

African Disability Rights Yearbook 2024

The *African Disability Rights Yearbook* aims to advance disability scholarship. Coming in the wake of the United Nations Convention on the Rights of Persons with Disabilities, it is the first peer-reviewed journal to focus exclusively on disability as human rights on the African continent. It provides an annual forum for scholarly analysis on issues pertaining to the human rights of persons with disabilities. It is also a source for country-based reports as well as commentaries on recent developments in the field of disability rights in the African region.



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African Disability Rights Yearbook 2024

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EDITORIAL

The editors of the *African Disability Rights Yearbook (ADRY)* are pleased to announce the publication of the twelfth volume of the *ADRY*.

Section A of this volume features six articles by: Dae-Wook Kim on the role of the Committee on the Rights of Persons with Disabilities in ensuring disability-inclusive responses to climate change in Africa; Tracey Kanhanga on impact of climate change on the rights to health and life of persons with albinism; Fidelicy Nyamukondiwa & Delis Mazambani on the mandate of Zimbabwe Human Rights Commission in promoting and protecting the rights of persons with disabilities; Florence Ndagire on a critical analysis of access to maternal, sexual and reproductive health services for women with disabilities in Uganda; Dumisani J Ngoma & Josephine Mwenda on the colonial legacy of disability and analysing historical perspectives and disability legislation in Zambia; and Anwuli Irene Ofuani-Sokolo & Ogochukwu Monye on engendering financial inclusion for persons with disabilities in Nigeria.

Section B contains three country reports by: Marianne Severin on Federal Republic of Equatorial Guinea; Esther Akua Gyamfi on Ghana and Ngozi Chuma Umeh on Sierra Leone.

Section C on regional developments contains two commentaries by: Paul Ochieng Juma on Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa; and Anneke Meerkotter on petty policing practices and the enforcement of minor offences against persons with psychosocial disabilities in three East African countries.

The twelfth volume of the *ADRY* ends with a book review of *The spaces of mental capacity law: Moving beyond binaries* (2022) by B Clough (ed). The book is reviewed by Piers Gooding.

The financial assistance of Wellspring Philanthropic Fund is gratefully acknowledged.

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SECTION A: ARTICLES

Dae-Wook Kim*

Summary

This paper investigates the often-neglected topic of disability-inclusive climate action, focusing on the recommendations from the Committee on the Rights of Persons with Disabilities for African countries. The author's analysis reveals a consistent emphasis by the Committee on climate change in its Concluding Observations, particularly in relation to adaptive capacity for climate-related disasters. Key recommendations typically encompass emergency and disaster risk reduction strategies, the provision of information in accessible formats, and the establishment of engagement channels with disability representative organisations. However, the Committee's climate change discussions fail to adequately address the unique attributes of the African region and its individual countries, leaving several crucial issues unresolved. These issues encompass the need for improved international cooperation and a focus on disability sub-groups with climate-related concerns. The paper advocates for the Committee to intensify its efforts to address disability-inclusive responses to climate change, including general recommendations for the inclusion and recognition of the diversity of persons with disabilities and a strategy for international collaboration on climate change.

1 Introduction

Climate change is a global menace, yet its detrimental effects are not evenly distributed and largely hinge on geographical factors. Ironically, it is the developing countries, which contribute minimally to climate change, that endure the brunt of its impacts. Recognising this inequity, the Paris

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DW Kim 'The role of the Committee on the Rights of Persons with Disabilities in ensuring disability-inclusive responses to climate change in Africa' (2024) 12 *African Disability Rights Yearbook* 3-19 <https://doi.org/10.29053/adry.v12i1.5528>

Agreement – the cornerstone of international climate change governance since 2015 – emphasises the imperative to understand the unique needs and circumstances of developing nations, especially those most vulnerable to the harmful repercussions of climate change.¹

Africa is expected to be severely impacted by climate change due to its close ties with the climate system, the complexity and unpredictability of its weather patterns, and the substantial degree of climate change anticipated.² As the driest continent in the world, Africa faces significant challenges related to water stress caused by climate change, potentially affecting up to 700 million people. Over the past 230 years, the number of scorching days in Africa has increased sevenfold.³ Surface temperatures in arid areas of Africa are likely to rise more rapidly than the global average. Additionally, heavy precipitation events and flooding will become more frequent and intense in Africa.⁴ However, the most crucial factor is Africa's limited capacity to adapt to these changes. This is why African nations consistently confront challenges associated with disasters and escalating climate change risks.⁵

Climate change disproportionately impacts members of marginalised communities.⁶ The Paris Agreement acknowledges that parties should respect, promote, and consider their respective obligations related to the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, women, and those in vulnerable situations when addressing climate change.⁷ Persons with disabilities are particularly susceptible to the detrimental impacts of climate change, primarily due to constraints in resources and socio-economic hurdles.⁸ Climate change not only intensifies pre-existing challenges but also introduces new difficulties that are unique to those living with disabilities.⁹ For example, persons with albinism, who are more commonly found in sub-Saharan Africa, may face an increased risk of skin cancer as a result of climate change.¹⁰ Likewise,

1 United Nations Framework Convention on Climate Change 'Decision 1/CP.21 Adoption of the Paris Agreement' 29 January 2016, UN Doc FCCC/CP/2015/10/Add.1 (2016) (Paris Agreement), Preamble.

2 'How Africa will be affected by climate change' *BBC* 15 December 2019 <https://www.bbc.com/news/world-africa-50726701> (accessed 27 January 2024).

3 African Union 'African Union Climate Change and Resilient Development Strategy and Action Plan 2022-2032' (2023).

4 As above.

5 United Nations Office for Disaster Risk Reduction 'Sendai Framework for Disaster Risk Reduction 2015-2030' (2015).

6 PJS Stein & MA Stein 'Disability, human rights, and climate justice' (2022) 44 *Human Rights Quarterly* 81.

7 Preamble to the Paris Agreement.

8 Centre for International Environmental Law 'The rights of persons with disabilities in the context of the UN Framework Convention on Climate Change' (2019) 6.

9 PJS Stein and others 'Advancing disability-inclusive climate research and action, climate justice, and climate-resilient development' (2024) 8 *The Lancet Planetary Health* e242.

10 B Astle and others 'Global impact of climate change on persons with albinism: A human rights issue' (2023) 9 *The Journal of Climate Change and Health* 100190.

persons with disabilities such as multiple sclerosis and spinal cord injuries, whose conditions are influenced by temperature sensitivity or thermoregulation, can also experience adverse effects due to high ambient temperatures.¹¹

Various international frameworks highlight the importance of incorporating persons with disabilities into climate action strategies. For example, the Sendai Framework for Disaster Risk Reduction 2015-2030 stresses that ‘persons with disabilities and their organizations are critical in the assessment of disaster risk and in designing and implementing plans tailored to specific requirements’.¹² The Office of the High Commissioner for Human Rights (OHCHR) has published a report highlighting that ‘a disability-inclusive human rights-based approach to climate change entails climate action that is inclusive of and accountable to persons with disabilities at all stages’.¹³ Previous research also underscores the need for more inclusive climate research that takes disability into account.¹⁴

Unfortunately, the representation of persons with disabilities in policy making is insufficient. A mere 39 countries have acknowledged persons with disabilities in their nationally determined contributions, and only 65 countries have made any reference to persons with disabilities in their national adaptation strategies.¹⁵ An evaluation of disability-inclusive climate policy making indicates that nations in the Global South generally outperform those in the Global North. Sierra Leone, Zimbabwe, and Cabo Verde rank among the top ten in this assessment.¹⁶ The human rights framework in Africa encourages the integration of disability considerations into climate policies. This is demonstrated by the African Commission on Human and Peoples’ Rights’ initiative to conduct the ‘Study on the Impact of Climate Change on Human and Peoples’ Rights in Africa’.¹⁷ Additionally, considering that most existing studies primarily concentrate on natural disasters in the United States,¹⁸ there is an urgent need for research that encompasses a broader geographical scope. As a

11 PJS Stein & MA Stein ‘Climate change and the right to health of people with disabilities’ (2022) 10 *Lancet Global Health* e24.

12 United Nations Office for Disaster Risk Reduction (n 5) 22.

13 Human Rights Council, Analytical study on the rights of persons with disabilities in the context of climate change, 22 April 2020, UN Doc A/HRC/44/30 (2020) para 39.

14 See S Jodoin and others ‘Nothing about us without us: The urgent need for disability-inclusive climate research’ (2023) 2 *PLOS Climate* e0000153; PJS Stein and others ‘The role of the scientific community in strengthening disability-inclusive climate resilience’ (2023) 13 *Nature Climate Change* 108; Stein & Stein (n 11).

15 J Sébastien and others ‘Disability rights in climate policies: 2023 status report’ (2023) 4-7.

16 As above.

17 African Commission on Human and Peoples’ Rights ‘Call for comments to the study on the impact of climate change on human and peoples’ rights in Africa’ (2023) <https://achpr.au.int/en/news/press-releases/2023-10-28/call-comments-study-impact-climate-change-human-and-peo> (accessed 18 July 2024).

18 CJ Gaskin and others ‘Factors associated with the climate change vulnerability and the adaptive capacity of people with disability: A systematic review’ (2017) 9 *Weather, Climate, and Society* 801.

result, there is a significant demand for more research on disability-inclusive responses to climate change, specifically in Africa.

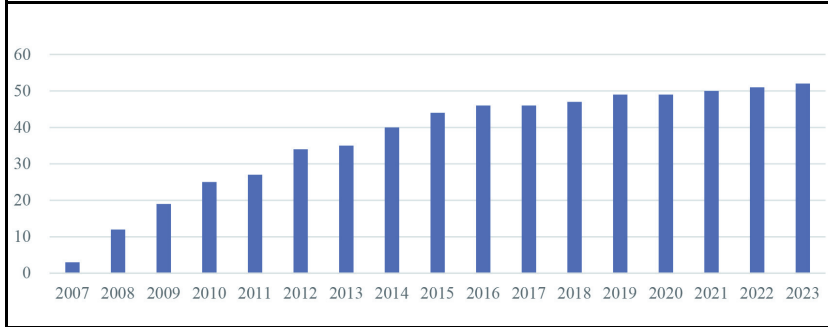
The contribution of international human rights monitoring bodies is frequently underestimated in the discourse on disability-inclusive climate action. Given that treaty bodies like the Committee on the Rights of Persons with Disabilities (CRPD Committee) can offer country-specific recommendations, they hold the potential to foster disability-inclusive approaches to climate change. Considering the limited research on the roles of international human rights monitoring bodies in disability-inclusive climate action, this paper seeks to bridge a gap in the literature. It addresses three key questions: Firstly, how does the CRPD Committee ensure the inclusion of persons with disabilities in climate change responses? Secondly, what specific recommendations does the CRPD Committee provide to guarantee the inclusion of persons with disabilities in climate change responses in Africa? Thirdly, how can the connection between climate change and disability rights be fortified in the African context?

