next step is to put in place a monitoring framework for what we are seeing here for localization. For its implementation locally the CRPD requires that monetary mechanisms be established, talking about independent human rights mechanisms to make sure that the provisions are being implemented nationally. And you can also establish regional monetary mechanisms to ensure that the provisions are being implemented right across society.

Critical to this process of implementation of the CRPD is the legislative framework. In order to make the CRPD in local jurisdiction, you have to bring domestic legislation into force. For example, in Jamaica when the disabilities act was formulated, the principles guiding that legislation were adopted from the CRPD. If you look up the domestic legislation, you will realize that some of the provisions capture different aspects of the CRPD so move from signing and ratifying of the convention to the point of establishing monitoring mechanisms as required by the CRPD and then you move to the point of establishing domestic legislation in order to facilitate the localization of the CRPD.

DR. LAVERNE JACOBS

There are a few elements I think are important. I really appreciate the question because I think that comparative aspects between countries when it comes to implementation and domestic implementation of international law is so important and interesting and can tell us a lot. So, it is definitely true that it's necessary to have a national human rights monitoring mechanism, section 33, and the legislative part. Certainly if you are from a country that has a dualist approach to international law, meaning that domestically you need to create legislation in order to implement it, and that is I think fairly common for many states and Canada is one of the states and Jamaica as well. What is interesting in terms of the comparative piece, is if one looks at Canada, Canada had legislation in place for quite some time and at the beginning of my talk I talked about the various enactments and legislative provisions that address disability rights to some extent, for example human rights legislation already addressed disability discrimination, or could cover it, and at the time of signing on and ratifying the convention, I think it was quite clear that Canada saw many of these rights were already recognized in legislation.

In some ways, in some jurisdictions there is probably legislation enacted that specifically deals with incorporating the convention and clearly Jamaica is one of those jurisdictions with the Disabilities Act but there are other jurisdictions that may have had legislation already and I talk about Canada because I am here but there are other jurisdictions, Ireland for example, that had disability discrimination legislation already in place and did not have to create specific legislation, so those were a couple of points. So the next steps in implementation, generally, making sure that there is a monitoring mechanism, making sure there is legislation that can carry the weight but I would say that on a less black and white level, there is

the idea of having that political and social will to implement this legislation and I think this is really important and key because even if there is legislation in place that specifically says that it will implement the convention, unless you have the motivation, unless you have politicians who are going to put money into this and politicians who will spread the word and uphold the convention as something worthwhile, you won't necessarily see that limitation or see it done in a way that is effective for persons with disabilities.

DR. FLOYD MORRIS

Thank you very much.

DR. CHRISTINE HENDRICKS

And before you move on – I agree with those I am also thinking that it would be important that other legislation line up to the convention and the principles and the articles that convention speaks about. So other legislation that deals with other matters should also line up with the convention to ensure that persons with disabilities, that their rights, are upheld and also very important for implementation we have said in the presentation, but there must be public education and awareness for that mindset change, the mindset change to take place, public education and awareness is something that is critical and foundational to help people to understand what it is, who person with a disability is and even helping the person with a disability, him or herself to really understand the place they should take in society because of how they have been left behind in the past, they could have come to just accepting that so the awareness is not just for others but people with disabilities themselves need to be brought into that awareness as well.

DR. FLOYD MORRIS

You made some very important intervention there, Dr. Hendricks, because one of the requirements of this CRPD is that countries have to abolish customs or practices and beliefs and laws that serve to discriminate against persons with disabilities so what you have legislation on the books you have to move to do a comprehensive overall modernization of those laws to bring them in line with the CRPD.

I am going to take –

I have about 3 more questions to take –

CHEVELLE

Yes

There are 3 questions in the chat, I will go in the order received first, from Tania Sleman, who says first I would like to thank all the speakers for the wonderful talk today. My questions largely revolve around allyship locally and globally, I want to ask, how can we ensure that the voices of individuals with disabilities

are highlighted and listed when having policy discussions without placing the burden of doing so on individual disability rights activists and individuals with disabilities? How do we hasten institutional changes required to effectively remove barriers for individuals with disabilities to gain governmental representation?

DR. FLOYD MORRIS

Could repeat the question?

CHEVELLE

How can we ensure the voices of individuals with disabilities are highlighted and listed when having policy discussions without placing the burden of doing so on individual disability rights activists and individuals with disabilities – that is one – and how do we hasten institutional changes required to effectively remove barriers for individuals with disabilities to gain governmental representation?

