

Implementation Measures to Be Taken By African States Parties to Realize the Rights of Children with Disabilities

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1. INTRODUCTION

The inclusion of children with disabilities is not simply a charitable act. It is a process inspired by the promotion of human rights that benefits the entire population of a country and provides a clear statement of a government's commitment to all its citizens. International provisions relating to the protection of children with disability rights exist within various international and regional legal systems. For the purpose of this paper, we write only discuss the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and, the African Charter on the Rights and Welfare of the Child. These instruments oblige State Parties to adopt appropriate legislative, administrative and other measures for the implementation of the rights of children with disability.

This paper focuses on the appropriate legislative, administrative and other measure that has to be taken by African State Parties for the full realization of the rights of children with disability.

Therefore, the paper will address the above and other related issues in two parts. Part one discusses the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and, the African Charter on the Rights and Welfare of the Child. Part two discuss the obligation of African States parties to implement these Conventions through appropriate legislative, administrative and other measures for the achievement of the rights of children with disability. Finally, the paper will come to an end by summarizing the main point of it.

1.1 International and Regional Instruments for the Protection of Children with Disabilities:

One basic human rights principle laid down in the Universal Declaration of Human Rights is that all human beings are born free and equal in dignity and rights.¹ However, specifically vulnerable groups such as women, indigenous people, and children have been assigned special protection by the UN legal framework.

It is with no doubt that persons, and particularly children, with disabilities, have historically experienced severe forms of abuse and discrimination, violation of their human rights, social exclusion and maltreatment.² Apart from dire social exclusion, many children with disabilities have no access to services, to education, to cultural and recreational activities, to vocational training and to other forms of important social and developmental activities. Many of them are in institutions, while in many societies the mere birth of a child with disability is linked to cultural, religious and social beliefs (i.e. 'curse', 'bad blood', etc) that lead to an ostracism of these children from their community environment.³ Thus, Children with disabilities are one of the most acknowledged categories of children who are found in difficult social

¹ Article 1, Universal Declaration of Human Rights

² Children with A Disability, project Work of The Master of Advanced Studies in Children's Rights (2007-2008), Institut Universitaire Kurt Bosch, and University De Fribourg. Available at www.childsrights.org/html/documents/themes/mcr_handicap.pdf

³ Ibid

situations all around the world. The United Nations has made a strong commitment to the human rights of persons with disabilities.⁴ This commitment has been reflected in major human rights instruments as well as within specific measures and initiatives, which began with the 1971 Declaration on the Rights of Persons with Mental Retardation and now has culminated in the 2006 Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

In spite of the almost universal ratification of the Convention on the Rights of the Child, and the social and political mobilization that led to adoption of the Convention on the Rights of Persons with Disabilities, disabled children and their families continue to be confronted with daily challenges that compromise the enjoyment of their rights. Discrimination and exclusion related to disabilities occur in all countries, in all sectors of society and across all economic, political, religious and cultural settings.⁵

1.1.1 Convention on the Rights of Persons with Disabilities:

Despite being entitled to protection under the existing human rights treaties through the cross-cutting principle of equality and non-discrimination, persons with disabilities have largely remained “invisible” in the human rights system and absent from the human rights discourse, and disability is considered to be a social and development rather than a human rights issue⁶ The lack of recognition of disability as a human rights issue has resulted in persons with disabilities being exposed to unique challenges in the enjoyment of their human rights. The UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, and make specific reference to children is provided in its Article 7.⁷ The Convention enshrines the important shift that has taken place over recent years in understanding disability, moving away from purely medical concepts towards notions that consider the role of factors in societies the so-called “social model”—in the understanding of disability. On the basis of the social model, the Convention moves forward by establishing obligations on States to promote inclusive societies “that anticipate and respond to variations in human characteristics that are inherent to the human condition” and that put in place all the appropriate measures to ensure that all persons enjoy all human rights⁸.

In general, building upon the CRC, the principles summarized in article 7 of the CRPD affirm the fundamental rights of all children with disabilities to the entire range of human rights inherent to all children. Requirements for the best interests of the child and for the participation of the children themselves in decision-making are particularly important for children with disabilities, whose interests and voices are all too frequently overlooked and undervalued.