2 The Convention on the Rights of Persons with Disabilities and climate change

In December 2006, the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol¹⁹ were unanimously approved by the United Nations (UN) General Assembly. The CRPD was put into effect in May 2008. By the close of 2022, the CRPD had been ratified or acceded to by 189 state parties. Most state parties have undertaken a review and revision of their domestic disability laws and have set up national monitoring mechanisms in accordance with the Convention.²⁰ As illustrated in Figure 1, nearly all African nations have ratified or acceded to the CRPD. The widespread adoption of the CRPD underscores the importance of examining disability-inclusive responses to climate change in Africa, utilising the CRPD as a guiding framework.

19 United Nations General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, UN Doc A/RES/61/106 (2007).

20 T Degener 'Disability in a human rights context' (2016) 5 *Laws* 35.

Figure 1: Cumulative number of African countries that ratified the CRPD²¹

Although the CRPD does not explicitly mention climate change, its principles of non-discrimination, comprehensive participation, societal inclusion, and accessibility could potentially influence the approach to meeting the needs of persons with disabilities in the context of climate change adaptation and mitigation efforts. The Preamble further stipulates that states must ensure the integration of disability issues as a fundamental component of sustainable development strategies.²² Certain articles are more directly relevant to persons with disabilities in the context of climate change. For example, Article 11 underscores that states are obligated to implement all necessary measures to guarantee the safety and protection of persons with disabilities in risky situations, including humanitarian emergencies:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.²³

Moreover, Article 4(3) highlights the states' general obligations to consult closely with and actively involve persons with disabilities in decision-making processes. This principle could potentially be applied to decisions related to climate change adaptation and mitigation:

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, States Parties shall

21 Drawing upon data from the United Nations Treaty Collection 'Status of treaties' https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&ch_apter=4&clang=en (accessed 27 January 2024).

22 Preamble to the CRPD.

23 Art 11 of the CRPD.

closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.²⁴

While the ratification of the CRPD marks the beginning of significant change, its effective implementation at the local level is of greater importance.²⁵ Therefore, our attention should be directed towards understanding the workings of the CRPD Committee. The CRPD Committee, composed of independent experts, supervises and offers recommendations to facilitate the Convention's implementation by state parties. Upon ratification of the Convention, each state party is required to submit regular reports detailing the steps taken to meet its obligations under the Convention and the progress made.²⁶ The Committee then reviews these reports and issues Concluding Observations (COs) to the respective state party, potentially requesting further information about the implementation.²⁷ These procedures enable the identification and resolution of country-specific issues. Consequently, the Convention provides a framework for inclusive climate change solutions by obligating state parties to protect the rights of persons with disabilities.

3 Data

This article utilises data derived from the COs of the CRPD Committee on each country report. Given that each state party receives an annual average of 70 recommendations from various UN human rights monitoring mechanisms, these COs serve as a valuable resource for country-specific information.²⁸ This is why previous studies on the rights of vulnerable groups have analysed COs. For example, Chapman and Carbonetti (2011) examined 135 COs to understand how concerns for the vulnerable have been incorporated into these recommendations.²⁹ Similarly, Lawson and Beckett (2021) examined COs issued by the CRPD Committee to explore the evolving trends from the social model of disability towards the human rights model of disability.³⁰

The author has compiled all the COs from the CRPD Committee for African countries, which are available in the Universal Human Rights Index operated by the OHCHR.³¹ As of 2022, the CRPD Committee had

24 Art 4(3) of the CRPD.

25 S Jodoin and others 'A disability rights approach to climate governance' (2020) 47 *Ecology Law Quarterly* 73.

26 Art 35(1) of the CRPD.

27 As above.

28 Danish Institute for Human Rights 'SDG-human rights data explorer methodology' <https://sdgdata.humanrights.dk/en/methodology> (accessed 27 January 2024).

29 AR Chapman & B Carbonetti 'Human rights protections for vulnerable and disadvantaged groups: The contributions of the UN Committee on Economic, Social and Cultural Rights' (2011) 33 *Human Rights Quarterly* 682.

30 A Lawson & AE Beckett 'The social and human rights models of disability: Towards a complementarity thesis' (2021) 25 *The International Journal of Human Rights* 348.

issued 14 COs on the reports of various African countries, including Tunisia, Gabon, Kenya, Mauritius, Ethiopia, Uganda, Morocco, Sudan, Seychelles, South Africa, Algeria, Niger, Rwanda, and Senegal. Each set of COs is structured into four sections: an introduction, positive aspects, principal areas of concern with recommendations, and follow-up. This study primarily focuses on concerns and recommendations.

The next step involves filtering out all the COs related to climate change. The SDG–Human Rights Data Explorer, a tool developed collaboratively by the OHCHR and the Danish Institute for Human Rights, connects the recommendations of international human rights mechanisms with the Sustainable Development Goals (SDGs).³² This tool facilitates the development of actionable steps to fulfil human rights obligations and sustainable development commitment.³³ The database houses a collection of 150 000 recommendations from 67 human rights mechanisms.

As of 2022, the CRPD Committee had issued 6 477 recommendations, with 134 identified as climate-related by the SDGs marker in the SDG–Human Rights Data Explorer. These recommendations serve as the primary data source. However, the categorisation results, obtained through a machine learning process, are not exhaustive.³⁴ The figure was used to corroborate the overall trend. Leveraging the results from the Explorer, the author reviewed all COs in the reports of African countries and broadened the list of climate-related concerns and recommendations.

Furthermore, the author gathered climate-related concerns and recommendations for persons with disabilities from the Committee on the Rights of the Child (CRC Committee) and the Committee on the Elimination of Discrimination against Women (CEDAW Committee). This information offers insights into how other treaty bodies tackle issues related to specific groups of individuals with disabilities, such as children and women. For example, women with disabilities face additional obstacles to climate adaptation due to gender marginalisation, compared to men with disabilities.

31 OHCHR ‘The Universal Human Rights Index (UHRI)’ <https://uhri.ohchr.org/en/> (accessed 27 January 2024).

32 Danish Institute for Human Rights ‘SDG-human rights data explorer: Explore data’ <https://sdgdata.humanrights.dk/en/solr-explorer> (accessed 27 January 2024).

33 Danish Institute for Human Rights ‘What is the SDG-human rights data explorer?’ <https://sdgdata.humanrights.dk/en/node/23> (accessed 27 January 2024).

34 Danish Institute for Human Rights (n 28).

4 Results

4.1 The Committee on the Rights of Persons with Disabilities

The CRPD Committee assesses the performance of state parties in meeting their obligations under the Convention. Climate-related concerns and recommendations are specifically addressed in the ‘Situations of Risk and Humanitarian Emergencies’ section of the report. This implies that among the five targets of climate action (SDGs 13), only target 13.1, which aims to strengthen resilience and adaptive capacity to climate-related disasters, is addressed in the COs produced by the Committee.

Table 1 presents the key points of climate-related concerns and recommendations issued by the CRPD Committee for African countries. The primary climate-related concerns encompass the absence of inclusive emergency and disaster risk reduction strategies and policies for persons with disabilities, the unavailability of information on emergency and disaster strategies in formats accessible to persons with disabilities, and the lack of involvement of persons with disabilities, through their representative organisations, in the formulation and execution of climate change-related policies.

In response to these concerns, the CRPD Committee has put forth three primary climate-related recommendations for African countries. Firstly, there is a call for the development of strategies aimed at mitigating the risks associated with emergencies and disasters, with a specific focus on the inclusion of persons with disabilities. Secondly, it is recommended that information be made accessible and presented in formats comprehensible to persons with disabilities. Lastly, the Committee advocates for the establishment of mechanisms that promote collaboration with organisations representing persons with disabilities.

However, in light of the escalating impacts of climate change on persons with disabilities, the current measures are deemed insufficient. A significant concern is the absence of specific problem analyses and proposals that reflect the unique characteristics of the African region or are tailored to each country’s circumstances. While it is recognised that most countries face similar climate change challenges, the content of the proposal needs to be more region- or country-specific to improve its feasibility. Persons with albinism, for instance, are more prevalent in sub-Saharan Africa and may face a higher risk of developing skin cancer due to climate change.³⁵ However, persons with albinism are not mentioned in 14 COs of African countries.

35 Astle and others (n 10).

As previously noted, apart from target 13.1, the other targets of SDG 13 are not addressed in the COs issued by the CRPD Committee. However, these targets are addressed by other treaty bodies. For instance, the CRC Committee recommends that Cambodia enhance children's awareness of climate change by integrating environmental education into the school curriculum. This recommendation aligns with SDGs target 13.3, which emphasises the need to build knowledge and capacity to tackle climate change challenges.³⁶

Next, it is important to note that international collaboration on climate change has not been mentioned in any recommendations for African countries. Article 32 of the Convention highlights the significance of international cooperation, ensuring inclusivity and accessibility for persons with disabilities.³⁷ The general principles of international cooperation are deemed a vital strategy for advancing the rights of persons with disabilities. For example, the CRPD Committee recommends that Morocco implement measures to guarantee the effective participation, inclusion, and consultation of persons with disabilities within the framework of international cooperation programmes.³⁸ Despite the emphasis on promoting international cooperation, previous recommendations in Africa have not specifically addressed international collaboration on climate change.

In conclusion, COs in the region often classify persons with disabilities as a homogeneous group. However, the intersection of various discriminatory factors, including gender, age, displacement, and indigenous origin can intensify the risks that persons with disabilities face in experiencing the adverse effects of climate change.³⁹ Therefore, while it is crucial to address issues common to persons with disabilities, it is equally important to highlight issues that reflect the diverse types and intersectional nature of disability. Adopting a disaggregated approach can lead to more precise problem identification and alternative solutions. Furthermore, examining issues that reflect intersectionality – such as women with disabilities, children with disabilities, and older individuals with disabilities – can pave the way for collaboration with other UN human rights treaty bodies, including those advocating for women and children.

However, only a handful of references are made to specific sub-groups of disabilities in relation to climate-related issues. These findings align with the observation that UN treaty bodies often focus on singular identities, thereby understating the diverse characteristics of individuals.⁴⁰ A notable

36 CRC Committee, Concluding observations on the combined fourth to sixth periodic reports of Cambodia, 27 June 2022, UN Doc CRC/C/KHM/CO/4-6 (2022) para 39.

