

CHAPTER 5

PROSPECTS AND PRACTICES FOR CRPD IMPLEMENTATION IN AFRICA

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Summary

African states strongly embraced the adoption of the CRPD, along with its Optional Protocol. The Working Group that developed the foundational text of the treaty included delegations from seven African nations. Likewise, the lone seat allocated within the Working Group to represent national human rights institutions was held by a South African Human Rights Commissioner. Sixteen African countries signed the CRPD on the first day it opened for signature, and 34 have ratified it, contributing to a rapid entry into force. In addition, 18 African states are party to the Optional Protocol to the CRPD, thereby assenting to its complaint procedure and procedure of inquiry. The Committee on the Rights of Persons with Disabilities has included experts from the continent, and the current Special Rapporteur on Disability is South African. Also significant is the declaration by the African Union of 1999-2009 and 2010-2019 as African Decades for Persons with Disabilities. The CRPD has therefore been enthusiastically embraced on the African continent, but so too have prior human rights treaties, with uneven subsequent progress. By the same token, the CRPD challenges Africa's states parties – as it does states parties from all regions of the world – to ensure treaty implementation in a manner that responds to broad obligations while being duly consonant to domestic social and legal norms. To foster dialogue around progressive and culturally appropriate CRPD implementation, this article begins with a brief overview of the treaty. Next, it identifies a number of CRPD provisions with particular salience for Africans with disabilities, and showcases innovative approaches, often led by disability rights advocates rather than by the obligated states, that are advancing domestic implementation of those rights on the continent. The article concludes with some thoughts regarding entry points for future CRPD advocacy that can advance implementation regionally across Africa.

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1 Introduction

The adoption of the Convention on the Rights of Persons with Disabilities (CRPD)¹ along with its Optional Protocol² by general consensus on 13 December 2006³ was an initiative strongly embraced by African states.⁴ The Working Group that developed the foundational text of the CRPD negotiations included delegations from seven African nations – Cameroon, Comoros, Mali, Morocco, Sierra Leone, South Africa, and Uganda.⁵ Likewise, the lone seat allocated within the Working Group to represent national human rights institutions was held by a commissioner from the South African Human Rights Commission.⁶

Sixteen African countries signed the CRPD on 30 March 2007, the first day it opened for signature,⁷ and 34 have ratified the treaty,⁸ contributing to its rapid entry into force. In addition, 18 African states are party to the Optional Protocol to the CRPD, thereby assenting to its complaint procedure and procedure of inquiry. The CRPD has included experts from Algeria, Kenya, and Tunisia,⁹ and the current Special Rapporteur on Disability is South African disability rights advocate, Mr Chalklen.¹⁰ Also significant is the declaration by the African Union of 1999-2009 as the African Decade for Persons with Disabilities, an

- 1 Convention on the Rights of Persons with Disabilities, GA Res 61/106, UN Doc A/RES/61/106 (13 December 2006) (CRPD).
- 2 Optional Protocol to the Convention on the Rights of Persons with Disabilities, GA Res 61/106, UN Doc A/RES/61/106 (13 December 2006).
- 3 The negotiation history of the CRPD, as well as updates on state parties, can be found on a website maintained by the UN Department of Economic and Social Affairs (DESA); See UN Enable 'Promoting the rights of persons with disabilities: Full participation and equality in social life and development' (2006) <http://www.un.org/esa/socdev/enable/rights/> (accessed 8 January 2013).
- 4 See MA Stein & JE Lord 'Human rights and humanitarian assistance for refugees and internally displaced persons with disabilities' in I Grobbelaar-du Plessis & TH Van Reenan (eds) *Aspects of disability law in Africa* (2011) 31.
- 5 UN Enable (n 3 above).
- 6 UN Enable (n 3 above), noting participation of the redoubtable Charlotte McClain-Nhlapo.
- 7 Algeria, Cape Verde, Republic of the Congo, Ethiopia, Gabon, Ghana, Kenya, Liberia, Morocco, Mozambique, Niger, Nigeria, Sierra Leone, South Africa, Sudan, Tunisia, Uganda and Tanzania; UN Enable (n 3 above).
- 8 Algeria, Benin, Burkina Faso, Cape Verde, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, Tanzania and Zambia; UN Enable (n 3 above).
- 9 UNHR 'Elected members of the Committee on the Rights of Persons with Disabilities' <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx> (accessed 8 January 2013).
- 10 UN Enable (n 3 above).

observance extended for a second decade, 2010-2019.¹¹ A new continental plan of action (CPOA) was adopted by the African Union Executive Council in January 2013.¹² The CPOA mirrors most of the provisions of the CRPD, while also referencing governing African bodies and specifically African contexts. And in 2009, the African Commission expanded the mandate of the focal point on the rights of older persons in Africa to include the rights of disabled persons.¹³

The CRPD has therefore been enthusiastically embraced on the African continent, but so too have prior human rights treaties, with uneven subsequent progress. By the same token, the CRPD challenges Africa's states parties – as it does states parties from all regions of the world – to ensure treaty implementation in a manner that responds to broad obligations while being duly consonant to domestic social and legal norms.¹⁴ Ncube put it well when observing that 'substantive rights will often get their complexion from the local cultural environment within which they have to be given concrete, practical meaning'.¹⁵ Thus, the recurring question that must be raised is whether the CRPD is being appropriately adopted, implemented, and understood within an African context.