1.1.2 Convention on the Rights of the Child:

The Convention on the Rights of the Child was once described by Nelson Mandela as “that luminous living document that enshrines the rights of every child without exception to a life of dignity and self-fulfillment.”⁹ The 1989 Convention on the Rights of the Child (CRC) is the first binding instrument in international law to deal comprehensively with the human rights of children, and is notable for the inclusion of an article specifically concerned with the rights of children with disabilities.¹⁰ CRC sets out the full range of human rights—civil, cultural, economic, political and social rights—

⁴ For a comprehensive account of human rights initiatives see Herr, S., L. Gostin, and H. Koh (Eds), *The Human Rights of Persons with Intellectual Disabilities: Different but equal*, Oxford University Press, Oxford, 2003.

⁵ Promoting the Rights of Children with Disabilities, UNICEF, Innocenti Research Center available at www.unicef-irc.org/publications/pdf/digest13-disability.pdf

⁶ Quinn, G. and others (2002) *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (Geneva, United Nations), accessed from www.ohchr.org/Documents/Publications/HRDisabilityen.pdf p. 23

⁷ Article 7, CRPD states: “1. States Parties shall take all appropriate measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right”.

⁸ Rioux, M. and A. Carbert (2003). “Human Rights and Disability: The International Context”, *Journal on Developmental Disabilities*, vol. 10, No. 2 www.oadd.org/publications/journal/issues/vol10no2/download/rioux.pdf

⁹ Taken from a statement on *Building a Global Partnership for Children*, Johannesburg, 6 May 2000

¹⁰ Ibid

pertaining to children under 18 years of age.¹¹ It identifies four general principles that provide the foundation for the realization of all other rights: non-discrimination; the best interests of the child; survival and development; and respect for the views of the child. The principle of non-discrimination is reflected in article 2 of the CRC that expressly prohibits discrimination on the grounds of disability:

States parties shall respect and ensure the rights set forth in the present Convention to each child ...without discrimination of any kind, irrespective of the child's...disability...or other status.

This principle is motivated by the recognition that segregated or separate facilities for education, health care, recreation and all other aspects of human life on the basis of disability can create and consolidate exclusion.¹² Article 23 of the CRC refers to the obligations of States parties and recognizes that a child with mental or physical disabilities is entitled to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community. This special article on children with disabilities is included "without prejudice to" the general applicability of the principles and provisions of the CRC to the situation of children with disabilities.¹³ The article adds force to the other provisions of the CRC, including freedom from discrimination, respect for the dignity of the child and the cultivation of her or his potential to assume a responsible and independent life in society.

1.2 The African Charter on the Rights and Welfare of the Child:

The African Charter on the Rights and Welfare of the Child' is an African regional human rights instrument adopted by the Organization of African Unity (OAU), now the African Union (AU),¹⁴ on 11 July 1990.¹⁵ The Charter entered into force on 29 November 1999. It was adopted within a year of the adoption of the United Nations Convention on the Rights of the Child (CRC). One of the reasons for a separate African Children's Charter was that during the drafting process of the CRC, Africa was under-represented.¹⁶ In addition, it was considered necessary to address issues which are peculiar to Africa but which were not included in the CRC, such as: those practices and attitudes which have a negative effect on the life of the girl child; displaced persons arising from internal conflicts; the African conception of the community's responsibilities and duties; and the particularly difficult socioeconomic conditions of the continent.¹⁷ On the situation of children in Africa, the Committee of Experts on the Rights and Welfare of the Child made the following remark:¹⁸

African children represent more than half of the continent's population and their vulnerability cannot be over-emphasized. Africa's children are most disadvantaged in many ways: their life chances are limited; they are exposed to violence; they are used as child soldiers; they are vulnerable to malnutrition and diseases, in particular the HIV/AIDS pandemic; they are deprived of education; their rights are violated; they are abused and exploited. While Africa's children are most vulnerable, addressing their vulnerabilities and rights has not been prioritized at national level. Governments continue to overlook children issues when formulating national development policies and programmes and the Ministries responsible for implementing activities on children are not allocated sufficient budget.