37 Art 32 of the CRPD.

38 CRPD Committee, Concluding observations on the initial report of Morocco, 25 September 2017, UN Doc CRPD/C/MAR/CO/1 (2017) para 61.

39 Human Rights Council (n 13) para 20.

exception is the 2016 recommendation for Uganda, which stresses addressing the needs of refugees with disabilities in humanitarian emergencies.⁴¹ In 2018, a recommendation was made for Sudan to extend aid to persons with disabilities. This aid specifically targets those who are internally displaced, refugees, or asylum seekers.⁴² The 2019 recommendation for Senegal underscores that individuals who are deaf, those with psychosocial or intellectual disabilities warrant special attention.⁴³ Despite these examples, the majority of COs do not specifically target certain sub-groups of disabilities with climate-related concerns.

Table 1: Climate-related concerns and recommendations by the CRPD Committee for African countries⁴⁴

Countries	Reporting	Concerns and recommendations
Gabon	2015	<ul style="list-style-type: none"> The lack of emergency and disaster risk reduction strategies and policies that are inclusive of persons with disabilities
		<ul style="list-style-type: none"> Adopt emergency and disaster risk reduction strategies and policies that are inclusive of persons with disabilities
Kenya	2015	<ul style="list-style-type: none"> The absence of information on the situation of internally displaced persons with disabilities and those living in refugee camps The lack of information on emergencies and disaster strategies in formats accessible to persons with disabilities
		<ul style="list-style-type: none"> Adopt a national plan to ensure the protection of persons with disabilities in situations of risk and humanitarian emergencies Provide information in modes, means and formats of communication accessible to all persons with disabilities Adopt measures to monitor the situation of persons with disabilities in refugee camps

40 G de Beco 'Intersectionality and disability in international human rights law' (2020) 24 *The International Journal of Human Rights* 593.

41 CRPD Committee, Concluding Observations on the initial report of Uganda, 12 May 2016, UN Doc CRPD/C/UGA/CO/1 (2016) para 21.

42 CRPD Committee, Concluding Observations on the initial report of the Sudan, 10 April 2018, UN Doc CRPD/C/SDN/CO/1 (2018) para 21.

43 CRPD Committee, Concluding Observations on the initial report of Senegal, 13 May 2019, UN Doc CRPD/C/SEN/CO/1 (2019) para 20.

44 Source: COs of the CRPD Committee on the reports of Tunisia, Gabon, Kenya, Mauritius, Ethiopia, Uganda, Morocco, Sudan, Seychelles, South Africa, Algeria, Niger, Rwanda, and Senegal. COs for Tunisia in 2011 did not include any concerns or recommendations related to climate change.

Mauritius	2015	<ul style="list-style-type: none"> • The lack of clarity as to the legal framework that the state party will include in the National Risk Reduction and Disaster Management Bill
		<ul style="list-style-type: none"> • Closely consult and actively involve persons with disabilities through their representative organisations
Ethiopia	2016	<ul style="list-style-type: none"> • The absence of measures to tackle humanitarian crises, specifically relating to persons with disabilities and their specific requirements
		<ul style="list-style-type: none"> • Adopt a risk and emergency strategy and ensure that disability issues are integrated into the strategy
Uganda	2016	<ul style="list-style-type: none"> • The lack of reference to persons with disabilities in the related national policy and institutions • The absence of specific provisions for refugees with disabilities in national policy • The absence of provisions for evacuation of persons with disabilities in emergency situations
		<ul style="list-style-type: none"> • Adopt a national plan to ensure the protection of persons with disabilities in situations of risk and humanitarian emergencies • Provide information in accessible formats in all languages used in the state party • Monitor the implementation of the Peace, Recovery and Development Plan to ensure the requirements of persons with disabilities, including refugees with disabilities • Finalise the draft Ugandan national disaster risk reduction and management policy
Morocco	2017	<ul style="list-style-type: none"> • The absence of a national strategy for the protection of persons with disabilities from risky situations • The lack of information on the accessibility of humanitarian and emergency services for persons with disabilities
		<ul style="list-style-type: none"> • Adopt a disaster risk reduction strategy that provides for accessibility for and inclusion of persons with disabilities
Sudan	2018	<ul style="list-style-type: none"> • The absence of a national strategy for the protection of persons with disabilities in emergency and humanitarian situations • The limited support provided for persons with disabilities who are internally displaced, refugees or asylum seekers
		<ul style="list-style-type: none"> • Adopt a disaster risk reduction strategy that is accessible and inclusive of persons with disabilities • Strengthen its efforts to provide adequate support for persons with disabilities who are internally displaced, refugees or asylum seekers

Seychelles	2018	<ul style="list-style-type: none"> • The lack of inclusion of a disability perspective in the Disaster Risk Management Act (2014) • The absence of participation of persons with disabilities through their representative organisations in the design and implementation of policies relating to climate change • Information on disaster risk reduction and emergency preparedness is not accessible to all persons with disabilities
South Africa	2018	<ul style="list-style-type: none"> • Ensure the inclusion of a disability rights perspective in the Disaster Risk Management Act • Consult closely with organisations of persons with disabilities to ensure that the requirements of persons with disabilities are included in the design and implementation of all disaster risk reduction and management plans and climate change adaptation
Algeria	2019	<ul style="list-style-type: none"> • The lack of a national plan for disaster risk reduction to support persons with disabilities in situations of risk and humanitarian emergencies, especially persons with psychosocial or intellectual disabilities and persons who are blind or visually impaired • The lack of access to information in appropriate formats, including emergency-related information, evacuation systems, transportation and shelters
Niger	2019	<ul style="list-style-type: none"> • Adopt a national plan to ensure the protection of persons with disabilities in situations of risk and humanitarian emergencies and to ensure universal accessibility and inclusion for persons with disabilities at all levels of disaster risk reduction policies and their implementation • Design and disseminate information in accessible formats to all persons with disabilities

		<ul style="list-style-type: none"> • Ensure the full inclusion and participation of persons with disabilities in designing the national emergency management system plan • Adopt a comprehensive emergency and disaster risk reduction strategy that is fully inclusive of and accessible to persons with disabilities in all situations of risk
Rwanda	2019	<ul style="list-style-type: none"> • The lack of a disability perspective in the general strategy, plan, protocols and tools in situations of risk and humanitarian emergencies • The lack of civil protection personnel with knowledge and skills to assist persons with disabilities in situations of risk • The inaccessibility of information regarding disaster risk reduction and response for persons with disabilities, in particular persons who are deaf, blind or deaf-blind and persons with intellectual disabilities
		<ul style="list-style-type: none"> • Ensure that the national strategy, plan, protocols and tools to deal with situations of risk and humanitarian emergencies are inclusive of and accessible to persons with disabilities • Train and equip emergency response teams with the knowledge and skills to assist persons with disabilities in situations of risk • Put into place measures to ensure that information on disaster risk reduction and response is accessible to all persons with disabilities
Senegal	2019	<ul style="list-style-type: none"> • The lack of a national disaster risk reduction plan to support persons with disabilities, especially persons with psychosocial or intellectual disabilities and persons who are blind or visually impaired, in situations of risk and in humanitarian emergencies • The lack of access to information in accessible formats, including emergency-related information on evacuation systems, transportation and available shelters.
		<ul style="list-style-type: none"> • Ensure the inclusion and effective participation of and meaningful consultation with persons with disabilities • Adopt and implement a comprehensive emergency and disaster risk reduction strategy that is inclusive of and accessible to persons with disabilities • Adopt measures to ensure the provision of information in accessible formats for persons with disabilities, especially for persons who are deaf, persons with psychosocial or intellectual disabilities and women and children with disabilities

4.2 Other UN treaty bodies

To understand how issues concerning children with disabilities and women with disabilities are addressed in other UN treaty bodies, the author examined the Convention on the Rights of the Child (CRC Convention) and the Convention on the Elimination of Discrimination against Women (CEDAW Convention). While neither Convention directly tackles climate change, they embody principles that apply to the issue, similar to the CRPD. The CRC Convention outlines specific rights related to the environment, including the right to non-discrimination, the best interests of the child, the right to life, the right to be heard, access to information, and the rights of Indigenous children and children from minority groups, among others.⁴⁵ It is noteworthy that the CRC Committee's most recent COs contain a separate section on the effects of climate change on children's rights. The CEDAW Convention also includes general principles applicable to disaster risk reduction and climate change, such as substantive equality and non-discrimination, participation and empowerment, and accountability and access to justice.⁴⁶

Recently, both the CRC and CEDAW Committees have made significant contributions to the discourse on climate change and its impact on vulnerable groups, each publishing a general comment or recommendation. In 2023, the CRC Committee approved a general comment on climate change, aiming to highlight the urgent need to mitigate its adverse effects on children's rights. This comment promotes a comprehensive understanding of children's rights in the context of environmental protection and clarifies the obligations of states under the Convention, with a particular emphasis on climate change.⁴⁷ The general comment emphasises that specific groups of children, including those with disabilities, encounter increased obstacles in exercising their rights. The detrimental effects of environmental harm disproportionately impact these children.⁴⁸ Additional support and specialised strategies may be necessary to empower children in disadvantaged situations, such as those with disabilities, to exercise their right to be heard.⁴⁹ Furthermore, neither the design nor the implementation of adaptation measures should discriminate against children at heightened risk, such as those with disabilities.⁵⁰

45 United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, General Assembly Resolution 44/25 (1989).

46 United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, General Assembly Resolution 34/180 (1979).

47 Committee on the Rights of the Child, General Comment 26 on children's rights and the environment with a special focus on climate change, 22 August 2023, UN Doc CRC/C/GC/26 (2023) para 12.