To foster dialogue around progressive and culturally appropriate CRPD implementation, this article begins with a brief overview of the treaty. Next, this article identifies a number of CRPD provisions with particular salience for Africans with disabilities, and showcases innovative approaches, often led by disability rights advocates rather than by the obligated states, that are advancing domestic implementation of those rights on the continent. This article concludes with some thoughts regarding entry points for future CRPD advocacy that can advance implementation regionally across Africa.

- 11 Press Release by the Secretariat of the African Decade of Persons with Disabilities (SADPD), 'African Decade of Persons with Disabilities Extended to 2019' *We Can Do* 2 November 2008 <http://wecando.wordpress.com/2008/11/02/news-african-decade-of-persons-with-disabilities-extended-to-2019/> (accessed 17 January 2013). An excellent overview of the African regional system and its response to disability rights issues may be found in J Biegeon 'The promotion and protection of disability rights in the African human rights system' in Grobbelaar-du Plessis & Van Reenan (n 4 above) 53.
- 12 Continental Plan of Action for the African Decade of Persons with Disabilities (CPOA), African Union, January 2013.
- 13 SADPD (n 11 above).
- 14 See JE Lord & MA Stein 'The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities' (2008) 83 *University of Washington Law Review* 449.
- 15 W Ncube 'The African cultural footprint? The changing conception of childhood' in W Ncube (ed) *Law, culture, tradition and children's rights in Eastern and Southern Africa* (1998) 14-15.

2 The CRPD

Persons with disabilities share a common history of stigma, discrimination and segregation the world over. As a result, disabled persons often find themselves denied basic human rights and fundamental freedoms, including the right to pursue an education, engage in meaningful work that pays a living wage, reside where they choose, move about freely, and generally participate in the lives of their communities.¹⁶ Legislation, policy and programming – as well as responsive advocacy campaigns – must therefore be attuned to the manifestations of harm particular to disabled persons and the types of settings in which they occur, including the home, within the family, at school, in social care facilities, and in refugee camps.¹⁷

Accordingly, while the denial of human rights is an unfortunate and common experience amongst persons with disabilities globally – including Africa's 55 nations – socio-legal norms about disability take on varied and local manifestations that are contextually relevant when considering CRPD implementation.¹⁸ African scholar Kisanji, for instance, reports that in various communities specific disabling conditions are regarded as a curse or a bad omen attributable to witchcraft or sorcery.¹⁹ Thus, to combat negative attitudes towards persons with disabilities and to raise awareness about the need for inclusion, the Swaziland Ministry of Education introduced a scheme wherein children composed songs and performed plays in schools and local communities; they also built ramps, made toilets accessible, and designed accessible playgrounds.²⁰

The CRPD's 25 preambular paragraphs and 50 articles provide a framework within which disability rights may be addressed in African country contexts. The aim of the drafters was not to create 'new' or 'special' rights for persons with disabilities, but instead to articulate how existing human rights obligations apply specifically to persons with disabilities.²¹

16 See World Health Organisation & World Bank *World report on disability* (2011) 29 (World Health Organization).

17 See MA Stein & JE Lord 'Forging effective international agreements: Lessons from the UN Convention on the Rights of Persons with Disabilities' in J Heymann & A Cassola (eds) *Making equal rights real: Taking effective action to overcome global challenges* (2012) 27.

18 See DW Anderson 'Human rights and persons with disabilities in developing nations of Africa' Paper presented at the Fourth Annual Lilly Fellows Program National Research Conference, 13 November 2004 http://www4.samford.edu/lillyhumanrights/papers/Anderson_Human.pdf (accessed 7 January 2013).

19 J Kisanji 'Growing up disabled' in P Zinkin & H McConachie (eds) *Disabled children & developing countries* (1995) 195, discussing epilepsy and leprosy.

20 R Rieser *Implementing inclusive education: A commonwealth guide to implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities* (2008) 148.

21 For a comprehensive overview of the CRPD, see MA Stein & JE Lord, 'Future prospects for the United Nations Convention on the Rights of Persons with Disabilities' in OM Arnardóttir & G Quinn (eds) *The UN Convention on the Rights of Person with Disabilities: European and Scandinavian perspectives* (2009).

The CRPD structure consists of an introductory set of provisions that outline its purpose (article 1) and key definitions (article 2), along with articles of general or cross-cutting application (articles 3-9). Among the obligations adumbrated in the instrument, states parties must (i) adopt legislative, administrative and other measures to implement enumerated rights; (ii) abolish or amend existing laws, regulations, customs and practices that discriminate against persons with disabilities; and (iii) adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programmes. In relation to economic, social and cultural rights, states parties must take measures to realise these rights progressively to the maximum extent of available resources.