Therefore, efforts to promote the welfare of the child have to be redoubled, inter alia by efficiently implementing the existing child-related legal instruments. Therefore, the Charter is an important tool for protecting and promoting the rights of children with or without disability in Africa.

¹¹ UNICEF, *Convention on the Rights of the Child: Introduction*, The rights include the right to survival (art 6); to develop to the fullest (art 6); to protection from harmful influences, abuse and exploitation (art 19); and to participate fully in family, cultural and social life www.unicef.org/crc/index_30160.html

¹² Ibid

¹³ Supra note 5

¹⁴ As per the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government in Sirte, Libyan Arab Jamahiriya, 8-9 September 1999, OAU Doc. EAHG/Draft/Ded. (IV) Rev.1. See also the Constitutive Act of the African Union of 11 July 2000 which entered into force on 26 May 2001.

¹⁵ The fact sheet can be found in the African Charter on the Rights and Welfare of the Child or on the website of the African Commission on Human and Peoples' Rights (www.achpr.org) or the website of the African Committee of Experts on the Rights and Welfare of the Child (www.africa-union.org/child/home.htm).

¹⁶ Health and human rights, The African Charter on the Rights and Welfare of the Child available at www.who.int/entity/hhr/African%20Child%20Charter.pdf

¹⁷ Ibid

¹⁸ See, the Committee of Experts on the Rights and Welfare of the Child 2005 available at Www.Ihrda.Org/515-2/

2. GENERAL STATE PARTIES OBLIGATIONS TO IMPLEMENT THE RIGHTS OF CHILDREN WITH DISABILITY

2.1. Obligation to adopt appropriate legislative, administrative and other measures

In the context of international human rights law, implementation means moving from a legal commitment, that is, acceptance of an international human rights obligation, to realization by the adoption of appropriate measures and ultimately the enjoyment by all of the right in question¹⁹.

The CRPD is an international treaty, but the main responsibility for its implementation lies with national governments. Implementation of human rights is essentially a domestic issue. The CRPD reflects this principle by giving guidelines to States Parties on domestic implementation. One way in which this can be operationalised is stated in article 4(3) of the CRPD. It requires that States Parties “in the development and implementation of legislation and policies to implement the Present Convention, and in other decision-making processes concerning issues relating to persons with disabilities ... closely consult with and actively involve persons with disabilities, including children with disabilities.”²⁰ Article 32(1)(a) embodies the principle of inclusion as it asks that States Parties ensure that measures relating to international cooperation are accessible to, and inclusive, of persons with disabilities. In addition, article 33(3) of the CRPD requires that persons with disabilities and their representative organizations are involved and fully participate in the domestic monitoring process.

By requiring States parties to give effect to their obligation to implement the Convention “by all appropriate measures” (CRPD, article 4, Para 1 (a)), the CRPD adopts a broad and flexible approach to implementation, that allows for the legal and other particularities of States to be taken into account²¹. Notwithstanding such flexibility, the means through which the Convention is given effect must be appropriate in the sense of producing results that are consistent with the full discharge of the obligations in the Convention.

The Convention makes specific reference to the obligation of States parties to adopt legislative measures as a matter of general obligation: article 4(1(a and b) requires States parties “to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention” and “to take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.”

Beside the general obligation contained in article 4, other articles in the Convention that deal with specific rights make explicit reference to the obligation of States parties to adopt legislation to implement the Convention. Article 5 on “equality and non-discrimination”, for example, requires States parties to guarantee to persons with disabilities “equality before and under the law” and “effective legal protection against discrimination”. Article 9 on “accessibility” requires States parties to “develop, promulgate and monitor the implementation of minimum standards and guidelines”. Article 16 on “freedom from exploitation, violence and abuse” requires taking “all appropriate legislative ... measures to protect persons with disabilities”. Article 22 on “respect for privacy” refers to the right of persons with disabilities to be protected by law against interference or attacks on their privacy. Article 32 on “statistics and data collection” requires States to have and to comply with legislation on data protection in the collection of information.

In addition to CRPD, treaty bodies in charge of monitoring other human rights treaties have often recommended States parties to undertake, upon ratification, an internal review of domestic legislation, administrative and other measures for compliance international standards. For instance, the Committee on the Rights of the Child in its General Comment No. 5 emphasizes particularly this requirement, by stating that “a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance is an obligation” of the State²².