48 Committee on the Rights of the Child (n 47) para 14.

49 Committee on the Rights of the Child (n 47) para 26.

50 Committee on the Rights of the Child (n 47) para 102.

In a similar vein, the CEDAW Committee published a general recommendation on climate change in 2018. This recommendation underscores the significant challenges and opportunities that climate change and disaster risk present for the realisation of women's human rights.⁵¹ The general recommendation emphasises that women and girls with disabilities are particularly vulnerable to gender-based violence and sexual exploitation during and in the aftermath of disasters.⁵² The recommendation also advocates that state parties should ensure that all policies related to disaster risk reduction and climate change are responsive to gender, with a focus on the most marginalised groups of women and girls, including those with disabilities.⁵³ In terms of more specific measures, the recommendation highlights the importance of early warning information. This information should be provided using technologies that are timely, culturally appropriate, accessible, and inclusive, ensuring accessibility for all women, including those with disabilities.⁵⁴

An exploratory analysis of climate-related recommendations for African countries from the CRC and CEDAW Committees yields insightful results. The CRC Committee has issued a total of 238 climate action-related recommendations, 47 of which are specifically designed for persons with disabilities. The primary recommendation urges the state party to allocate strategic budgetary resources for children in disadvantaged or vulnerable situations, including children with disabilities. The CEDAW Committee has issued a total of 186 climate change-related recommendations, 15 of which are specifically aimed at persons with disabilities. The primary recommendation is that the state party should ensure the inclusion of all women, including women with disabilities, in the development and implementation of national policies and programmes related to climate change. These findings demonstrate that these committees are addressing the issues related to children and women with disabilities. They also underscore the importance of enhancing climate action through an intersectional approach. Furthermore, these results highlight the need for collaborative efforts to incorporate disability-inclusive climate actions into the frameworks of UN human rights treaties.

5 Conclusion

This paper explores the role of the CRPD Committee in promoting disability-inclusive responses to climate change in Africa. The CRPD

51 Committee on the Elimination of Discrimination against Women, General Recommendation 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, 7 February 2018, UN Doc CEDAW/C/GC/37 (2018) para 8.

52 Committee on the Elimination of Discrimination against Women (n 51) para 5.

53 Committee on the Elimination of Discrimination against Women (n 51) para 26.

54 Committee on the Elimination of Discrimination against Women (n 51) para 54.

Committee consistently emphasises the inclusion of persons with disabilities in climate change responses in its COs on country reports. Key recommendations include the implementation of emergency and disaster risk reduction strategies, the provision of information in accessible formats, and the establishment of engagement channels with disability representative organisations. However, the unique characteristics of the African region or individual countries are not sufficiently considered. Several critical issues related to climate change remain unaddressed. There is a need to tackle additional issues such as the significance of international cooperation and heightened focus on the sub-groups of disabilities with climate-related concerns.

These findings provide valuable insights that reinforce the connection between climate change and disability rights within the CRPD Committee. The implications of this study are threefold. Firstly, it underscores the need to develop comprehensive recommendations that ensure the inclusion of persons with disabilities in the CRPD Committee's responses to climate change. The CEDAW and the CRC Committees have shown that making general recommendations can advance the integration of climate change into the discourse on disability rights. The Committee's review process and the issuance of COs should incorporate a general comment or recommendation on disability-inclusive climate action. By adding a separate section on the effects of climate change on disability rights in the COs, the CRPD Committee would enhance its role in promoting more inclusive responses to climate change.

Secondly, it is crucial to recognise the diversity within the group of persons with disabilities. The intersectionality of age, gender, and disability leads to unique experiences and challenges that must be considered in the CRPD Committee's overall approach to climate action. Thirdly, it emphasises the importance of an international climate change collaboration strategy that includes persons with disabilities, particularly in the African context.

Strengthening the connection between climate change and disability rights within the CRPD Committee would contribute to mainstreaming disability-inclusive climate action within Africa's human rights framework, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol). The recent coming into force of the African Disability Protocol provides an enabling regional framework for integrating disability considerations into climate policies.⁵⁵ Strengthening

55 See African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018) art 12; Centre for Human Rights 'Press statement: Centre for Human Rights welcomes the coming into force of the African Disability Protocol' (2024) <https://www.chr.up.ac.za/latest-news/3877-press-statement-the-centre-for-human-rights-welcomes-the-coming-into-force-of-the-african-disability-protocol> (accessed 8 October 2024).

the role of the CRPD Committee, along with ongoing efforts to enhance human rights frameworks at the continental level, is essential for mainstreaming disability-inclusive climate action in Africa.

One of the limitations of this study is its exclusive focus on the African region. While this study highlights the situation in Africa, it underscores the need for geographically broader research into the role of the CRPD Committee in fostering disability-inclusive responses to climate change. Another limitation of this study is that its analysis of climate-related recommendations for the CRC and CEDAW Committees is merely exploratory. This paper also advocates for additional comparative studies and case studies on the CEDAW Committee, the CRC Committee, and the Committee on the Elimination of Racial Discrimination. These studies could contribute to a comprehensive examination of disability-inclusive responses to climate change by international human rights monitoring bodies.

CHAPTER 2

IMPACT OF CLIMATE CHANGE ON THE RIGHTS TO HEALTH AND LIFE OF PERSONS WITH ALBINISM: WHAT ARE SOUTH AFRICA'S OBLIGATIONS?

Tracey Kanhanga*

Summary

Climate change significantly threatens the health and lives of people with albinism, affecting both their physical and mental well-being. Elevated ultraviolet radiation increases visual impairments and susceptibility to skin cancer, while climate-related disasters further limit access to healthcare. Despite these multifaceted challenges, states in their capacity as duty-bearers are obligated under human rights and climate change frameworks to not only uphold their climate change mitigation and adaptation duties but also their duty to respect, protect, promote, and fulfil the individual's rights. These obligations as the article submits are related – with the climate change obligations influencing the human rights ones. Heeding the clarion call that 'no one is left behind', South Africa has established legal mechanisms to mitigate the impacts of climate change on the rights of persons with albinism, ensuring that they adapt to climate change by undertaking practical measures, such as the provision of protection packages. However, the state's efforts fall short of achieving full disability inclusivity for persons with albinism in climate related decision-making processes, leading to their marginalisation.

1 Introduction

The link between human rights and climate change gained prominence in the mid-2000s, becoming the focal point of discussion amongst scholars¹

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1 J Knox 'Human rights principles and climate change' in P Cinnamon and others (eds) *International climate change law* (2016) 213. See also P Cullet 'Human rights and climate change: Broadening the right to environment' in P Cinnamon and others (eds) *International climate change law* (2016) 495.

T Kanhanga 'Impact of climate change on the rights to health and life of persons with albinism: What are South Africa's obligations?' (2024) 12 *African Disability Rights Yearbook* 20-45
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and the international community. In 2008, the United Nations Human Rights Council (HRC) requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) and others to conduct a study on this relationship.² Subsequently, several resolutions have been adopted in this regard. Perhaps the most significant resolution for the purposes of this article is the HRC resolution adopted in 2011 which emphasised the impacts of climate change on the enjoyment of human rights.³ The HRC accurately observed that although the impacts of climate change are felt by all beings collectively, vulnerable groups are severely affected.⁴ Nevertheless, the HRC recognised that states' involvement in the climate change crisis reduces the adverse effects of climate change on the enjoyment of rights. Thus, it affirmed that human rights obligations, standards, and principles could inform and improve international policymaking around climate change.

This article addresses two aspects: while the interference of climate change with human rights is acknowledged, debates arise regarding the nature of states' human rights obligations concerning climate change. Atapattu examines how the human rights obligations of states pan out in relation to mitigation and adaptation measures as states decide how to implement their Nationally Determined Contributions (NDC) under the Paris Agreement.⁵ Knox observed various state obligations such as assessing the environmental impacts of proposed projects within their jurisdiction, disseminating information, and ensuring remedies for environmental interferences with human rights enjoyment.⁶ What distinguishes the present article is that it focuses on a specific rights bearer. Limited legal research has been conducted on the impacts of climate change on persons with disabilities let alone persons with albinism.

This article addresses the following question: what are South Africa's obligations under international, or regional human rights law regarding climate change impacts on persons with albinism? The article demonstrates that the international instruments applicable to the discourse seem to implicitly outline these obligations. However, how has the South African government fared in fulfilling these obligations?

To address these issues, the article adopts a human rights based approach, a conceptual framework intended for mainstreaming human rights norms, standards, and principles into legislation, policies, and

2 Human Rights Council, Resolution 7/23: Human rights and climate change, 28 March 2008, UN Doc A/HRC/RES/7/23 (2008).

3 Human Rights Council, Resolution 18/22: Human rights and climate change, 17 October 2011, UN Doc A/HRC/RES/18/22 (2011) 2.

4 As above.

5 S Atapattu 'The right to a healthy environment and climate change mismatch or harmony' in J Knox & R Pejan (eds) *The human right to a healthy environment* (2018) 253.

6 Knox (n 1) 220-232.

planning to ensure that peoples' interests are always protected.⁷ Since the call made by the UN Secretary-General to the UN entities during the launch of the UN Programme for Reform in 1997 to mainstream human rights norms into their respective mandates and activities,⁸ various agencies began to integrate human rights principles within their operations.

Choosing the human rights based approach also seems befitting due to its unproblematic legal basis. Thus, most parties to the core human rights treaties including South Africa are also parties to the international climate change regime. As such these countries have obligations under international law to respect human rights and to address climate change. The human rights based approach provides a holistic framework through which parties can meet their obligations under both regimes. The framework allows states to respect, protect, and fulfil human rights while meeting their climate change obligations. It does not seek to impose new obligations other than those which parties have already agreed to under international human rights law.

This article's primary focus is on the obligations of states, in particular South Africa's in relation to the impacts of climate change on persons with albinism. The article consists of three sections. The first section is the introduction. Section two lays the groundwork by analysing the effects of climate change on persons with albinism and examining the fundamental concepts of climate change, albinism, and the link between the two. It also examines fundamental rights of people with albinism that are impacted by climate change. Section three discusses South Africa's general and procedural obligations as derived from treaties directly applicable to this discussion. Additionally, it assesses the government's efforts to fulfil its international and regional obligations before concluding.

2 Effects of climate change on albinism

Climate change presents unique challenges for individuals with albinism, and this section explores the connection between these two issues, emphasising how people with albinism, who are recognised as having disabilities, are disproportionately affected by climate change. It begins by

7 See UN Sustainable Development Group 'The human rights based approach to development cooperation towards a common understanding among UN agencies' (2003) https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (accessed 18 October 2023). See further UN Sustainable Development '2030 Agenda: Universal values – Principle one: human rights-based approach' <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> (accessed 18 October 2023)

8 Report of the Secretary General, *Renewing the United Nations: A program for reform*, 14 July 1997, UN Doc A/51/950 (1997) para 274. D Olawuyi *The human rights-based approach to carbon finance* (2016) 145.

defining climate change and examining the social framing of albinism as a disability to ensure that individuals with albinism receive equal protection as those with disabilities in the face of climate change. The discussion then transitions to the broader relationship between climate change and human rights, followed by a more detailed analysis of how climate-related challenges impact the rights to health and life of people with albinism.