The CRPD sets forth specific substantive rights covering civil, political, economic, social and cultural rights (articles 10-30). African government delegations and disability rights advocates pressed for a treaty that was comprehensive in its approach; encompassing civil, political, economic, social and cultural rights. They likewise insisted that the entrenched interrelationship between disability and poverty be reflected in the text, thus contributing references to disability-inclusive poverty reduction programs and making explicit the right to an adequate standard of living.

The CRPD further establishes a system of monitoring and implementation (articles 31-40) and includes final provisions that govern the treaty's operation (articles 41-50). Of considerable significance, and attributable in part to African lobbying, is that certain obstacles that inhibit disability rights implementation in the African context are anticipated and accounted for in the text. For instance, the need to ensure that international cooperation programming is inclusive of persons with disabilities made its way into article 32 as an implementation measure. Likewise, insistence by African state representatives that guidance was needed to delineate the population of persons with disabilities for whom the treaty was drafted helped ensure the establishment of a definitional baseline in article 1.

The framework for national level monitoring (article 33) was facilitated by African national human rights institution participation in the CRPD negotiations –in particular the South African Human Rights Commission – along with several disability-specific African commissions. The Committee on the Rights of Persons with Disabilities is tasked with monitoring implementation by states parties through its oversight of the mandatory state reporting requirement and through the issuance of recommendations. An Optional Protocol to the CRPD, comprised of 18 articles, gives the Committee competence to examine individual complaints and initiate inquiries with regard to alleged violations of the

Convention by states parties to the Protocol.²² Finally, it bears noting that the CRPD drafters consciously desired and enumerated the active participation of disabled peoples organisations (DPOs) in the conception, implementation, and monitoring of every facet of the treaty.²³

3 CRPD implications for Africa

Building on domestic African experiences, the sections that follow help identify particular challenges for persons with disabilities on the continent relating to: physical and mental integrity; living in the community; situations of risk; health; and legal recognition.²⁴ When doing so, we underscore successful CRPD-based responses that have facilitated domestic-level human rights implementation.²⁵ These themes are resonant with the call by the Secretariat of the African Decade of Persons with Disabilities to 'promote equal provision of services especially in the areas of health, education, employment, skills training and development, and access to justice for all persons with disabilities who suffer and are victims of exclusion and human rights violation.'²⁶

Moreover, the issues highlighted underscore human rights concerns that ought to be reflected in any future African region guidelines or treaty standards on the rights of persons with disabilities.

3.1 Physical and mental integrity

Violations of the physical and mental integrity of adults and children with disabilities take many forms. Disability is a major 'risk factor' when accounting globally for vulnerability to torture, cruel, inhuman or degrading treatment or other abuse.²⁷

Stigmatisation and discrimination associated with disability in many communities increase vulnerability to violence and abuse. For example, the forced ingestion of substances harmful to human health is regarded in

22 The history, powers, and transformative potential of the CRPD Committee is examined in MA Stein & JE Lord 'Monitoring the committee on the rights of persons with disabilities: Innovations, lost opportunities, and future potential' (2010) 31 *Human Rights Quarterly* 689.

23 See MA Stein & JE Lord 'The United Nations Convention on the Rights of Persons with Disabilities: Process, substance, and prospects' in F Gomez Isa & K de Feyter (eds) *International human rights law in a global context* (2009) 495

24 We stress – as we have throughout our work – that the CRPD must be understood and implemented holistically, across articles, and that highlighting particular rights does not infer their precedence.

25 Lord & Stein (n 14 above).

26 SADPD (n 11 above) para 6.

27 Report of the Office of the High Commissioner for Human Rights 'Expert seminar on freedom from torture and ill-treatment and persons with disabilities' (11 December 2007) <http://www2.ohchr.org/english/issues/disability/docs/torture/seminartorture-reportfinal.doc> (accessed 6 January 2013).

some African communities as an antidote to mental disability.²⁸ Remedies thought to 'cure' disability proliferate around the world, are peddled via the internet or, in rural communities with limited access to the internet, are discovered through word of mouth, while elsewhere, as in Ghana, religious quackery subjects Ghanaians with psychosocial disabilities to abuse in prayer camps where they are chained to trees for hours, denied food, and exposed to the sun in a bogus 'healing' process.²⁹ According to Sierra Leone disability rights advocate Bangura, persons with epilepsy are 'subjected to traditional treatments that are "tantamount to torture" – cuts, burning, inhaling or drinking potions'.³⁰ Some accounts tell of autistic persons being thrown into the bush and left to die in West African communities on the ground that they are 'possessed' and their behaviour 'demonic'.³¹ Equally disconcerting are numerous accounts from Tanzania of people with albinism being killed due to the 'superstitious belief' that utilising their bodily parts 'will lead to great wealth' and reports from Kenya regarding mistreatment and abuse in the Mathari Psychiatric Hospital.³²

To combat this often deadly stigma, African DPOs have: organised the reporting of these types of human rights abuses;³³ raised awareness regarding the equal dignity and worth of persons with disabilities,³⁴ and repealed retrogressive 'mental health' laws which permit involuntary