The Committee in general issued a comprehensive “check-list” of activities (action plans) to be undertaken by governments, including: ratification of other relevant human rights treaties; withdrawal of reservations to treaty

¹⁹ See, United Nations Economic and Social Council 2009 “Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights”, E/2009/90, available at www.un.org/Docs/journal/asp/ws.asp?m=E/2009/90

²⁰ See, The Convention on the Rights of Persons with Disabilities. Art 4(3) Available at: <http://www.un.org/esa/socdev/enable/conventioninfo.htm>.

²¹ See, United Nations Committee on Economic, Social and Cultural Rights (1990). “General Comment No. 3 the Nature of States Parties’ Obligations”, E/1991/23, Para. 3 available at www.unhcr.org/refugees/crc/crc-generalcomment5.html

²² See, United Nations Committee on the Rights of the Child (2003). “General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child”, CRC/GC/2003/5, Para. 18 Available at www.unhcr.org/refugees/crc/crc-generalcomment5.html

provisions; review of existing legislation to make it compatible with child rights standards; provision of effective remedies to victims of child rights violations; development of rights-based national strategies; establishment of coordination mechanisms, e.g. between state authorities at central and/or local level; supervision of services even after privatization; impact assessment, evaluation and other monitoring activities; budgetary allocations and making children visible in budgets; child rights training, education and awareness-raising; establishment of independent human rights/ombudsman institutions; cooperation with civil society; cooperation with children directly; international cooperation and specific indicators data collection and research.²³

In its general comment no.5, the CRC Committee first explains and defines the concept:

*“When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States Parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction. Article 4 requires States Parties to take ‘all appropriate legislative, administrative and other measures’ for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation – of making reality of the human rights of children – needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.”*²⁴

Therefore, despite the degree of autonomy that States Parties enjoy in deciding the strategies to implement the Convention at the national level, treaty bodies have consistently recognized that “in many instances legislation is highly desirable and in some cases may even be indispensable”, even if it is by no means exhaustive of the obligations of States parties²⁵.

3. IMPLEMENTATION MEASURES TO BE TAKEN BY AFRICAN STATES PARTIES TO CATER FOR THE NEEDS OF CHILDREN WITH DISABILITIES

3.1. Comprehensive Reviewing and Reforming National Legislation and Policy with International Human Rights Norms:

There are several reasons why a State Party would undertake to review and reform its legislation relating to children with disability. In some places, several factors may combine to prompt an examination of legislation, social policy, administrative structures and the allocation of resources that reflect a State's effort to meet its obligations to its children with disability.²⁶ The reasons for undertaking the exercise will, to a large extent, determine the process followed and the resulting actions. One reason for review and reform of legislation could be to ensure that the State Party is meeting its commitment and obligation under CRPD, CRC and other international and regional instruments to undertake all appropriate legislative, administrative and other measures for the implementation of the rights of children with disability.

Review and reform of legislation has also far-reaching significant for dualist countries which do not automatically adopt international instruments into national law, the existing legislation needs to be reviewed to see the extent to which it fulfills the State's obligations under the CRPD, CRC and other instruments.²⁷ If there are gaps or contradictions, new legislation needs to be adopted to establish the full legal implementation of the provisions in the country.

Thus, since many Africa countries are become party to CRPD, CRC, ACRWC, and other international and regional human rights instruments, the first step in implementing their obligation is to review whether their legislations and policies are comply with these Conventions. The review should include constitutional provisions, statutes, codes and regulations, provides a means of understanding the extent to which laws discriminate against children with disabilities, as well as the extent to which they promote the rights of children with disabilities.²⁸

²³ Ibid

²⁴ Ibid

²⁵ Supra note 23

²⁶ See, Assessing Compliance of National Legislation with International Human Rights Norms and Standards available at www.unicef.org/.../Assessing_COMpliance_of_National_Legislation

²⁷ Ibid

²⁸ Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human rights monitors available at www.ohchr.org/Documents/.../Disabilities_training_17EN.pdf