2.1 Climate change

The United Nations Framework Convention on Climate Change (UNFCCC) and the South African Climate Change Act (CCA) define climate change as a

change in climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.⁹

In essence, it refers to long-term shifts in global temperatures and weather patterns, which can result from natural climate variations or, as the UNFCCC and the CCA accurately highlighted, from human-induced activities. Since the first industrial revolution, human activities, particularly the destruction of rainforests and the burning of fossil fuels such as coal, oil, and natural gas, have been the primary contributors to climate change. These fossil fuels generate greenhouse gas emissions which form a blanket around the Earth, trapping the sun's heat, and raising temperatures.¹⁰ According to the Intergovernmental Panel on Climate Change (IPCC) AR6 2023 synthesis report, global surface temperatures have increased by 1.1°C above 1850-1900 in 2011-2020.¹¹ This rise affects global weather and climate, resulting in widespread adverse climate change impacts on nature and people. Global assessments indicate that these adverse impacts have a range of implications for the full enjoyment of human rights with vulnerable groups, including persons with disabilities experiencing the impacts most acutely.

9 Art 1 of the United Nations General Assembly, United Nations Framework Convention on Climate Change, 9 May 1992 / 1771 United Nations Treaty Series (UNTS) 107. See also Chapter 1 of the South African Climate Change Act 22 of 2024.

10 UN Climate Action 'Causes and effects of climate change' <https://www.un.org/en/climatechange/science/causes-effects-climate-change> (accessed on 17 September 2024).

11 See IPCC 'Climate change: 2023 Synthesis report' (2023) 42 https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf (accessed 27 October 2023).

2.2 Albinism as a disability

Albinism is a rare, genetic condition affecting melanin synthesis, causing skin, hair, and eye colour loss due to a deficiency in melanin.¹² There are different types of albinism: ocular and oculocutaneous. The latter manifests when there is reduced melanin synthesis in the melanocytes of the hair, skin, and eyes, while ocular albinism involves hypopigmentation primarily involving the retinal pigment epithelium of the eyes.¹³ In Africa, statistics on albinism prevalence vary widely, with an estimated occurrence of one in 5 000-15 000 people, and selected populations having estimates as high as one in 1 000.¹⁴ In South Africa, specifically in Soweto, one in 3 900 out of a size sample of 803 511 has albinism.¹⁵

Determining who qualifies as a disabled person can be challenging because the notion of disability is an evolving concept with unclear and flexible boundaries.¹⁶ However, with regards to albinism there is a consensus that it qualifies as a disability. According to the Convention on the Rights of Persons with Disability (CRPD) and the Protocol to the African Charter on Human and Peoples' Rights of Persons with Disabilities (African Disability Protocol),¹⁷ disability encompasses various impairments. Individuals with long-term physical, mental, intellectual, neurological or sensory impairments are considered persons with disability.¹⁸ These impairments hinder them from participating in society fully and effectively on an equal basis with others.¹⁹

Internationally and regionally the CRPD and the African Disability Protocol are the most significant instruments relating to disability, with the

12 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond: Climate change and persons with albinism, 13 July 2023, UN Doc A/ 78/167 (2023) para 14. Applicable international human rights standards and related obligations addressing the issues faced by persons with albinism: Report of the Independent Expert on the enjoyment of human rights by persons with albinism, 14 July 2017, UN Doc A/72/131 (2017) para 2.

13 RA King & WS Oetting 'Oculocutaneous albinism' in J Nordlund and others (eds) *The pigmentary system: Physiology and pathophysiology* 2nd ed (2006) 600.

14 Report of the Office of the United Nations High Commissioner for Human Rights: Persons with albinism, 12 September 2013, A/HRC/24/57 (2013) para 14.

15 JGT Kromberg & R Kerr 'Oculocutaneous albinism in Southern Africa: Historical background, genetic, clinical and psychosocial issues' (2022) 11 *African Journal of Disability* 3.

16 Preamble (e) of the United Nations General Assembly, Convention on the Right of Persons with Disabilities: Resolution/adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106/ (2007) (CRPD).

17 AU, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018) (African Disability Protocol) https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf (accessed 27 October 2023). It is important to take note that during the process of writing this article the African Disability Protocol entered into force on 3 May 2024, following the receipt of the 15th instrument of ratification, in accordance with art 38 of the Protocol.

18 Art 1 of the CRPD. See also Art 1 of the African Disability Protocol.

19 As above.

purpose of protecting the fundamental rights and dignity of persons with disability. Although the CRPD does not specifically mention albinism, its broad definition of disability encompasses it. Additionally, the Preamble of the African Disability Protocol explicitly affirms that individuals with albinism fall within the category of persons with disabilities.²⁰ Furthermore, a report on the human rights enjoyment of persons with albinism notes that persons with albinism are a constituent of persons with disabilities.²¹ Having said that several other scholars such as Mswela, Astel, and Franklin and others also agree that persons with albinism are indeed disabled.²² However, access to the protection of their rights offered by the international and regional disability instruments is often granted to them based solely on their visual impairments.²³ While this observation holds, I submit that skin physiology should also be taken into account when defining disability.²⁴

2.3 The relationship between climate change and persons with albinism

What effect does climate change have on the enjoyment of human rights by persons with albinism? Answering this question requires stepping back to unveil the layers within climate change and human rights discourse. In my view, it is necessary to engage in a three-stage process, namely: a brief general examination of the connection between climate change and human rights; an analysis of the link between climate change and disability; and a more focused approach when examining the nexus between climate change and albinism.

2.3.1 *The intersection between climate change and human rights*

The application of human rights to climate change is still in its early developmental stages, however, the connection between climate change and human rights is undeniable. Knox for instance, examined whether the effects of climate change interfered with the full enjoyment of human rights recognised in international law.²⁵ Drawing from the livelihood of the Inuit

20 Para 18 of the Preamble to the African Disability Protocol.

21 Report of the Independent Expert on albinism (n 12) para 8.

22 M Mswela 'Does albinism fit within the legal definition of disability in the employment context? A comparative analysis of the judicial interpretation of disability under the SA and the US non-discrimination laws' (2018) 21 *Potchefstroom Electronical Law Journal* 1. B Astle and others 'Global impact of climate change on persons with albinism: A human rights issue' (2023) 9 *The Journal of Climate Change and Health* 100190 at 2. A Franklin and others 'Children with albinism in African Regions: Their rights to "being" and "doing"' (2018) 18 *BMC International Health and Human Rights* 2. See also Kromberg & Kerr (n 15) 1.

23 Report of the Independent Expert on albinism (n 12) para 8.

24 To corroborate this view, see the Report of the Independent Expert on albinism (n 12) para 14.

25 Knox (n 1) 215-220.

Indigenous peoples living in the Arctic region (classified as a vulnerable community) he observed that rising temperatures in the Arctic due to climate change infringed on the Inuit's human rights such as life, property, and health.²⁶ Cullet, on the other hand examined the extent to which the climate change regime has addressed the human rights dimension of climate change.²⁷ He explored the human right to a clean, healthy and sustainable environment as an underlying conceptual framework for considering the link between human rights and climate change, acknowledging climate change as part of the corpus of international environmental law. Cullet observed that despite the obvious intersection between the two regimes, the foundational framework of the climate change regime (the 1992 UNFCCC and 1997 Kyoto Protocol) refrained from addressing human rights directly.²⁸

In 2007, the Male Declaration on the Human Dimension of Global Climate Change marked the first occasion climate change was linked to human rights. In the declaration, representatives of the small island states recognised climate change as a threat multiplier, posing harm to the environment, individuals, and global communities. The declaration observed that 'climate change has clear and immediate implications for the full enjoyment of human rights'.²⁹ To corroborate this observation, the HRC has since adopted several resolutions highlighting the link between climate change and human rights.³⁰ A common feature in these resolutions is the Council's observation that the adverse effects of climate change have a range of implications for the enjoyment of a wide range of human rights such as the right to life, food, water, and adequate housing. The Council also noted that the effects of climate change are felt most acutely by vulnerable groups such as children, Indigenous peoples, elderly people, women, and persons with disability. Importantly, the council

26 Knox (n 1) 220.

27 Cullet (n 1) 496-501.

28 See the Kyoto Protocol to the United Nations Framework Convention of Climate Change 2303 UNTS 148 (Kyoto Protocol). Cullet (n 1) 499.

29 'Male' Declaration on the Human Dimension of Global Climate Change: Adopted 14 November 2007' (2007) 2 https://www.ciel.org/Publications/Male_Declaration_Nov07.pdf (accessed 28 October 2023).

30 Report of the Human Rights Council on its Seventh Special Session: Vice-President and Rapporteur: Mr Alejandro Artucio (Uruguay): Resolution adopted by the council at its seventh special session, 17 July 2008, UN Doc A/HRC/S-7/2 (2008) on the negative impacts of the worsening of the world food crisis on the realisation of the right to food for all; See also Human Rights Council, Resolution 10/4: Human rights and climate change, 25 March 2009, UN Doc A/HRC/Res/10/4 (2009); Human Rights Council, Resolution 18/22: Human rights and climate change, 17 October 2011, UN Doc A/HRC/Res/18/22 (2011); Human Rights Council, Resolution 26/27: Human rights and climate change, 15 July 2014, UN Doc A/HRC/Res/26/27 (2014); and Human Rights Council, Resolution 29/15: Human rights and climate change, 22 July 2015, UN Doc A/HRC/Res 29/15 (2015).

stressed states' obligations to protect human rights from the harmful effects of climate change,³¹ a matter addressed in section three.

Over the years, OHCHR has organised annual HRC panel discussions on climate change, covering diverse subjects such as climate change and the rights of the child;³² climate change and migration;³³ climate change and the right to health;³⁴ and the impacts of climate change on the rights of persons with disabilities³⁵ which is the focus of this article.

2.3.2 Climate change and disability

Climate change has widespread impacts on human rights. However, for an estimated one billion people globally living with some form of disability, nearly 200 million of whom face significant challenges in daily functioning,³⁶ adverse effects of climate change are experienced differently and more severely. Consequently, the HRC requested the OHCHR to prepare 'an analytical study on the promotion and the protection of the rights of persons with disabilities in the context of climate change'³⁷ to better understand their plight. The study observed that sudden-onset natural disasters and slow-onset events seriously affect persons with disability's access to food, safe drinking water, sanitation, healthcare services, education, adequate housing, and access to decent work.³⁸

31 See Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, UN Doc A/HRC/10/61 (2009).

32 See Human Rights Council, Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child – Report of the Office of the United Nations High Commissioner for Human Rights, 4 May 2017, UN Doc A/HRC/35/13 (2017).