- 28 JE Lord 'Shared understanding or consensus-masked disagreement? The anti-torture framework in the Convention on the Rights of Persons with Disabilities' (2010) 33 *Loyola of Los Angeles International & Comparative Law Review* 78, n 285, reviewing customary practices, including the forced ingestion of harmful substances to 'heal' persons with psycho-social disabilities, a practice observed during field work in Ethiopia.
- 29 See generally R Whitaker *Mad in America: Bad science, bad medicine, and the enduring mistreatment of the mentally ill* (2001); World Health Organisation & Mental Health and Poverty Project *Mental health and development: Targeting people with mental health conditions as a vulnerable group* (2010) 9 (WHO/MH) http://whqlibdoc.who.int/publications/2010/9789241563949_eng.pdf (accessed 8 January 2013); Human Rights Watch 'Ghana: People with Mental Disabilities Face Serious Abuse' 2 October 2012 <http://www.hrw.org/news/2012/10/02/ghana-people-mental-disabilities-face-serious-abuse> (accessed 17 January 2013).
- 30 'Stigma is toughest foe in an epilepsy fight' *New York Times* 29 August 2011 <http://www.nytimes.com/2011/08/30/health/30epilepsy.html?pagewanted=all> (accessed 6 January 2013). Bangura also reported that one of the association's members survived drinking two liters of kerosene. Girls and young women are subjected to sexual assault as a purported 'cure', says Bangura.
- 31 See WHO/MH (n 29 above) 'Attributions of mental health conditions to possession by evil spirits or punishment for immoral behaviour frequently lead to harmful treatment practices' 9.
- 32 See *Albinism Foundation of East Africa, Petition* (13 December 2008) http://www.albinismfoundationea.com/index.php?option=com_content&task=view&id=6&Itemid=2 (accessed 8 January 2013); 'Rights groups accuse Kenya of patient abuse' *CNN* 2 March 2011 http://articles.cnn.com/2011-03-02/world/kenya.health_1_human-rights-rights-groups-solitary-confinement?_s=PM:WORLD (accessed 17 January 2013).
- 33 *Albinism Foundation of East Africa* (n 32 above).
- 34 For example, the Cape Town Declaration by the Pan African Network of People with Psychosocial Disabilities <http://www.panusp.org/about-us/> (accessed 7 January 2013).

confinement and forced medical treatment.³⁵ The South African Human Rights Commission concurrently has engaged in local training exercises and advocacy activities, and released public statements regarding disability equality.³⁶

3.2 Living in the community

Disability rights advocates around the world are campaigning vigorously for the elimination of living arrangements that segregate and isolate persons with disabilities, often in state-sponsored institutions. In Africa, institutions are not as prominent as in many parts of the 'developed' world³⁷ and in consequence isolation is more likely to take place within the community. For example, human rights organisations and journalists have documented 'leper colonies' and amputee camps in parts of West Africa.³⁸ Bangura reports that in Sierra Leone persons with epilepsy 'are often driven from schools, jobs, homes.'³⁹ Kisanji similarly notes the practice of hiding away disabled children is common in some communities across the continent, although he attributes this practice to paternalistic impulse rather than disability animus.⁴⁰

At the same time, orphanages and social care homes are problematically on the rise in Africa, particularly in sub-Saharan African countries greatly impacted by HIV/AIDS.⁴¹ Children who have lost their parents due to AIDS may themselves have disabling illnesses, but are also at a high risk of acquiring newly disabling conditions when they are housed in congregate settings with sub-standard care and limited stimulation.⁴² Moreover, instances of abuse against persons with disabilities in institutional settings – and particularly individuals with mental and

35 Efforts are underway in Ghana, Kenya, South Africa, Tanzania, and Uganda, to name a few African countries. See Movement for Global Mental Health <http://www.globalmentalhealth.org/home> (accessed 8 January 2013).

36 See South African Human Rights Commission 'SAHRC statement to observe World Mental Health Day' 9 October 2011 <http://www.sahrc.org.za/home/index.php?ipkArticleID=80> (accessed 8 January 2013). Much of the SAHRC's disability-related work has been conducted in conjunction with the Harvard Law School Project on Disability which both raises the prospects for academic support of CRPD implementation as well as the continuing challenge to the adequacy of state-based efforts.

37 Disability Rights International, formerly Mental Disability Rights International, has documented egregious disability rights violations against persons with disabilities in institutional settings, for example in orphanages, social care homes, and psychiatric hospitals. These reports are available on their website, Disability Rights International <http://www.disabilityrightsintl.org/> (accessed 8 January 2013).

38 See L Polman *The crisis caravan: What's wrong with humanitarian aid?* (2011) 63-72; 'The last leper colonies' *African Review* 22 April 2010.

39 *New York Times* (n 30 above).

40 Kisanji (n 19 above).

41 J Sloth-Nielsen & BD Mezmur 'HIV/AIDS and children's rights in law and policy' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 279-80.