Thus, the review should identify normative gaps or laws that are in conflict with these international and regional Conventions. For instance legislation that restricts the rights of children with disabilities on the grounds of their disabilities is naturally in conflict with these Conventions. Therefore, states parties at the national level should abolish of various norms, such as legislation that permits the institutionalization of children with disabilities on the grounds of their disability, alone or in conjunction with other factors; legislation that excludes children with disabilities from the general education system is in violation of these Conventions. For instance, the CRC Committee in its recommendations to Benin, welcomed “the measures taken to strengthen the legal framework on the right of the child and to bring the national legislation into conformity with the Convention, notably the Persons and Family Code and the draft Children’s Code.”²⁹ However, the Committee noted that this legislation in some areas was not coherent (particularly on issues of violence against children) and that other national legislation was not brought in conformity with the CRC.³⁰ Thus, any meaningful review should not be limited to the traditional scope of disability-related legislation, but should extend to all areas of the law, civil and criminal law included.³¹ The review and reform should be followed by meaningful analysis of the gaps and obstacles in legislation that lead to inequality and non-realization of the rights of children with disability. The review and reform should be, among other things:³²

- Developing legislation at the national level which deals directly with matters affecting the rights of children with disability, such as laws relating to protection from abuse and exploitation; administration of justice; provision of services such as education (e.g. school enrolment and completion targets); health care (e.g. immunization coverage); assignment of family responsibilities; and creation of opportunities for children with disability to participate in national life; and nutrition (e.g. access to adequate and appropriate food and nutrition).
- Making the National Constitution to reflect the principles and norms of CRPD, CRC and other international and regional instruments
- Identifying laws to be amended or abolished in order to harmonise all national legislation with CRPD, CRC other international and regional instruments standards for the protection of children with disability.

In general, the UN High Commissioner also recommends State Parties reviewing both laws and policies for compliance with the CRPD.⁴¹ In so doing; the High Commissioner recommends that governments confer with civil society, including organizations representing persons with disabilities.³³ Therefore, States Parties not only have an obligation to stop discriminating against children with disabilities, but also an affirmative obligation to provide the services necessary for children with disabilities to engage in society on an equal basis as those without disabilities.

3.2. Non-discrimination and Equality:

Here, discrimination can manifest itself in various ways: through cultural prejudices, socio-economic, legislative or administrative measures, as well as environments that are inaccessible to persons with disabilities. In any cases, state parties should include prohibition of discrimination on grounds of disability in all their national legislation. In its General Comment No. 9 on “The rights of children with disabilities”, the Committee on the Rights of the Child notes that,³⁴

“... Discrimination takes place – often de facto – regarding various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization lead to their marginalization and exclusion and may even threaten their survival and development in the form of violence. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, and overprotection, negative attitudes misbelieve and prevailing prejudices against children with disabilities remain strong in many communities leading to the marginalization and alienation of children with disabilities...”

²⁹ Source: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.BEN.CO.2](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.BEN.CO.2).

³⁰ Ibid

³¹ Supra note 23 Par.31

³² The issue of harmonization of national legislation is discussed in great detail in Chapter II of the Handbook. For a more comprehensive introduction to law review and law reforms see: Lundy, Christine. Chapter II of the Handbook, *Compliance of National Legislation Related to Children with International Human Rights Standards and Norms*, UNICEF, DPP (2007).

³³ United Nations High Commissioner for Human Rights, “Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General: Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities,” Human Rights Council, 10th Session, 29 January 2009, UN Doc. No. A/HRC/10/48. Para 67

³⁴ See, Committee on the Rights of the Child, General Comment No. 9: The Rights of Children with Disabilities. 29 Sep. 2006. UN doc. CRC/C/GC/9 Para. 8, <http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.GC.9.doc>

Therefore, the Non-discrimination and equality legislative reform will help State Parties to tackle the root causes of discrimination and strives to eliminate the gaps and obstacles responsible for exclusion and discrimination of children with disability. It is one of the most effective strategies to counter laws and cultural and traditional practices that affect and disempower children with disability.³⁵ Therefore, State Parties should prohibit all discrimination based on ethnic or national origin, gender, age, disability, social condition, health condition, religion, opinion, preferences, marital status or any others threat to human dignity and nullify the rights and freedom of children with disabilities.