33 See Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: The Slow onset effects of climate change and human rights protection for cross-border migrants, UN Doc A/HRC/37.CRP.4 (2018); See also Human Rights Council, Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps - Report of the United Nations High Commissioner for Human Rights, 23 April 2018, UN Doc A/HRC/38/21(2018).

34 See Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights: Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 May 2016, UN Doc A/HRC/32/23 (2016).

35 See Human Rights Council, Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change: Report of the Office of the United Nations High Commissioner for Human Rights, 22 April 2020, UN Doc A/HRC/44/30 (2020).

36 World Health Organisation (WHO) and the World Bank *World Report on Disability* (2011) xi.

37 See the request in Human Rights Council, Resolution 41/21: Human rights and climate change, 23 July 2019, UN Doc A/HRC/Res/41/21 (2019) para 10.

38 Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change (n 35) paras 8-23.

Furthermore, persons with disabilities were identified amongst the most adversely affected in emergencies, sustaining disproportionately higher rates of morbidity and mortality, while being among those least able to access emergency support.³⁹

2.3.3 *Climate change and albinism*

One impact of climate change on persons with albinism's health is increased global temperatures. According to the IPCC climate change synthesis report of March 2023⁴⁰ in all regions weather and climate extremes have become more widespread and pronounced. Projected increases in average seasonal temperature and the frequency and intensity of heatwaves contribute to heat-related illness.⁴¹ Heatwaves increase the incidents of respiratory, cardiovascular diseases, and clinical heatstroke. Furthermore, during a heatwave, the levels of ultraviolet (UV) radiation also increase,⁴² and this is detrimental to persons with albinism. It has been observed that as average global temperatures rise, so do human mortality and morbidity,⁴³ and persons with albinism bear the brunt of deadly heatwaves fuelled by climate change.

2.3.4 *The right to health and life of persons with albinism*

Climate change poses a great threat to a wide variety of rights. These include the indivisible and interdependent rights to health, food, water, housing, and life. The interdependent nature of these rights is especially visible in the context of the rights to health and life. The enjoyment of the right to life is contingent upon good health. The right to life is supreme, with no derogation permitted even in situations of environmental degradation due to climate change.⁴⁴ Equally, the right to health is a fundamental human right and everyone is 'entitled to the enjoyment of the

39 See Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change (n 35) paras 10-12.

40 IPCC 'Climate change 2023: Synthesis Report – Summary for Policymakers' https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (accessed 29 October 2023).

41 See WHO 'Fact sheet on heat and health' (28 May 2024) <https://www.who.int/news-room/fact-sheets/detail/climate-change-heat-and-health> (accessed 15 November 2023).

42 JC Van der Leun and others 'Climate change and human skin cancer' (2008) 7 *Photochemical & Photobiological Sciences* 730. They observed that UV radiation could increase by 2% for every degree Celsius of temperature rise.

43 Human Rights Council, Report by the special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy environment and sustainable environment, 1 February 2016, UN Doc A/HRC/31/52 (2016) para 24.

44 United Nations Human Rights Committee, General Comment 36: Art 6: Right to life, 3 September 2019, UN Doc CCPR/C/GC/35 (2019) paras 2, 26 and 62.

highest attainable standard of health conducive for living a life in dignity'.⁴⁵

The right to life is inherent to every individual and is protected by several human rights instruments.⁴⁶ Concerning disabled persons, article 10 of the CRPD reaffirms the inherent nature of the right to life and states' duty to ensure its effective enjoyment by persons with disability on an equal basis with others. Analogously, article 8 of the African Disability Protocol provides for the right to life and elaborates in article 8(2)(b) that persons with disability must be guaranteed access to services, facilities, and devices enabling them to realise their right to life and live in a dignified manner. In view of this article, it can be interpreted that the services that are referred to include healthcare services. This leads us to the interconnected right to health.

Like the right to life, the right to health is recognised in several international instruments.⁴⁷ Nevertheless, the Preamble of the CRPD recognises the importance of the right to health in enabling persons with disabilities to fully enjoy rights and fundamental freedoms. Additionally, article 17(1) of the African Disability Protocol affirms that '[e]very person with a disability has the right to the highest attainable standard of health'.⁴⁸ The Constitution of the World Health Organisation (WHO) conceptualises health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.⁴⁹ The reference in article 17(1) to 'the right to the highest attainable standard of health' in the African Disability Protocol is not confined to the right to healthcare. The right to health, as well as the right to life, embrace a wide range of socio-economic and environmental factors that promote the realisation of the rights.

Thus, both rights are dependent upon the availability of safe drinking water, food, quality healthcare, and a healthy environment amongst other things.⁵⁰ A healthy environment is *inter alia* non-toxic, free of pollutants,

45 United Nations Committee on Economic Social and Cultural Right, General Comment 14. Art 12: Right to the highest attainable standard of health, 11 August 2000, UN Doc e/c.12/2000/4 (2000) para 1.

46 Art 6 of the International Covenant on Civil and Political Rights (ICCPR), United Nations Treaty Series, Vol 999, 171; art 6 of the Convention on the Rights of Children (CRC) United Nations, United Nations Treaty Series (UNTS), Vol 1577, 3; art 4 of the African Charter on Human and Peoples Rights (ACHPR), 27 June 1981, 1520, UNTS 217.

47 Art 25(1) of the 1948 Universal Declaration of Human Rights (UDHR) GA Res 217A (III), UN Doc A/810 at 71; art 12(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) 993 UNTS 3; art 12 of the 1979 Convention on the Elimination of All Forms of Racial Discrimination against Women 1249 UNTS 13; art 24 CRC (n 46) UNTS 3. On a regional level, we have art 16 ACHPR (n 46).

48 Art 17(1) of the African Disability Protocol.

49 See the 1946 Constitution of the World Health Organisation https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=6 (accessed 30 October 2023).

50 General Comment 36 (n 44) para 26. See also General Comment 14 (n 45) para 4.

and has a safe and stable climate.⁵¹ Climate change contributes to the increased frequency of extreme weather events such as rising sea water levels, droughts, floods, and heatwaves. These extremes impact the right holders' rights to health and subsequent life. All things considered, the UN Human Rights Committee observed that climate change constitutes one of the 'most pressing and serious threats to the ability of the present and future generations to enjoy the right to life'.⁵² Correspondingly, WHO observed that climate change has adverse impacts on the enjoyment of the highest attainable standards of mental and physical health.⁵³

Certain population groups are particularly vulnerable to the health effects of climate change due to physiological factors. Albinism, for instance, leads to a heightened susceptibility to skin cancer that is fatal if left untreated, and climate change further elevates this risk amongst persons with albinism. Their susceptibility to skin cancer is due to a lack of or inefficient protection against harsh UV rays or sun exposure because of low skin pigmentation. In Africa skin cancer is a significant cause of deaths for persons with albinism.⁵⁴ Ninety-eight (98) per cent of persons with albinism do not live beyond the age of 40 because of sun exposure, with skin cancer responsible for at least four-fifths of these deaths.⁵⁵ A sub-Saharan African study indicated that in addition to the skin cancer, persons with albinism may suffer sunburn and skin photoaging, which can lead to lentigines (small, flat, brown spots), freckles and heavy wrinkling of the skin.⁵⁶

Apart from increasing the risk of fatal skin cancer for most persons with albinism, climate change directly impacts their eye health. Visual impairment is another physiological consequence of albinism common to individuals who have ocular albinism. This impairment varies from mild to severe, with many persons with albinism considered legally blind.⁵⁷

51 Human Rights Council, Report of the special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 30 December 2019, UN Doc A/ HRC/43/53 (2019) paras 38-112. See also the Information note by the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP) and the OHCHR 'What is a right to a healthy environment' (2023) <https://www.undp.org/publications/what-right-healthy-environment> (accessed 16 January 2024).

52 General Comment 36 (n 44) para 62.

53 WHO 'Climate change and health' <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (accessed 10 November 2023).

54 Human Rights Council, visit to South Africa: Report of the independent expert on the enjoyment of human rights by persons with albinism, 9 January 2020, UN Doc A/ HRC/43/42/Add.1 (2020) para 11.

55 E Nakkazi 'People with albinism in Africa: contending with skin cancer' (2019) 394 *The Lancet* 553.

56 Y Caradee and others 'Oculocutaneous albinism in Sub-Saharan Africa: adverse sun-associated health effects and photoprotection' (2015) 91 *Photochemistry and Photobiology* 27.

57 Mswela (n 22) 24.

UV radiation has been linked to the increase of ocular tumours and cataracts,⁵⁸ along with increased risk of retinal detachment.⁵⁹ Clearly, exposure to extreme sunlight rays affects persons with albinism's eye health as they are more sensitive to bright light and experience a lot of discomfort from sunlight exposure.

Beyond the direct impacts on the eyes and skin, climate change can also overwhelmingly affect the mental health of persons with albinism⁶⁰ through direct impact on their physiological well-being. Those residing in the warmer geographical regions with less adaptive measures face higher risks of stress, anxiety, and depression during climate induced weather extremes such as heatwaves. Because climate change exacerbates their existing genetic defects and threatens their mortality, people with albinism are more conscious of their physiological conditions. They are more apprehensive about being outdoors and about being exposed to the sun for longer periods because this could be a life-threatening situation. Also, they may worry about procuring quality sunscreen and protective gear, which is expensive for many persons with albinism who live in poverty.⁶¹

As highlighted, climate change has direct adverse effects on the physiology and mental state of people with albinism. However, it is important to recognise its indirect effect on their access to essential resources. One of the key elements of the right to health is the right holders' entitlements and determinants to health.⁶² Thus the right contains entitlements such as access to essential medicine,⁶³ and the determinants include adequate housing amongst other things. In the event of a climate change disaster, for example, flooding, landslides, and wildfires, persons with albinism may struggle due to disrupted healthcare access. During extreme weather events, accessing sunscreen, protective wear, visual aids, and essential medicines or treatment becomes challenging. Additionally, lack of proper shelter and infrastructure, and disruption to transport

58 L Echevarria-Lucas and others 'Impacts of climate change on eyes disease and associated economical cost' (2021) 18 *International Journal of Environmental Research and Public Health* 2. AP Cullen 'Ozone depletion and solar ultraviolet radiation: Ocular effects – A United Nations Environment Programme perspective' (2011) 37 *Eye Contact Lens Science and Clinical Practice* 185.

59 N Auger and others 'Climate and the eye: Case-crossover analysis of retinal detachment after exposure to ambient heat' (2017) 157 *Environmental Research* 103.

60 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) paras 34 and 39. See also, Report of the Office of the United Nations High Commissioner for Human Rights (n 34) para 21.