42 The exclusion of children with disabilities from social interaction has been shown to stifle both mental and physical well-being. See D Hutchinson & C Tennyson *Transition to adulthood: A curriculum framework for students with severe physical disability* (1986).

intellectual disabilities – are increasingly coming to light. For example, in *Purohit & Moore v The Gambia*⁴³ the African Commission on Human and Peoples' Rights found numerous human rights violations perpetrated against persons with mental disabilities housed in a psychiatric hospital in the Gambia.

There are some models of advocacy that tackle disability stigma and attendant segregation with the specific aim of facilitating community inclusion. DPOs in Sierra Leone, for instance, are working to counter the extreme prejudice associated with epilepsy through education and awareness raising campaigns as well as by ensuring access to inexpensive and often highly effective anti-seizure medications that are inaccessible to many persons living in poverty.⁴⁴

3.3 Situations of risk

African delegations to the CRPD negotiations strongly supported the inclusion of language addressing the protection of persons with disabilities in various situations of risk, whether natural disaster, armed conflict, or other emergency and humanitarian situations. The provision capturing this issue is article 11 of the CRPD.

In the African context, there are various manifestations of risk for persons with disabilities, and DPOs are beginning to highlight their experience in humanitarian crises. Situations of risk can disable people and exacerbate or create secondary impairments for persons with existing disabilities. These circumstances also impact persons with disabilities through the break-up of support networks of family and community; their displacement or abandonment; and the general destruction of health, rehabilitation, and transportation infrastructure. Similarly, situations of risk – and in particular, armed conflict – can have a devastating effect on the mental and psycho-social well-being of the effected population.⁴⁵

Sexual violence is a prevalent problem for displaced women and girls with disabilities generally, but the experience of such abuse is exacerbated when they are subject to conflict or displacement in Africa.⁴⁶ A Human Rights Watch report on Northern Uganda, for example, documented

43 See Communication No 241/2001, *Purohit & Moore v The Gambia* ACHPR (2003) <http://www1.umn.edu/humanrts/africa/comcases/241-2001.html> (accessed 7 January 2013).

44 See *New York Times* (n 30 above); see also 'The isolation of epilepsy sufferers' *Inter Press Service News Agency* 22 December 2011 <http://ipsnews.net/news.asp?idnews=106293> (accessed 8 January 2013).

45 JE Lord & MA Stein 'Ensuring respect for the rights of people with disabilities' in VO Pang *et al* (eds) *The human impact of natural disasters: Issues for the inquiry-based classroom* (2010)

46 Stein & Lord (n 4 above).

instances of physical and sexual violence against women and girl refugees with disabilities who were unable to flee rebel forces.⁴⁷

Child soldiering is another predominant marker of conflict and human rights abridgement in Africa. Mezmur's analysis reveals that African regional mechanisms and international law and programming equally fail to accommodate the experiences of girl soldiers.⁴⁸ The same critique must be applied to child soldiers with disabilities either created or aggravated by their military experience. The 2003 Accra Peace Agreement on Liberia,⁴⁹ to note one example, is silent on child soldiers with disabilities. The CRPD could usefully inform the development of peace agreements and post-conflict transitions as could the work of the Peace and Security Council of the African Union,⁵⁰ and the African Committee of Experts on the Rights and Welfare of the Child⁵¹ to better address the specific needs of child soldiers with disabilities.

Finally, a situation of acute risk for Africans with disabilities is displacement, either as a consequence of armed conflict or natural disasters. The World Health Organisation estimates that as many as 3.3 million of the world's forcibly displaced persons live with disabilities, one third of them are children.⁵² Across the African continent, refugees and internally displaced persons with disabilities face particular challenges, for example refugee camp settings, yet examples of successful disability accommodations abound.⁵³ One humanitarian assistance organisation detailed their experience in West Africa improving accessibility to sanitation facilities for persons with disabilities with simple and low cost

47 Human Rights Watch 'As if we weren't human: Discrimination and violence against women with disabilities in Northern Uganda' 26 August 2010 <http://www.hrw.org/en/reports/2010/08/26/if-we-weren-t-human> (accessed 8 January 2013).

48 See BD Mezmur 'Children at both ends of the gun: Child soldiers in Africa' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 212.

49 Comprehensive Peace Agreement between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, Accra, 18 August 2003 http://www.usip.org/files/file/resources/collections/peace_agreements/liberia_08182003.pdf (accessed 8 January 2013).

50 For the webpage of the African Union, Peace and Security Council, see The Organs of the AU, the Peace and security council http://www.africa-union.org/root/au/organs/The_Peace_%20and_Security_Council_en.htm (accessed 8 January 2013).

51 African Committee of Experts on the Rights and Welfare of the Child <http://www.africa-union.org/child/home.htm> (accessed 8 January 2013).

52 See UNHCR, The UN Refugee Agency 'People with disabilities: Largely invisible or forgotten' <http://www.unhcr.org/pages/4a0c310c6.html> (accessed 8 January 2013).