3.3. Reasonable accommodation and accessibility:

The concept of reasonable accommodation is extremely important under the CRPD. Without reasonable accommodation, individuals with disabilities will not be able to realize their right to dignity, equality, and non-discrimination because they will not be able to fully participate in society.³⁶ The necessity of reasonable accommodation for children is further emphasized in article 7, which states children in particular must be “provided with disability and age-appropriate assistance. Thus, State Parties should enact laws that sates; failure to provide reasonable accommodation to children with disabilities constitutes discrimination, because without reasonable accommodations, children with disabilities will not be able to participate fully in society and are therefore subject to discrimination.

One of the most pervasive problems that all people with disabilities face is the lack of accessibility to public spaces and public services.³⁷ It will be too difficult for Children with physical disabilities to be able to access schools, health care centers, and public places if the buildings and the transportation do not accommodate children with disabilities. Thus, State Parties should enact laws and regulations that assure to make accessible the physical environment, transportation, information technology and communication.

In general, since society’s attitudes and beliefs are reflected in the laws that govern its affairs. Segregation of, and discrimination against children with disabilities is perpetuated and reinforced by discriminatory legislation.³⁸ These laws, in turn, are a reflection of society’s misperceptions about children with disabilities.³⁹ However, the opposite holds true as well—society’s attitudes and beliefs are influenced by the law. The law, therefore, is also capable of changing society’s attitudes and beliefs. In fact, one of the most dominant characteristics of the 20th century jurisprudence has been the recognition and utilization of the law as a tool for change.⁴⁰ In particular, domestic laws are considered “one of the most effective means of facilitating social change and improving the status of children with disabilities.”⁴¹ Therefore, State Parties should establish comprehensive policies, programmes and mechanisms to benefit children with disabilities. The law should focus on the principle of equal opportunity, health services, education and training, and, including by the provision of transportation, improved housing conditions and decent living environments. Therefore, it can be concluded that African State Parties should be committed to protect children with disability rights by incorporating a broad variety of international and regional legal instruments into the domestic system, because these instruments contain a broad variety of material rights for children with disability.

4. IMPLEMENTATION AND ENFORCEMENT OF LEGISLATIVE MEASURES

‘Putting the law in place’ or setting standards to review and reform with international standards is not an exercise limited to the legislative branch, but is a process that links to effective implementation through involvement of different stakeholders, social policy support, institutional support and adequate resource allocation.⁴²

4.1. Mainstreaming Child Disability Issues in Various Government Institutions:

Addressing child disability issues in the legal framework is critical for the realization of children with disability rights. The Committee on the Rights of the Child provides that:⁴³

³⁵ Ibid

³⁶ The Rights of Children with Disabilities in Viet Nam Bringing Vietnam’s Laws Into Compliance With The UN Convention On The Rights Of Persons With Disabilities December, 2009 Prepared For UNICEF By Eric Rosenthal And Mental Disability Rights International available at www.disabilityrightsintl.org/.../UNICEF_final_legal_analysis_report

³⁷ Ibid

³⁸ UN Enable, Overview of International Legal Frameworks for Disability Legislation. Available at: www.un.org/esa/socdev/enable/disovlf.htm.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Goonesekere, Savitri, Protecting the world’s children: Impact of the Convention on the Rights of the Child in diverse legal systems, Introduction and Overview, UNICEF, Cambridge University Press (2007).

“...implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children’s rights across Government, between different levels of government and between Government and civil society – including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children’s lives and children’s enjoyment of their rights. Few, if any, government departments have no effect on children’s lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.”

Therefore, State Parties should link inclusion for children with disabilities to broader developments such as the overall reform of the country’s education system and curriculum, and to changes addressing the status of marginalized groups such as government ministries, local authorities, development agencies and children with disabilities and their families, because the rights of children with disabilities are often most effectively promoted when ‘disability issues’ do not come under the responsibility of a single ministry.⁴⁴ The mainstreaming of disability issues into various programmes and throughout established sectors, such as health, education and social welfare ministries, will involve establishing a focal point for disability to ensure that children with disabilities are included in all programmes. Without this, child disability issues are in danger of being submerged and overlooked.

