

REGIONAL DEVELOPMENTS

DISABILITY, CYCLONE IDAI AND THE COVID-19 PANDEMIC: PREPAREDNESS OF AFRICAN COUNTRIES FOR DISABILITY-INCLUSIVE RESPONSES IN EMERGENCY SITUATIONS

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1 Introduction

On 11 March 2020, the World Health Organisation (WHO) declared the outbreak of a novel coronavirus disease 2019 (COVID-19), a respiratory disease which started in Wuhan, China, in December 2019, to be a pandemic following a surge in case numbers in Italy, Iran, South Korea and Japan.¹ In that same month, most African countries recorded their first COVID-19 cases.² For Madagascar, Mozambique, Zimbabwe and Malawi, this was barely a year after another humanitarian emergency. In mid-March 2019, the four countries were hit by Cyclone Idai, a tropical storm that was characterised by heavy rains and flooding, which killed around 1 000 people and affected over 2 million people.³ Among those affected were people with disabilities.⁴

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1 WHO 'WHO Director-General's opening remarks at the media briefing on COVID-19' (11 March 2020) <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 22 October 2020).

2 Wikipedia 'COVID-19 pandemic in Africa' (21 October 2020) https://en.wikipedia.org/wiki/COVID-19_pandemic_in_Africa (accessed 22 October 2020).

3 D Phiri, M Simwanda & V Nyirenda 'Mapping the impacts of Cyclone Idai in Mozambique using Sentinel-2 and OBIA approach' (2020) 82 *South African Geographical Journal* 1.

4 Light for the World 'Access to humanitarian aid: Challenges and recommendations for women and men, girls and boys with disabilities' (2019) Unicef http://www.light-for-the-world.org/sites/lfw_org/files/download_files/policy_paper_lftw_unicef_-_def_di_gital_accessible_0.pdf (accessed 29 September 2020).

Studies show that people with disabilities are generally disproportionately affected by natural disasters and emergency situations⁵ and their needs are often not, or inadequately, addressed in emergency response plans and preparations.⁶ Such vulnerability and inequality often stem from several factors, including a lack of information and knowledge of disability issues among governments and relief organisations;⁷ financial constraints leading to the lack of prioritisation of disability issues and people with disabilities;⁸ as well as stigma and discrimination.⁹ The failure to involve people with disabilities in disaster response planning and preparation also contributes to people with disabilities' needs not being addressed, or being inadequately addressed, in emergency response plans and preparations.¹⁰

For both the COVID-19 pandemic and Cyclone Idai, the four African countries have had to develop and implement emergency response plans and preparations. As emergency response plans and preparations for COVID-19 are still being adjusted and implemented as the disease continues to spread, it may be too early to assess them. However, it is the opportune time to assess the four countries' emergency response plans and preparations for Cyclone Idai and possibly draw some lessons from them, which may be useful to the emergency response plans and preparations for COVID-19.

Therefore, this comment provides an assessment of the extent to which disability issues were addressed in the four countries' emergency response plans and preparations for Cyclone Idai and a discussion of the lessons learnt which may be of relevance to the emergency response plans and preparations for COVID-19. The assessment will be made against relevant provisions of the Convention on the Rights of Persons with Disabilities (CRPD) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol), which are discussed in the next section.

5 BH Morrow 'Identifying and mapping community vulnerability' (1999) 23 *Disasters* 11; GA Tobin & JC Ollenburger 'Natural hazards and the elderly' (1992) *FMHI Publications Paper 16*; B Wisner et al (2004) 'At Risk: Natural hazards, people's vulnerability and disasters' 2nd ed (2004).

6 B Wisner 'Business-as-usual disaster relief' (2012) 23 *Capitalism Nature Socialism* 123.

7 F Smith, E Jolley & E Schmidt *Disability and disasters: The importance of an inclusive approach to vulnerability and social capital* (2012); Light for the World (n 4).

8 W Lunga et al 'Disability and disaster risk reduction as an incongruent matrix: Lessons from rural Zimbabwe' (2019) 11 *Jambá* n1.

9 Smith, Jolley & Schmidt (n 7).

10 Smith, Jolley & Schmidt (n 7); HT Sullivan & MT Häkkinen 'Preparedness and warming systems for special needs: Ensuring everyone gets the message (and knows what to do)' (2011) 29 *Geotechnical and Geological Engineering* 225.