53 See generally Women's Commission for Refugee Women and Children *Disabilities among refugees and conflict-affected populations: Resource kit for fieldworkers* (June 2008) (Women's Commission).

solutions.⁵⁴ Other practices include collaboration between the United Nations High Commissioner for Refugees and the World Food Programme which prioritised food distribution to refugees with disabilities and their families.⁵⁵ Another successful approach established mobile units for food distribution for those who are unable to wait in line or access transport to reach food distribution centres.⁵⁶

3.4 Health

In all regions of the world, health care is often unavailable to persons with disabilities on an equal basis with others on account of inaccessible health care facilities; in more egregious circumstances, treatment is denied altogether on the basis of disability.⁵⁷ While African states do not bear responsibility for ensuring good health, they are accountable for guaranteeing persons with disabilities the right to the 'highest attainable standard of health' on an equal basis with others, in accordance with the obligations in the CRPD as well as general human rights law and regional African treaties.⁵⁸

There are many different implications of the right to health for persons with disabilities on the African continent, ranging from child mortality to river blindness to basic vaccines. One prominent example – because of its prevalence in sub-Saharan Africa – is the need to ensure that HIV/AIDS pandemic programming is accessible to persons with disabilities.⁵⁹ Research conducted on HIV/AIDS and disability in several African countries discloses that persons with disabilities are often absent from

54 JE Lord & MA Stein 'Enabling refugee and IDP law and policy: Implications of the UN Convention on the Rights of Persons with Disabilities' (2011) 28 *Arizona Journal of International and Comparative Law* 401; See WaterAid (Mal) 'All people, one goal, all access: Water and sanitation access for people with disabilities' Briefing note (2007) http://www.wateraid.org/documents/plugin_documents/all_people_one_goal_all_access.pdf (accessed 8 January 2013); WaterAid (Ethiopia) 'Equal access for all-2: Water and sanitation access for people with motor disabilities' Briefing note 9 (December 2006) http://www.wateraid.org/documents/plugin_documents/briefing_note_disability.pdf (accessed 8 January 2013).

55 Lord & Stein (n 54 above).

56 See Women's Commission (n 53 above) 18.

57 World Health Organisation (n 16 above).

58 CRPD (n 1 above) art 25; See also African [Banjul] Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), entered into force 21 October 1986, art 16(1); African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49 (1990), entered into force 29 November 1999, arts 11(h), 14 & 20; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, arts 2, 5 & 14.

59 See generally JE Lord & A deFranco 'HIV/AIDS, disability and discrimination: A thematic guide on inclusive law, policy and programming' (2012) http://www.one-billion-strong.org/Portals/_Appleseed/images/default/Documents/HIV%20Aids%20Disability%20and%20Discrimination.pdf (accessed 19 April 2013); S Nduta *et al A handbook on best practices regarding HIV and AIDS for disability* http://www.vsointernational.org/Images/hiv-aids-and-disabilities-handbook_tcm76-25401.pdf (accessed 17 January 2013).

HIV/AIDS programming including screening.⁶⁰ This exclusion is attributable to patently false assumptions of sexual inactivity and equally wrong ideas about low risk for sexual abuse or drug usage among disabled populations.⁶¹ Yet it remains the case that public sexual and reproductive health programs continue to disregard disabled populations when combating HIV/AIDS, with particularly deleterious consequences for women and adolescent girls with disabilities.⁶²

DPOs in many AIDS-affected African countries are actively engaged in HIV/AIDS advocacy and working to ensure disability-inclusive programming. In Zambia, a DPO coalition combined a general objective to learn more about the CRPD with a specific desire to make public health services, including HIV/AIDS education, disability-inclusive. The project increased the human rights capacity of disabled persons and enabled them to achieve equal access to health care.⁶³ Similarly, national disability and HIV organisations in Tanzania and Mozambique worked in collaboration with Rehabilitation International to develop educational materials as a component of HIV/AIDS education and outreach.⁶⁴ We note that some African states, for example Mozambique, South Africa, Uganda, Zambia and Zimbabwe, have demonstrated good practices in collaborating with DPOs,⁶⁵ but underscore that combating HIV/AIDS remains a state obligation and on where greater efforts are urgently needed.

60 NE Groce 'HIV/AIDS and disability: Capturing hidden voices' *Report of the World Bank and Yale University Global survey on HIV/AIDS and Disability* (April 2004); NE Groce 'HIV/AIDS and people with disability' (2003) 361 *The Lancet* 1401.

61 NE Groce & R Trasi 'Rape of individuals with disability: AIDS and the folk belief of virgin cleansing' (2004) 363 *The Lancet* 1663.

62 K Fleming *et al* 'Vulnerability for households with persons with disabilities and HIV/AIDS in Chongwe, Zambia' *American Institutes for Research* (2010) 6–7 http://www.air.org/files/Vulnerability_for_Households_w_Disability_and_HIV_in_Chongwe_Zambia_Final.pdf (accessed 17 January 2013).

63 See generally MA Stein *et al* 'Disability rights, the MDGs and inclusive development' in M Langford *et al* (eds) *The Millennium Development Goals and human rights: Past, present and future* (2013).