DR. FLOYD MORRIS

One of the things I want to say, or that is concerned, more and more with the CRPD the rights of persons with disabilities to express themselves is being recognized. It is not adopted and embraced at every section of society, but that is why we have this seminar to talk about the localization of the CRPD because the CRPD gives a voice to everything a person with a disability.

The truth is, you are not going to find every person with a disability present at a forum such as this but if they are here no one can stop them from speaking about issues relating to them and the topic.

Likewise, we have to make sure that we train more persons with disabilities in the advocacy process so that you have a broad spectrum of persons with disabilities who are adding their voices on policy and programmatic issues in their society.

One of the things I have noted and have observed from being one of the lead negotiators for Jamaica on the CRPD between 2002 and 2007, I noticed the same faces internationally, regionally, and nationally driving the disability agenda.

We have to train a younger cohort of persons with disabilities to participate. But also younger persons with disabilities have to be willing to take up the mantle to join the advocacy line for persons with disabilities and add their voices.

And the other panelists what to add in on that.

DR. LAVERNE JACOBS

I will add a couple of comments, I think those are wonderful remarks. I think the question connects a bit to my presentation. I had indicated that in order to seek change, often even flagging what the issues are

falls on the shoulders of persons with disabilities and I think this is one of those issues where there are some jurisdictions where people have been fighting for years or asking for years or pushing for years for disability rights to be recognized. So, there is an expression, advocacy fatigue, that is used and I think in order to avoid advocacy fatigue it is necessary to have newer voices come in from the disability community but there must certainly be a way for repeated issues to be recognized so that persons with disabilities do not have to go up again and again. I've seen this happen, issues reoccur and reappear even though you think they have been addressed. Legislation can be interpreted in different ways for example. Post-pandemic, a number of issues that one would have thought had disappeared before the pandemic arose again, so how do we make sure that the burden of bringing forward these issues, how do we make sure these issues are recognized so that there is not repetitive burden or advocacy fatigue? And it is not just in Canada and North America, I know this exists elsewhere as well. If I understand the question and Tania is one of my students, if I did not certainly I can chat about this a bit more later as well.

DR. CHRISTINE HENDRICKS

Yes, I agree with you in terms of the training of persons with disabilities and advocacy at all age groups because when that happens persons are not waiting for an invitation so although it should be the responsibility of government, private and private sector to ensure that people with disability are invited to the table. If persons learn the art of advocacy they themselves will ensure that they are there when the discourse and the discussions are taking place. I was indicating that self-advocates, persons who are already advocates ensure that they too are at the policy level and therefore for the discussions and not leaving it for an invitation but make themselves present. In terms of the convention and the act it encourages persons with disabilities should be part of the political process, part of wards and public bodies, take leadership positions and lead out so it is not left for others to advocate on their behalf but they are part and parcel of the governance framework of any country and that is critical.

DR. FLOYD MORRIS

Great.

CHEVELLE

Our next question is from Glenn Liburd, and he has 2 questions, does civil society have to submit a shadow report each time the state party submits there is? And, is the state party expected to have their report reviewed by civil society before it is submitted?

DR. CHRISTINE HENDRICKS

If I can jump in – yes I believe that civil society does or should do a shadow report but more importantly I believe that in doing its report to government should include as part of its stakeholders civil society to review and give input, because in a number of instances there are data in other areas of society, other than in government, so civil society should definitely weigh in. They should be part of the dissemination

of the report to the stakeholders so that they know what is being said and put in their input because it will all go for less antagonism when it comes up for that constructive dialogue, there will be better cohesion, or the country will be going with the report that is accepted all around and I know that government and civil society sometimes will butt heads, but having them as part of stakeholderhood will serve, rather than being negative

DR. LAVERNE JACOBS

I don't have anything to add. I think those are wonderful points, thank you.

DR. FLOYD MORRIS

Just to indicate, shadow reports are strongly recommended, they provide an alternate view and gives the members of the committee an objective lens and terms of assessing and questioning the state parties.

It is not, the shadow report that is being reviewed by the committee, it is the state party review, the state party report but they use the shadow report to guide and assist in terms of making a determination as to what is really taking place in the state part.

The final question –

CHEVELLE

Our final question is from Shadae Hayes, on what grounds can a country reject implementation of the CRPD and what would be possible next steps in that case? And, how much impact does the civil society have on positive move towards implementation?