2 State obligations to ensure that disability issues are addressed in emergency response plans and preparations

Disability-inclusive emergency response plans and preparations have been promoted through several international and regional laws, policies and guidelines. Here, however, I only focus on the CRPD and the African Disability Protocol as they are the most comprehensive legal frameworks safeguarding the human rights of people with disabilities at the global and regional level. Adopted by the United Nation's General Assembly on 13 December 2006,¹¹ the CRPD is the leading disability-specific articulation of human rights. Internationally, it has been widely acknowledged as such including through wide ratification. At the time of writing this comment, the CRPD has been ratified by 181 countries, including 43 African countries, and the European Union.¹² The African Disability Protocol was adopted by the African Union on 29 January 2018,¹³ but has not yet achieved the 15 ratifications that it requires to become operational. Although it is not yet in operation, the African Disability Protocol stands alongside the CRPD in providing a comprehensive disability specific articulation of human rights in the African context.¹⁴ Thus, many provisions of the African Disability Protocol correspond to the provisions of the CRPD, but they have been contextualised to reflect the situation of people with disabilities.¹⁵ The African Disability Protocol also contains additional provisions on issues which are not emphasised or explicitly mentioned in the CRPD, but are important for the promotion, protection and fulfilment of the rights of people with disabilities in Africa.

Among their similarities, both the CRPD and the African Disability Protocol require state parties to ensure the protection and safety of persons with disabilities in situations of risk. Accordingly, article 11 of the CRPD enjoins state parties to take 'all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including

11 GA Res A/RES/61/06, adopted on 13 December 2006, entered into force on 3 May 2008.

12 United Nations Department of Economic and Social Affairs Disability 'Convention on the Rights of Persons with Disabilities (CRPD)' United Nations Department of Economic and Social Affairs Disability <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (accessed 11 September 2020).

13 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted on 29 January 2018 <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa> (accessed 14 September 2020). The Protocol was adopted in terms of art 66 of the African Charter on Human and Peoples' Rights (African Charter), which allows for the acceptance of additional protocols to supplement its provisions.

14 J Mururiwa 'Some reflections on the draft African Disability Protocol and socio-economic justice for persons with disabilities' (2011) 12 *ESR Review: Economic and Social Rights in South Africa* 3.

15 Mururiwa (n 14).

situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters'.¹⁶ Similarly, article 12 of the Protocol requires state parties to '[t]ake specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced displacements, humanitarian emergencies and natural disasters'.¹⁷

While article 11 of the CRPD and article 12 of the African Disability Protocol are similar in a broad sense, the African Disability Protocol explicitly mentions forced displacement as a situation of risk whereas the CRPD does not do so. This draws attention to the gravity of the problem of forced displacement in Africa and the need to address disability issues in such situations. Although it is a worldwide phenomenon, forced displacement is more pronounced in Africa than any other continent.¹⁸ It is reported that Cyclone Idai caused the displacement of 4.5 million people.¹⁹

Beyond article 11 of the CRPD and article 12 of the African Disability Protocol, other provisions of both instruments are relevant for the development and implementation of emergency response plans and preparations which are disability inclusive. First, the general principles of both instruments provide guidance to the inclusion of disability issues in this context.²⁰ In addition to the seven principles listed in the CRPD, the African Disability Protocol specifies 'reasonable accommodation'²¹ and 'best interest of the child'²² as general principles. Given that these two concepts are not common practice in Africa, they needed to be specifically mentioned to ensure that they are prioritised in the implantation of the Protocol.

Second, the general obligations of both instruments outline the steps which state parties should take in implementing these instruments.²³ While most of these steps are similar in both instruments, the African Disability Protocol requires state parties to take additional steps or pay attention to some things that were not explicitly mentioned in the CRPD, primarily as a way of contextualising the rights of people with disabilities to the African context. For instance, the African Disability Protocol requires states parties to '[put] in place adequate resources, including through budgetary allocations, to ensure the full implementation of this

16 Art 11 CRPD.

17 Art 12(a) African Disability Protocol.

18 Internal Displacement Monitoring Centre 'Africa report on internal displacement' (2019) <https://reliefweb.int/sites/reliefweb.int/files/resources/201912-Africa-report.pdf> (accessed 29 September 2020).