64 Rehabilitation International *et al* *HIV/AIDS Awareness and Disability Rights Training Manual* (December 2007) http://www.aidslex.org/site_documents/DB-0045E.pdf (accessed 8 January 2013). Combating AIDS-related stigma and violence against women and girls with disabilities was the life work and legacy of disability rights advocate G Charowa, founder of the Disabled Women Support Organisation of Zimbabwe, 'NEWS: Disability advocate, Gladys Charowa, dies' *We Can Do* 21 April 2008 <http://wecando.wordpress.com/2008/04/21/news-disability-advocate-gladys-charowa-dies/> (accessed 8 January 2013).

65 The World Bank 'HIV/AIDS & Disability: Three Country Studies – South Africa, Uganda, and Zambia' The International Bank for Reconstruction and Development World Bank: *ACTAfrica – AIDS Campaign Team for Africa* (July 2010) 5-16 <http://siteresources.worldbank.org/EXTAFRRREGTOPHIVAIDS/Resources/Conference-Edition-HIV-AIDS-Disability.pdf>.

3.5 Legal recognition

Equal recognition by and before the law for persons with disabilities is a human rights concern in developed and developing countries alike across the world.

Legal capacity

Persons with disabilities are routinely subjected to laws and practices that deprive them of their legal capacity and, consequently, of their freedom to make basic choices, including how, with whom, and where to live. This is as true in African states as it is for countries around the world, and is reflected in national legislation, much of which was established during colonisation but nonetheless continues to impede the full enjoyment of basic human rights amongst persons with disabilities. Article 12 of the CRPD is serving as a global impetus for reforming these laws.

Failure to respect the autonomy and dignity of persons with disabilities with respect to medical decision-making is a graphic manifestation of infringement on legal capacity, as evidenced by practices of forced treatment, especially in the case of persons with mental and intellectual disabilities. The African Commission on Human and Peoples' Rights pointed to retrogressive Gambian legislation tellingly entitled the 'Lunatics Detention Act' which effectively stripped persons with disabilities of their decision-making capacity.⁶⁶ In other instances, legislation in a specific autonomy realm restricts decision-making capacity on the basis of disability. Numerous examples exist across the continent of electoral codes that summarily remove the right to vote for persons with mental, intellectual, and on occasion physical disabilities.⁶⁷

Some significant processes are underway to develop legislative and policy responses that ensure the equal recognition by the law of persons with disabilities. Among states parties, South Africa has proposed legislation for establishing a framework for supported decision-making for persons with disabilities.⁶⁸ This example, however, is a notable exception; otherwise, the closest that African states have come to engaging this crucial issue has been consideration or promulgation of general equality clauses within statutes or constitutions. Amongst DPOs, the advocacy efforts of the Zambian Federation of Disabled Persons stands out in this regard for undertaking a careful review of the revised constitution, focusing in

⁶⁶ See *Purohit & Moore v The Gambia* (n 43 above).

⁶⁷ Exclusions based on disability, usually mental and/or intellectual disability, are widespread across the continent and in all regions. See for example the Electoral Law of Burundi (2005, amended 2009) art 5; the Constitution of Seychelles (1993, amended 2000) art 114; the Liberia New Election Law (1986) sec 3.1 & 2.33; & the Namibia Election Act (1992, amended 2003) sec 13(2).

⁶⁸ A copy of the South African draft law is on file with the authors.

particular on the various provisions that pertained to legal capacity and decision-making making numerous suggestions to bring the text into compliance with the CRPD.⁶⁹ Equally significant are the efforts of regional and domestic DPOs to repeal mental health laws that permit involuntary detention and treatment, as noted above.⁷⁰

Access to justice

Much in the same vein, access to justice by persons with disabilities raises multidimensional barriers from physical access to courthouses, to ensuring that people with various disabilities are accommodated by materials in alternative formats, making court websites accessible for persons who use assistive technology, and installing listening systems in courtrooms. Equal access must include all roles in the judicial process, from parties and witnesses to judges, jurors, prosecutors and attorneys.

Courts housed in old structures across Africa present numerous barriers for persons with mobility impairments such as stairs, narrow doorways, and inaccessible rest-rooms. Equally problematic are new structures financed by international development aid that take no account of accessibility at the design phase and thus introduce barriers and create future redevelopment costs for beneficiary countries. Note, for example, the reconstructed Ministry of Foreign Affairs in Monrovia financed by the Chinese government that took no account whatsoever of physical access, notwithstanding the fact that Liberians who used wheelchairs and had various mobility impairments worked there.⁷¹

The first case to come before the South African Equality Court was brought by a wheelchair-using trial lawyer because she could not access the court house buildings. South Africa conceded that the failure to provide proper access was a form of unfair discrimination and committed to rendering court buildings accessible.⁷² In Zambia, a DPO coalition protested detention of a Deaf youth accused of murdering his mother who was not provided an interpreter or access to legal representation. After several months, he was given assistance and exonerated from what was

69 A copy of the legal analysis of the revised constitution draft done in collaboration between the Harvard Law School Project on Disability and ZAFOD is on file with the authors.