61 See Report of the Office of the United Nations High Commissioner for Human Rights (n 35) para 6. See also I Ero and others 'People with albinism worldwide: A human rights perspective' (2021) 2 https://www.ohchr.org/sites/default/files/Documents/Issues/Albinism/Albinism_Worldwide_Report2021_EN.pdf (accessed 18 January 2024). Ero observed that although people with albinism represent a relatively small segment of people globally, they are disproportionately affected by poverty, particularly in least developing countries.

62 See WHO 'The right to health: Factsheet 31' <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf> (accessed 11 November 2023)

63 As above.

networks means persons with albinism may spend significantly more time exposed to the sun, thus increasing their risk of skin cancer. To corroborate this view during Muluka-Anne Miti-Drummond's mandate as the independent expert on the enjoyment of human rights by persons with albinism she received reports that the care packages for those affected by tropical Cyclone Freddy (in Madagascar, Malawi, Mozambique, South Africa, and Zimbabwe) lacked sun protection products. In Mozambique, an organisation working on issues concerning persons with albinism visiting resettlement centres for the victims of Cyclones Eloise and Idai identified cases where children and adolescents with albinism were 'housed in humanitarian tents that were not appropriate for their condition owing to the heat accumulating inside, causing discomfort and skin damage'.⁶⁴

3 The legal normative framework establishing state obligations under the disability and climate change discourse

An important premise of this article is that climate change interferes with the enjoyment of persons with albinism's rights to health along with life and this triggers numerous obligations. These obligations are primarily imposed on states, and other duty bearers such as businesses, to promote, protect, respect, and fulfil as would be appropriate, human rights, including those of persons with albinism, when taking action to address the adverse effects of climate change.⁶⁵ Additionally, states are obligated to ensure that persons with albinism receive information on climate change and its effects and participate in climate change policy making.

3.1 State's general obligations

When a state becomes a party to a treaty, it assumes various obligations under international law. Within the context of this article, there is a combination of state obligations: (a) those emanating from international climate change laws (obligation to mitigate and adapt to climate change);⁶⁶ and (b) those under international human rights law, but also applicable in climate change law (respect, protect, promote, and fulfil). I submit that obligations from the former influence those of the latter. For example, there is an overarching obligation requiring states as primary duty bearers to actively prevent and curb the increase in global

64 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) para 29.

65 HRC, Resolution 41/21: Human rights and climate change adopted on 12 July 2019, 23 July 2019, UN Doc A/HRC/Res/41/21 (2019) Preamble.

66 The obligation to mitigate and adapt to climate change is in line with the 2015 United Nations Sustainable Development Goal (SDG) 13.

temperatures (by avoiding and reducing greenhouse gas emissions) to minimise the human rights impacts of climate change. In so doing, it respects individuals' rights thereby upholding its human rights obligations. Also, states have a positive obligation under climate change laws to take adaptive measures. Climate change adaptation involves acclimatising to the impacts of climate change. This could encompass building climate change resilient housing and protecting people from extreme heat amongst other things. While upholding its adaptation obligations, the state simultaneously satisfies its obligation to fulfil.⁶⁷ Although the obligations to mitigate and adapt to climate change arise from climate change laws, this article demonstrates how they intersect with states' general obligations under human rights law concerning persons with albinism impacted by climate change. Under the international human rights regime, several instruments, including the international Bill of Rights enjoin states to uphold their respective human rights obligations.⁶⁸ However, a discussion of these conventions falls outside the remit of this research.

Under the CRPD and African Disability Protocol, article 4 of the instruments in their respective capacity outline the states' general obligations. It stipulates that within their policy, legislative, administrative, and institutional endeavours state parties are to undertake the duty of ensuring, respecting, promoting, and fulfilling the rights of persons with disability including persons with albinism.⁶⁹ This entails that South Africa which ratified the CRPD⁷⁰ and signed the African Disability Protocol has a combination of positive and negative duties.

Regarding climate change instruments, it is notable that like the legal framework protecting the rights of persons with albinism, no mention is made of the link between climate change and persons with albinism in the primary legal framework governing climate change matters. Thus, the UNFCCC and its Kyoto Protocol do not refer to the adverse effects of climate change on the enjoyment of human rights. This could be because, for a long time, the fields of human rights and environmental law developed in parallel. The first direct reference to human rights in the context of the UNFCCC was made in a decision adopted by the Conference of the Parties in 2010.⁷¹ The parties referred to HRC Resolution 10/4, which recognised the link between human rights and climate change, and reiterated the importance of states ensuring respect for human rights in their climate actions.⁷² The Preamble to the Paris

67 For more detail on this topic refer to the discussion in sec 3.1.4 below.

68 See the Preamble of the UDHR and ICESCR (n 47) and the Preamble of the ICCPR (n 46) which recognises the obligation of states to respect human rights and freedoms.

69 Art 4 of the CRPD; art 4 of the African Disability Protocol.

70 South Africa ratified the CRPD on the 30 November 2007. For ratification status see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD (accessed 15 November 2023).

71 Report of the Conference of the Parties at its 16th session, held in Cancun from 29 November to 10 December 2010, UN Doc FCCC/ CP/2010/7/Add. 1 (2010).

72 Preamble to Report of the Conference of Parties (n 71).

Agreement to the UNFCCC developed upon this notion calling on states, when taking action to address climate change, to ‘respect, promote and consider their respective obligations on human rights, the right to health, the rights of ... persons with disabilities and people in vulnerable situations’.⁷³ The Paris Agreement is the first climate agreement, and one of the first environmental agreements of any kind, to explicitly recognise the relevance of human rights, recognising that climate change poses unacceptable threats to the full enjoyment of persons with disabilities rights and that actions to address climate change must comply with human rights obligations.

While international legal frameworks governing human rights and climate change establish obligations that states are bound to uphold, the specific articulation of these obligations lacks clarity. However, the African Commission on Human and Peoples’ Rights in the *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria* case⁷⁴ took an occasion to examine various state obligations. Although the case was decided outside the framework of disability rights or climate change issues, it recognised that all social, economic, civil, and political rights generate at least four distinct levels of responsibility for a state that undertakes to adhere to a human rights regime, namely the duties to respect, protect, promote, and fulfil.⁷⁵ Furthermore, the case provided clarity on the specific responsibilities associated with each obligation. In this regard, this article expounds, and augments each obligation, while considering the impacts of climate change on persons with albinism.

3.1.1 *Obligation to mitigate climate change and respect human rights*

South Africa is among the world’s largest greenhouse gas emission emitters. Its emissions mainly stem from heavy reliance on coal for electricity generation, potentially indicating a failure in its mitigation duties. On the one hand, the obligation to mitigate entails the avoidance and reduction of heat trapping greenhouse gas emissions in the atmosphere to prevent the planet from warming to more extreme temperatures. Article 3 of the UNFCCC notes that states ‘should take precautionary measures to ... minimise the cause of climate change and mitigate its adverse effects’. On the other hand, the obligation to respect fundamental rights dictates that states must refrain from interfering with or limiting the enjoyment of rights.⁷⁶ While these obligations appear unrelated, I submit that states

73 Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, Treaties and Other International Acts Series (TIAS) No 16-1104.

74 *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHRLR 60 (*SERAC* case).

75 *SERAC* case (n 74) para 44.

76 *SERAC* case (n 74) para 45.

obligation to mitigate climate change has a bearing on the obligation to respect human rights.

Under international law a state may violate a right through its acts, or omissions.⁷⁷ In the context of climate change, a state's action or inaction can therefore violate human rights. When addressing climate change, a state simultaneously executes its human rights obligation to respect. Conversely, when a state fails to reduce its greenhouse gas emissions it will interfere with and therefore will not respect individuals' rights. To successfully tackle climate change, South Africa must refrain from interfering in the enjoyment of persons with albinism's rights by avoiding activities contributing to climate change. Mitigating climate change may involve inter alia decreasing its reliance on fossil fuels and transitioning to renewable energy sources. While the State's mitigation duties are directed at enhancing its commitment to reducing climate change, its obligation to respect human rights is centred toward bearers of right.

Regarding an omission, article 4(1)(b) of the UNFCCC notes that:

All parties, taking into account their common but differentiated responsibilities ... shall formulate, implement ... national programmes containing measures to mitigate climate change by addressing anthropogenic emissions.

In this regard, South Africa will be deemed to be in breach of its climate change obligations if it fails to implement legislative measures aimed at achieving its nationally determined contributions.⁷⁸

Mitigating climate change is not only an environmental responsibility, but also a human rights obligation. The obligation to mitigate and respect are interrelated, addressing climate change is essential for respecting and protecting human rights.

3.1.2 *Obligation to protect*

The obligation to protect requires states to safeguard individuals and groups from human rights abuses. In the CRPD and the African Disability Protocol, under articles 11 and 12(a) respectively, states are obliged to protect persons with disabilities, including those with albinism, in situations of risk and humanitarian emergencies. These situations according to the CRPD and African Disability Protocol include 'armed conflict, forced displacements, humanitarian emergencies and natural

77 See Art 2 of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001) II Yearbook of International Law Commission (ILC DARSIIWA).

78 Art 4(2) of the Paris Agreement.

disasters'.⁷⁹ Since climate change is deemed a humanitarian crisis, its impact can be classified as a humanitarian emergency or natural disaster. The *SERAC* case aptly noted that the obligation to protect 'requires the state to take measures to protect beneficiaries of the protected rights against political, economic, social, [and to add on the list environmental] interferences'.⁸⁰ Thus, for example, in the case of an extreme heatwave the government must take all necessary measures to ensure the protection and safety of persons with albinism in situations of risk to life and health. Articles 11 and 12(a) provide a HRBA entry point to humanitarian responses and ultimately ensure that climate change programmes and policies, as well as prevention, planning, and responses, are fully inclusive of persons with albinism.⁸¹

The obligation to protect also means that states have a responsibility to protect persons with albinism rights from third parties, like private businesses. In this regard, states must take measures to protect persons with albinism against harmful environmental interferences detrimental to their well-being. This entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that persons with albinism can freely realise their rights. To this end, South Africa must therefore regulate the activities of private businesses emitting greenhouse gas emissions. In a joint statement with four other treaty monitoring bodies, the CRPD committee stressed states' obligations to regulate private actors and hold them accountable for climate harm occurring domestically and extra-territorially. It warned that 'failure to ... regulate activities contributing to such harm, could constitute a violation of states' human rights obligations'.⁸²

3.1.3 *Obligation to promote*

Articles 1 and 4 of the CRPD, and Preamble, and article 4 of the African Disability Protocol, collectively note that state parties are to promote the rights of all individuals, which includes persons with albinism, to enable them to fully enjoy their human rights and fundamental freedoms. In the *SERAC* case the court opined that to promote the enjoyment of all human rights

79 Art 11 of the CRPD; art 12 of the African Disability Protocol.

80 *SERAC* case, para 46.