19 Phiri, Simwanda & Nyirenda (n 3).

20 Art 3 CRPD; art 3 African Disability Protocol.

21 Art 3 African Disability Protocol, Principle (g).

22 Art 3 African Disability Protocol, Principle (i).

23 See Art 4 CRPD; art 4 African Disability Protocol.

Protocol',²⁴ whereas the CRPD does not make express mention of such a requirement. As Yvette Basson notes, '[m]any countries in Africa do not prioritise spending on socioeconomic issues, which makes the duty to allocate resources to the implementation of the Protocol particularly significant'.²⁵

Differences also exist in the scope of the guidelines for the involvement of people with disabilities in decision-making processes. The CRPD requires state parties to 'closely consult' and 'actively involve' people with disabilities 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'.²⁶ The African Disability Protocol, on the other hand, requires state parties to ensure that people with disabilities effectively participate in 'all decision-making processes including the development and implementation of legislation, policies and administrative processes to implement this Protocol'.²⁷

While both instruments require state parties to ensure the involvement of people with disabilities in decision-making processes, there are three differences in the scope of these obligations. First, the CRPD requires state parties to ensure that people with disabilities are also involved in 'other decision-making processes concerning issues relating to persons with disabilities' in addition to issues relating to the implementation of the Convention²⁸ whereas the African Disability Protocol only requires state parties to ensure that people with disabilities are involved in issues relating to the implementation of the Protocol.²⁹ This may be an oversight by the drafters of the Protocol. Consequently, it may pose a limitation on the participation of people with disabilities in decision-making processes which are not explicitly mentioned in the Protocol. Second, the African Disability Protocol mentions that people with disabilities should be involved in the development and implementation of administrative processes,³⁰ while the CRPD does not. Finally, while the CRPD emphasises the participation of children with disabilities,³¹ the African Disability Protocol emphasises the participation of children with disabilities as well as that of women with disabilities.³² Women with disabilities face double discrimination – as people with disabilities and as

24 Art 4 African Disability Protocol, General Obligation (i).

25 Y Basson 'The right to an adequate standard of living in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2019) 7 *African Disability Rights Yearbook* 258 at 260.

26 Art 4(3) CRPD.

27 Art 4 African Disability Protocol, General Obligation (j).

28 Art 4(3) CRPD.

29 Art 4 African Disability Protocol, General Obligation (j).

30 As above.

31 Art 4(3) CRPD.

32 Art 4 African Disability Protocol, General Obligation (j).

women – and the latter is compounded by patriarchy in Africa,³³ therefore it was important to make the participation of women with disabilities in decision-making processes an explicit requirement in the African Disability Protocol.

Article 31 of the CRPD and article 32 of the African Disability Protocol on statistics and data collection are also relevant to the development and implementation of emergency response plans and preparations which are disability inclusive. These provisions respond to the historic death of disability data, which has been one of the contributing factors to the exclusion of people with disabilities in the development and implementation of legislation and policies, including emergency response plans and preparations.³⁴ While the CRPD encourages the collection of appropriate information, including statistical and research data, to enable the formulation and implementation of policies to give effect to the Convention,³⁵ the African Disability Protocol encourages ‘the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities’.³⁶ Two differences can be seen in these texts. First, beyond encouraging the collection of information, the African Disability Protocol also encourages analysing, storing and disseminating information.³⁷ Second, while the CRPD encourages collecting information for ‘the formulation and implementation of policies to give effect to the Convention’,³⁸ the African Disability Protocol encourages collecting information ‘to facilitate the protection and promotion of the rights of persons with disabilities’.³⁹ Thus, the latter reimagines not only the use of statistics and information for issues beyond the Protocol, but also for the protection and promotion of the rights of persons with disabilities more broadly.

Finally, article 32 of the CRPD on international cooperation and article 33 of the African Disability Protocol on cooperation are also relevant to the development and implementation of emergency response plans and preparations which are disability inclusive. While the CRPD highlights the need for international cooperation as broadly referring to all forms of possible cooperation among state parties, the African Disability Protocol spells out the forms of cooperation among state parties. This

33 S Majiet & A Africa ‘Women with disabilities in leadership: The challenges of patriarchy’ (2015) 29 *Agenda* 101.

34 JH Madans, ME Loeb & BM Altman ‘Measuring disability and monitoring the UN Convention on the Rights of Persons with Disabilities: The work of the Washington Group on Disability Statistics’ (2011) 11 *BMC Public Health* S4. BioMed Central, AH Eide & ME Loeb ‘Data and statistics on disability in developing countries’ (2005) Disability Knowledge and Research Programme Executive Summary.