70 Movement for Global Mental Health (n 35 above).

71 Observation by J Lord on field mission disability assessment to Liberia in 2004.

72 *Esthé Muller v DoJCD & Department of Public Works* (Equality Court, Germiston Magistrates' Court 01/03); 'Equality Court victory for people with disabilities' *South African Human Rights Commission* 24 February 2004 <http://www.info.gov.za/speeches/2004/04022415461001.htm> (accessed 8 January 2013); 'Government sets date for all courts to be accessible' *Inclusion Daily Express* 15 September 2004 <http://www.inclusiondaily.com/archives/04/09/15/091504sacourtaccess.htm> (accessed 8 January 2013). The authors note that although the courthouses nearest to the plaintiff's home were made accessible, the same has yet to be true for other courthouses named in the settlement as well as for courthouses more generally.

deemed a false accusation.⁷³ More generally, the Zambian Federation of Disabled Persons designed and implemented an access to justice project funded by Irish Aid to address systemic barriers that persons with disabilities faced in seeking justice in the Zambian court system.⁷⁴

4 Entry points for regional advocacy

Africa has been at the forefront of embracing the CRPD, as evidenced by rapid State ratification and attendant surges in disability law and policy development and reform. African countries, like those on every continent, face significant challenges in making the treaty's mandates real in culturally appropriate ways that comport with their respective and varied domestic contexts. In many instances African states parties have been inventive and resourceful in responding to implementation challenges. As is the case across the globe, some of the most creative disability rights initiatives arise at the behest of, and/or in collaboration with local DPOs.⁷⁵

Africa has also demonstrated leadership in implementing disability rights through various institutional arrangements at the regional level. The African Commission on Human and Peoples' Rights for example, contributed to the progressive development of human rights law in its first disability case *Purohit*, which underscored the duty of African states to take concrete steps towards full implementation of human rights obligations even in the face of resource constraints. Of considerable significance in that case was overt recognition that persons with mental disabilities have political rights when, in so many parts of the world, such rights are summarily stripped away without any consideration of state obligations to facilitate legal capacity through supportive decision making frameworks or other accommodations.

Other regional mechanisms that can be harnessed to forward progressive approaches to CRPD implementation in Africa include the African Committee of Experts on the Rights and Welfare of the Child,⁷⁶ the African Union,⁷⁷ the New Partnership for Africa's Development,⁷⁸ the

73 Email communications with Zambian advocates (on file with authors). For the website of the Zambian Federation of the Disabled, see ZAFOD 'Zambia federation of the disabled was registered in 1990 under Cap 551 of the laws of Zambia' http://www.safod.org/about%20safod/Countries/zambia_web.htm (accessed 8 January 2013).

74 Zambia Federation of Disability Organisations 'Advocacy and influence' http://www.zafod.org/index.php?option=com_content&view=article&id=55&Itemid=61 (accessed 8 January 2013).

75 Stein & Lord (n 17 above).

76 African committee of experts on the rights and welfare of the child (n 51 above).

77 <http://www.au.int/en/> (accessed 8 January 2013).

78 <http://www.nepad.org/> (accessed 8 January 2013).

African Peer Review Mechanism,⁷⁹ and the Network of African National Human Rights Institutions.⁸⁰ That said, the chief obstacle for utilising such mechanisms to advance disability law and policy is the lack of awareness and understanding of disability rights and the particular barriers that so often impede access of persons with disabilities to basic needs in society. Until political will is harnessed around disability issues at the national and regional levels, disability issues will remain marginal and without prioritisation.

Of particular interest and concern is the move to draft an African Union protocol on the rights of persons with disabilities.⁸¹ While there is much to commend this effort, such work should be undertaken in the same spirit of drafting that animated the CRPD process and which ought to direct the treaty's domestic implementation. Only a process in which African disability advocates across the continent are engaged through careful discernment of what issues merit capture in a treaty instrument and whether and how it would help to advance the rights specifically of Africans with disabilities should be undertaken. Significant steps have been taken in this direction since the initial drafting, which did not include persons with disabilities or DPOs.⁸²

5 Conclusion

The progressive developments recorded in this article constitute a viable and altogether hopeful set of interventions that can be built upon in order to further advance an emerging and uniquely African disability rights narrative. Ratification of the CRPD across the continent and the impetus that it has created for domestic law and policy change offers Africans with disabilities and their allies the promise of rights realisation. These developments present a challenge for civil society and for national human rights institutions to engage in effective monitoring required to hold African governments accountable for treaty compliance. Moreover, they represent a challenge at the regional level, particularly for the AU as a policy formulation body with little disability expertise and limited implementation capacity. This is of special concern if a regional protocol is to be developed, or the CPOA is to have effect, without the parallel political and resource commitments necessary to engender change through a regional treaty. For disability rights scholars and practitioners alike, the approaches developed across the region warrant further study and

79 <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about> (accessed 8 January 2013).

80 <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about> (accessed 8 January 2013).

81 SADPD (n 11 above).

82 L Mute 'Concept on the list of issues to guide preparation of a Protocol on the Rights of Persons with Disabilities in Africa' (August 2012) 4-6 (unpublished working paper on file with the authors).

attention to inform disability rights work in the African context and beyond.