4.2. Institutional Reform and Development:

State Parties should develop Institutional reform for a better protection of children with disability. Among others things:⁴⁵ Creating institutions that are in line with human rights standards and principles to direct, implement and enforce laws or reforming institutions; Building institutional capacity, e.g. training judges and helping them to develop jurisprudence on child disability rights, to refer to CRPD, CRC and Aff and other human rights principles and provisions in their decisions; In relation to the judiciary, strengthening capacity to develop a judiciary that is independent and committed to the rule of law; Facilitating the establishment of monitoring systems and/or a supportive infrastructure: Institutional reform can also refer to non-legal or semi-legal models (i.e. Ombudspersons, Human Rights Commissions with a children’s focus, Child Protection Authorities, Municipal Boards for Child Protection, etc.); Establishing mechanisms for free legal advice/service etc.

4.3. Budget and Resource Allocation:

The need for funding for legislative reform is highlighted by the CRC Committee, which views it as necessary to realize children’s rights and incorporate the instrument into the domestic legal system⁴⁶ Law implementation measures, such as budget and resource allocation, are essential to legislative reform.

“Legislative reform and the subsequent implementation of legislation through policies and institutional development require adequate and often substantial allocation of funds from governments to ensure concrete implementation and to make children’s rights a reality.”⁴⁷ Funds are not only critical to the immediate implementation of policies, but also to ensuring adherence to these policies (e.g. by providing for economic opportunities to the group who will be directly or indirectly affected by the law).⁴⁸ Consequently, the State Parties policy-making and budgetary process should be intimately related.⁴⁹ This implies, among others:⁴⁹ A focus on realistic resource allocation and budgeting for enforcement of laws; Awareness-raising campaigns, in particular law awareness activities (translation of laws into national, local, minority languages, education campaigns and dissemination of laws, availability of new legislation to public in reader-friendly format etc.); Capacity-building/Training of civil servants, including professionals working for and with children, such as teachers, psychologists, law enforcement officers, police officers, lawyers, etc; Mechanisms to ensure access to the judicial system (e.g. ensure availability of financial and other assistance).

⁴³ Supra note 27, Para. 27

⁴⁴ Supra note 28

⁴⁵ See, Comprehensive and Holistic Legislative Reform on Behalf of Children’s Rights available at

⁴⁶ General Guidelines for periodic reports’, U.N. Doc. CRC/C/58 (November 1996). For further information on budgeting and rights, see Gore, R. *Influencing Budgets for Children’s Rights* (June 2004).

⁴⁷ Summary Report of the Study on the Impact of the Implementation of the Convention on the Rights of the Child, Innocenti Research Centre (2004).

⁴⁸ Perrault, Nadine. *A human rights-based approach to legislative reform*, Concept note, UNICEF, DPP (2004).

⁴⁹ Ibid

5. CONCLUSION

In Africa, children with disabilities face difficulties in accessing their physical environment, as well as access to community-based services and health care, education, and child protective systems. The barrier for children with disabilities is not only the disability itself, but rather a combination of social, cultural, attitudinal and physical obstacles, which they encounter in their daily lives.

As State Parties to the Convention on the Rights of Persons with Disabilities, and other international and regional human rights instruments, African State Parties has signaled that, they are committed to adopt appropriate legislative, administrative and other measures for the implementation of the rights of children with disability.

The Convention on the Rights of Persons with Disabilities makes specific reference to the obligation of States parties to adopt legislative, administrative and other measures as a matter of general obligation, including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against children with disabilities. The Committee on the Rights of the Child also stated that, a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance is an obligation of the State Parties. Among other things State parties should review their discriminatory laws, policies and practice that have historically segregated children with disabilities from society. Here, laws alone are not sufficient to protect the rights of children with disability. Appropriate economic policies, institutional reform, training of professionals, social mobilization and the modification of attitudes and social values are essential to realize the rights of children with disability.

Therefore, African State Parties should establish comprehensive laws, policies, programmes and mechanisms to benefit children with disabilities. The law should focus on the principle of equal opportunity, health services, education and training, and, including by the provision of transportation, improved housing conditions and decent living environments.

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