35 Art 31 CRPD.

36 Art 32 African Disability Protocol.

37 As above.

38 Art 31 CRPD.

39 Art 32 African Disability Protocol.

includes cooperation at international, continental, sub-regional and bilateral level.⁴⁰ Emergency relief programmes often involve some level of cooperation. Therefore, the requirements of the two instruments are that emergency relief programmes are inclusive of, and accessible to, people with disabilities when some level of cooperation is involved.⁴¹ Thus, the state party and its partners have a responsibility to ensure that their emergency response plans and preparations are disability inclusive.

In summary, both the CRPD and the African Disability Protocol set out the human rights standards which state parties should follow to ensure the protection and safety of people with disabilities during situations of risk. This includes collecting disaggregated data on people with disabilities and involving people with disabilities in decision-making processes. The African Disability Protocol also emphasises the need to allocate financial resources for the implementation of the provisions of the Protocol. As I have already mentioned in the introduction, the failure to do these things are among the main causes of the historic exclusion of people with disabilities and disability issues in emergency response plans and preparations. The next section discusses the extent to which these standards were followed during Cyclone Idai.

3 The extent to which disability issues were addressed in emergency response plans and preparations for Cyclone Idai

Cyclone Idai affected the lives and wellbeing of many people with disabilities. While it is not known how many precisely, Help and Healing International, formally known as CBM, carried out a survey and identified nearly 5 000 people with disabilities in need of humanitarian assistance in Zimbabwe and Malawi.⁴² According to Light for the World, it is estimated that over 100 000 people with disabilities were affected by Cyclone Idai in Mozambique.⁴³ However, there are no statistics for Madagascar. It is important to note that these statistics were provided by international organisations which specifically assist people with disabilities or minorities and that these organisations conducted their surveys after broader government and non-government surveys, which contained very little information about the effects of the Cyclone on people with disabilities.⁴⁴

40 Art 33 African Disability Protocol.

41 MA Stein 'Mainstreaming and accountability: (Really) including persons with disabilities in development aid and humanitarian relief programming' (2013) 31 *Nordic Journal of Human Rights* 292.

42 Hope and Healing International 'Finding and assisting survivors with disabilities: Cyclone Idai emergency rapid assessment by Hope and Healing International and its partners' (2019) <https://blog.hopeandhealing.org/wp-content/uploads/2019/07/HH-Rapid-Assessment-Cyclone-Idai.pdf> (accessed 26 October 2020).

43 Light for the World (n 4).

44 Hope and Healing International (n 42); Light for the World (n 4).

Help and Healing International reports that many of the people with disabilities who they identified in Malawi and Zimbabwe had not been captured in broader government and non-government surveys and records.⁴⁵ They had also failed to access relief aid.⁴⁶ Light for the World reports that only 1 000 people with disabilities had been identified and received assistance in Mozambique.⁴⁷ This was partially due to the government and non-government organisations using different definitions of ‘persons with disabilities’, with some of them having limited or lacking knowledge of ‘impairment types’; using diverse vulnerability criteria, some of which excluded people with disabilities based on their impairment type or its severity; collecting data at various times after the cyclone, but not making follow-ups; and excluding disabled peoples’ organisations (DPOs) in data collection and identification processes.⁴⁸ Similarly, UNICEF Zimbabwe highlighted that the failure to capture disaggregated data of children with disabilities increased the risk of failure to address their unique needs.⁴⁹ In its third situation report on the Cyclone, Unicef reported having identified and assisted 255 children with disabilities in a preliminary disability related assessment in Chimanimani, Zimbabwe.⁵⁰

The failure by governments and mainstream non-government organisations to capture people with disabilities in their surveys and records has also been regarded as an attitude problem.⁵¹ In Mozambique, Unicef was informed that mainstream organisations were not prepared to assist people with disabilities.⁵² Instead of including people with disabilities in their programmes, these organisations passed them on to disability-specific organisations:

Rather than taking up these cases themselves, they (mainstream humanitarian actors) shift responsibility towards other organisations. It seems like there is a general assumption among humanitarian actors that women and men, girls and boys with disabilities require separate services, while in fact they can also be included in their general programmes. This reflects the need to change attitudes about women and men, girls and boys with disabilities and recognise that everyone has the same basic needs with possible additional specific requirements.⁵³

45 Hope and Healing International (n 42).

46 As above.

47 Light for the World (n 4).

48 As above.

49 Unicef ‘Deafening silence on disability Cyclone Idai’ (8 May 2019) <https://www.unicef.org/zimbabwe/stories/deafening-silence-disability-cyclone-idai> (accessed 26 October 2020).