DR. FLOYD MORRIS

I have seen the United States for example refuse to sign and ratify – ratify – the CRPD because I think they have signed but they have not ratified. They indicate that the Americans with Disabilities Act, ADA, has been in place long before the CRPD and in their estimation is a piece of legislation that provides Americans with greater protection. On that basis they have not ratified the CRPD – am I correct Laverne

DR. LAVERNE JACOBS

The US has not ratified the CRPD, you are correct. If I can add an additional dimension: when it comes to countries that have signed and ratified, there are no "legitimate" grounds for not implementing the CRPD. If I understand the questions on what grounds can a country reject implementation of the CRPD there are no legitimate grounds. A country, if they have ratified, ratification is essentially putting a voice to commitment to say we will commit to do these things. That does not mean that in practice countries do all the things that are required under the convention and that is the point of our country reviews. The

periodic reviews that are done under the convention are to see the extent to which a country has lived up to the commitments. As Dr. Morris has indicated, the shadow report help us identify places by showing, usually through lived experience, exactly how words on the books or the words being said through commitments of ratification do not actually square with what is happening on the ground.

The next question of what would be possible next steps in that case, if a country does not implement. In their reviews, these places will be noted, the places where the country has not implemented will be noted and then on further reviews we can follow up and say: at the last review we had a given concluding observations indicating you should do the following things, have they been done? We will have information as to whether or not they have been done.

How much impact will civil society have on the move towards implementation? I think there's room for civil society to have an impact but again I think the question of how much of an impact really depends on a number of factors including how well they're resourced and the extent they are respected and can make civil society and shadow reports. So there are a lot of pieces on the ground that depend on the context and the nation of relationship with civil society.

DR. FLOYD MORRIS

Thank you very much!

We have been discussing the localization of the Convention on the Rights of Persons with Disabilities for the past 2 hours. I am certain that we could go on and on with the discussion.

At some point in time, we have to bring the discourse to an end and unfortunately that time is now.

I just want to take the opportunity on behalf of my colleague and friend Prof. Laverne Jacobs, from The Law, Disability & Social Change Project of the University of Windsor Faculty of Law, to thank the participants, myself and Prof. Jacobs and Christine Hendricks for participating and thanks to Kerryann Ifill even though she was unable to make it online, we want to thank every single attendee who made the sacrifice and time to be here in this forum. And to share in this very important discussion because the Convention on the Rights of Persons with Disabilities is designed to transform the world to make it a better place for persons with disabilities. Persons with disabilities have been marginalized, isolated, they have been excluded from their society because of no reason of their own, the only factor is that they have a disability.

And what the CRPD seeks to do is ensure that those countries that have signed and ratified the CRPD at the national or regional, local and community level, the provisions of this global treaty are recognized and permitted.

It is what we call the localization of the CRPD.

And we thank you very much, and just to say to you, look forward to further invitations from the Center for Disability Studies of the University of West Indies faculty of Social Sciences and the Law Disability and Social Change Project of the University of Windsor Faculty of Law to look out for further invitation from similar seminars that we will have in the future.

We thank you very much, Prof. Jacobs, did you want to say anything in closing?

DR. LAVERNE JACOBS

Just to reiterate thanks and how wonderful it was to be able to speak to you this evening and share information about the CRPD and answer your questions. So, thank you again and thank you Dr. Morris and the Center for Disability Studies at UWI Mona, it has been a wonderful experience for us to collaborate with you and I'm so delighted we did this and will be doing more so thank you, thank you and good evening.

DR. FLOYD MORRIS

Thank you, Dr. Hendricks –

DR. CHRISTINE HENDRICKS

Certainly, it is my pleasure to join with yourself, Sen., and professor Jacobs in this very important discourse because disability inclusion rights across the globe is critical. It is important not only for persons with disabilities themselves but for the betterment of society, we all benefit when we include persons with disabilities and leave no one behind as the SDGs commits to. I too look forward to future conversations and I trust that our participants benefited greatly, thank you it was my honour.

DR. FLOYD MORRIS

Thank you very much and I also want to thank Ms. Chevelle Gerson for assisting want to thank Francesca Lloyd-McDavid and all of that for the seminar and we want to thank you all for sharing and for joining and participating.

God bless you.

Thank you.

DR. CHRISTINE HENDRICKS

Have a wonderful evening everyone.

DR. LAVERNE JACOBS

Thank you and good evening.