

process, for example, that such gaps could be filled by amending the applicable laws or by adopting disability specific or child protection laws or by enacting anti-discrimination laws. Therefore, the choice of the nature of legal reforms will be informed by the measures that should be taken to fill the gaps that exist in the legal framework as a whole with a view of ensuring that it conforms to the fundamental attributes.

Lastly, it has been found that the implementation frameworks of Malawi and South Africa do not recognise certain 'inclusion focused' rights such as the right to 'community living' in their legal provisions and policies. This observation implies that even if states adopt disability specific or child protection laws, or any other applicable laws and policies, the implementation framework could still fail to make provision for other rights that play a significant role in ensuring conformity to the fundamental attributes or their 'sub-categories'. Such gaps could be addressed through the 'domestication' of the CRPD and the other applicable treaties.



Indeed, Malawi and South Africa have not 'domesticated' the CRPD. If the two countries domesticate the Convention, the 'omitted' right to 'community living' would be incorporated into their domestic implementation frameworks. Similarly, in the case of Malawi, the 'omitted' obligation to provide reasonable accommodation would be incorporated into the Disability Act or other applicable laws; whilst in respect of South Africa; the appropriate legal definition of disability would be incorporated into the PEPUDA or other applicable laws.

The implication of this for African states, especially the countries that have a dualist legal system, is that they will be expected to appreciate the fact that the 'domestication' of the applicable treaties might be indispensable considering that any measures they undertake might still have gaps that prevent the achievement of full conformity to the attributes. Therefore, it can be concluded from these observations that the pertinent African states parties should be expected to demonstrate flexibility in their approach to domestic implementation with regard to the measures they undertake for this purpose.

Ultimately, such measures must be geared towards ensuring that the domestic framework as a whole conforms to the fundamental attributes since it is such framework that will be in a position to ensure the full human rights enjoyment by children with disabilities on an equal basis with other children. In this way African states will be acknowledging that the phrase 'on an equal basis with other children' in reference to the enjoyment of human rights by children with disabilities⁶⁹ (and 'on an equal basis with others' in reference to human rights enjoyment by persons with disabilities broadly) as used by the CRPD embodies its philosophical vision to recognise and protect the 'equal dignity' of persons/children with disabilities.⁷⁰ Indeed, just as it has been stated in the Vienna Declaration that the 'place of [persons/children with disabilities] is everywhere',⁷¹ persons/children with disabilities should share the same space occupied by other persons/children. To realise this 'goal', the first step to be taken by African states is to look no further than ensuring that they design the framework for implementing the rights of children with disabilities in such a way that it conforms to the fundamental attributes identified by this study. In this way, children with disabilities will enjoy human rights on an equal basis with other children in addition to having their place together with other children 'everywhere'.

(97, 000 words)

⁶⁹ See e.g. preamble para r & art 7(1), where it specifically requires children with disabilities to enjoy human rights 'on an equal basis with other children'. See 2.4.1, 2.4.5 & 2.6.1 in Chapter 2 & in 3.3.2 & 3.3.3 in Chapter 3 of this study for the pertinent discussion.

⁷⁰ See e.g. CRPD, preamble para y & & art 1.

⁷¹ See Vienna Declaration (1993) Part I, para. 22, & Part II, paras 63 & 64, where it is stated that:

'Every person is born equal and has the same rights to life and...active participation in all aspects of society...*The place of disabled persons is everywhere*. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers... which exclude or restrict full participation in society.'

(Emphasis added by candidate).

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