50 As above.

51 Light for the World (n 4); Unicef ‘Aid out of reach’ (2019) <https://www.unicef.org/mozambique/media/2396/file/Aid%20out%20of%20reach.pdf> (accessed 26 October 2020).

52 Unicef (n 51).

53 As above.

Despite the above challenges, however, several organisations, especially those with a disability-specific focus, collected data and information about people with disabilities and used it to address their specific needs. In addition to the above-mentioned organisations, member charities of the Disasters Emergency Committee (DEC), working in Mozambique, Zimbabwe and Malawi, collected disaggregated data at the outset and used it to identify specific groups, such as people with disabilities, and develop emergency response plans that addressed their specific needs.⁵⁴ In addition, these charities actively sought the input of the identified groups when they were designing their intervention programmes.⁵⁵ This enabled these charities to identify and address the specific needs of people with disabilities.

4 Making emergency response plans and preparations for COVID-19 disability inclusive: Drawing lessons from Cyclone Idai

The current COVID-19 pandemic places people with disabilities in a potentially more vulnerable position than the general population.⁵⁶ While they may not be inherently at a greater risk of infection because of their disability status, people with disabilities face greater risk of exclusion in respect to the extent to which emergency response plans and preparations addresses their specific situation.⁵⁷ This notwithstanding, people with disabilities with certain pre-existing medical conditions also fall in the at-risk category.⁵⁸ Therefore, measures need to be taken to ensure that the needs of people with disabilities are addressed in the emergency response plans and preparations for COVID-19. Some of the measures which countries should take are outlined below.

Many persons with disabilities were overlooked in initial relief efforts during Cyclone Idai due to the lack of disaggregated data and statistics on people with disabilities and the effects of the cyclone on their lives. Therefore, national governments should collect disaggregated data on persons with disabilities affected by COVID-19 and its effects on their lives. Furthermore, governments should conduct research into the risk factors which may have contributed to infection, including identifying any possible gaps in existing emergency response strategies and their

54 Disasters Emergency Committee (DEC) '2019 Cyclone Idai Appeal Six-Month Report' (2010) https://www.dec.org.uk/sites/default/files/dec_2019_cyclone_idai_six_mon_th_report.pdf (accessed 29 September 2020).

55 As above.

56 WHO 'Disability Considerations during the COVID-19 outbreak' (26 March 2020) <https://www.who.int/publications/i/item/WHO-2019-nCoV-Disability-2020-1> (accessed 26 October 2020).

57 As above.

58 As above.

implementation. This information can be used as feedback in the further development and implementation of emergency response plans and preparations for COVID-19, which can help make these plans and preparations more disability inclusive.

The exclusion of people with disabilities and their representative organisations during Cyclone Idai also resulted in many needs of people with disabilities going unmet. Therefore, people with disabilities and their representative organisations should be invited to provide technical support in emergency response plans and preparations for COVID-19. This will help make these plans and preparations more disability inclusive.

Finally, disability should be mainstreamed in all emergency response planning and preparation processes. Some organisations side-lined people with disabilities in their emergency relief programmes for Cyclone Idai because they did not have a specific focus on disability issues. Therefore, disability issues should be an integral part of emergency response planning and preparation processes for all state and non-state actors. This will force state and non-state actors, including international collaboration partners, to think about disability issues in the development and implementation of their emergency response plans and preparations for COVID-19.

5 Conclusion

The foregoing discussion shows that while the CRPD and the African Disability Protocol requires state parties to ensure the protection of people with disabilities in situations of risk and humanitarian emergencies, not all the emergency response plans and preparations for Cyclone Idai were disability inclusive. Consequently, many disabled people did not benefit from initial emergency relief aid. These are gaps that should be addressed in the emergency response plans and preparations for COVID-19. These gaps can be addressed by collecting disaggregated data on persons with disabilities, involving people with disabilities in decision-making processes, including through their representative organisations, and mainstreaming disability in all emergency response planning and preparation processes.