81 Fulfilling art 4(b) of the African Disability Protocol which obligates states to mainstream disability into policies, legislation, development plans and programmes and activities and in all other spheres of life.

82 United Nations Human Rights Commission for Human Rights, joint statement on 'Human rights and climate change' by the Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Rights of Children, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families of (September 2019) in States' Human Rights Obligations in the Context of Climate Change 2020 update 6 https://www.ciel.org/wp-content/uploads/2020/03/States-Human-Rights-Obligations-in-the-Context-of-Climate-Change_2020-Update.pdf (accessed 27 January 2024).

[s]tates should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures [which can include legal infrastructure].⁸³

The idea of raising awareness regarding persons with albinism at various levels of society is widely canvassed in the CRPD. Article 8(1) of the CRPD stipulates that state parties assume the responsibility to

adopt immediate, effective and appropriate measures: (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities.

Recently it was reported that there is a lack of awareness among persons with albinism about their physiological state, how climate change exacerbates their health condition and how to protect themselves against UV radiation.⁸⁴ Furthermore, other key stakeholders such as health practitioners lack awareness about the health needs of persons with albinism, especially concerning their skin condition.⁸⁵ There are records capturing cases where persons with albinism with skin cancer have been misdiagnosed and discharged based on the belief that their skin condition was a normal part of their condition.⁸⁶ To this end, the government is duty bound and recommended to promote the training of health professionals and staff working with persons with disabilities to protect the rights recognised in the present Conventions so as to better provide the assistance and services guaranteed by those rights.⁸⁷

3.1.4 Obligation to adapt to climate change and fulfil human rights

States often find themselves in a realm of greatly enhanced environmental uncertainty with extreme unpredictable weather patterns. As climate change impacts continue to emerge, states must respond either by mitigating⁸⁸ or adapting. Climate change adaptation involves acclimatising, and as noted by Voight, it can either be anticipatory or responsive.⁸⁹ Anticipatory action involves implementing measures before the occurrence of an extreme event, such as constructing climate-resilient structures. This includes building shelters friendly to persons with albinism, featuring thermal insulation on the walls and roof, as well as

83 *SERAC* case (n 74) para 46.

84 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) para 28

85 As above. See also Astle (n 22).

86 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) para 28.

87 Report of the independent expert on the enjoyment of human rights by persons with albinism (n 54) para 112.

88 For more detail on this topic, refer to discussion in sec 3.1.1 above.

89 C Voight 'Climate change and damages' in P Cinnamon and others (eds) *The Oxford handbook of international climate change law* (2016) 476.

ultraviolet-protective window film. Voight also notes that responsive action ‘requires the capacity to react once the extreme event takes place’.⁹⁰ However, I submit that responsive adaptation need not be taken as a responsive strategy to a singular catastrophic event, it may be action taken in response to conditions that have already changed, namely a climate crisis, considering the specific needs of persons with albinism.

Recognising that adaptation can significantly reduce vulnerabilities to the impacts of climate change, parties to the UNFCCC in article 4(1)(b) committed to implementing national programmes containing measures to facilitate adequate adaptation to climate change. Additionally, in article 7 of the Paris Agreement, parties established global goals on adaptation. In terms of article 7(5) parties recognised that ‘adaptation action should follow a ... participatory and fully transparent approach, taking into consideration vulnerable groups’. This means that states that ratified the agreement such as South Africa,⁹¹ are obliged to ensure that appropriate adaptation measures are established to reduce human vulnerability to climate change especially those greatly affected by its negative impacts such as persons with albinism.⁹² When a state executes its national adaptation measures in an anticipatory or responsive manner, it subsequently meets its obligation to fulfil persons with albinism’s rights and freedoms under the disability and climate change instruments. Like the obligation to adapt, the obligation to fulfil creates a positive obligation on the part of the state to move its machinery towards the actual realisation of the rights.⁹³ As noted above, this could include the direct provision of basic needs such as shelters designed for persons with albinism which incorporate high-quality insulation materials in the building to minimise heat transfer. Additionally, the state must increase the availability of affordable and quality healthcare for persons with albinism, providing sunscreen with a high sun protection factor (SPF), and protective clothing such as long trousers, long-sleeved tops, and hats made from dense ultraviolet-resistant material.⁹⁴ All these essentials, which I term a ‘persons with albinism protection package’ are vital to ensure they enjoy the highest attainable standard of health and ultimately right to life. The government must also make certain that persons with albinism have access to dermatologists to treat skin lesions, and oncologist practitioners who will

90 As above.

91 South Africa ratified the Paris Agreement on 1 November 2016 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en (accessed 21 March 2024).

92 See art 7 of the Paris Agreement which stipulates that adaptation is a key component of and contributes to the long-term global response to climate change to protect people, livelihoods, and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.

93 *SERAC* case (n 74) para 47.

94 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) para 26. See also Report of the independent expert on the enjoyment of human rights by persons with albinism (n 54) para 111.

be available for the treatment of cancer. All these actions will ultimately enable persons with albinism to fully realise their right to health enshrined in article 17(1) and recognised in the Preamble of the African Disability Protocol and the CRPD respectively.

Some may however argue that the suggested protection package and free specialised healthcare lie beyond government's available resources, and climate change affects everyone hence, everybody needs protection. It is crucial to acknowledge people with albinism peculiar vulnerabilities that are exacerbated by climate change. In this regard, the government is obligated to provide services that meet their survival needs, and it must do so in a manner that is reasonable in both conception and implementation.⁹⁵ Additionally, the state must take into account available resources, and the urgency of the need of vulnerable groups as emphasised in *Grootboom* and subsequent cases.⁹⁶ Vulnerable groups' interests or those whose needs are most urgent are of greater importance and require a higher level of protection,⁹⁷ and there is none so vulnerable as persons with albinism whose very survival is threatened by climate change's adverse impacts.

In essence, the obligation to adapt is interlinked with the obligation to fulfil human rights, creating a comprehensive approach to addressing the impact on vulnerable groups like persons with albinism. Although providing essential services to persons with albinism may stretch the government's available resources, the reasonableness standard dictates that the government acknowledge their unique vulnerabilities, which are exacerbated by climate change, and take appropriate measures to address their needs in a timely and effective manner.

3.2 South Africa's normative framework and its efforts

Against this backdrop, it is important to acknowledge South Africa's commendable efforts in fulfilling its obligations. Beyond ratifying the CRPD, African Disability Protocol,⁹⁸ and having signed the Paris Agreement,⁹⁹ the State has incorporated and implemented treaty obligations at a national level. Meaning within its jurisdiction, the Republic has established an institutional and legal framework that can be

95 *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 42.

96 *Grootboom* (n 95) para 44. *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC) paras 26-36, 68,78.

97 *Grootboom* (n 95) para 44.

98 It is also important to note that these international human rights treaties apply in South Africa to the extent provided by the Constitution of the Republic of South Africa, 1996 sec 39(1)(b) and sec 233.

99 See the list of states that have signed the Paris Agreement <https://www.un.org/sustainabledevelopment/blog/2016/04/parisagreementsingatures/> (accessed 17 October 2023).

extended to promote the rights of persons with albinism impacted by climate change.

The South African Constitution of the Republic of South Africa, 1996, for instance, provides a comprehensive Bill of Rights enshrining the rights of all people. Section 9 on equality prohibits discrimination on several grounds including disability. Also, section 27 enshrines *inter alia* the right to health for everyone, and section 11 the right to life. Perhaps the most important is section 24(a) which provides that everyone has the right 'to an environment that is not harmful to their health or well-being'. Although the provision does not explicitly recognise the existence of intersections between persons with albinism and climate change, the term 'everyone' patently includes persons with albinism and the right to a healthy environment can by extension cover climate change.¹⁰⁰

In addition to the Constitution, in 2013, the South African government also adopted the Ekurhuleni Declaration on the Rights of Persons with Albinism aimed at *inter alia* eliminating all forms of discrimination against persons with albinism and improving access to free healthcare services and assistive devices.¹⁰¹ On the former matter, the delegates recognised that free access to healthcare services for persons with disability should be detached from disability grants and made available to all persons with disability, including persons with albinism. The free healthcare services were to be non-discriminatory, and made available to all especially those in the rural areas where the department of health had to build medical infrastructure.¹⁰² To guarantee free healthcare services, it was observed that the department of health should also provide free access to adequate sunscreen protection.¹⁰³ Moreover, the department would have to accelerate the roll-out of free eye tests and issue spectacles across all nine provinces.¹⁰⁴ The Declaration was hailed as a key achievement, not only for raising the aspirations of persons with albinism, but also that it prompted further dialogue and awareness about the needs of persons with albinism. However, the question one must ask is how much dialogue and awareness has been done since, for example, on climate change and people with albinism. Article 12 of the Paris Agreement encourages states to take appropriate measures in enhancing *inter alia* climate change awareness¹⁰⁵

100 See R Lavanya 'Human rights in the climate change regime from Rio to Paris and beyond' in Knox & Pejan (eds) (n 5) 237 and 243. See also the Preamble of the CCA which notes that 'everyone has the Constitutional right to an environment that is not harmful to their health and well-being, and to have the environment protected'.

101 See South African Government 'Ekurhuleni Declaration on the rights of persons with albinism' (2013) <https://www.gov.za/ekurhuleni-declaration-rights-persons-albinism#> (accessed 19 October 2023).

102 Ekurhuleni Declaration (n 101) item 29.

103 Ekurhuleni Declaration (n 101) item 25.

104 Ekurhuleni Declaration (n 101) item 26.

105 Paris Agreement art 12 notes that '[p]arties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognising the importance of these steps with respect to enhancing actions under this Agreement'.

which is critical to ensure that persons with albinism are educated about current and future climate-related impacts. This will enable them to make a concerted effort to ensure their safety. The South African government may have missed an opportunity to raise climate change awareness, and effectively engage with persons with albinism during Climate Change Bill (CCB) public hearings (as discussed in section 3.3).

South Africa has taken steps to address climate change through legislation. One significant piece of legislation is the latest CCA which is a critical legal instrument, establishing a comprehensive framework for managing climate change and ensuring the country meets its international obligations, including those under the UNFCCC and the Paris Agreement. The Act includes provisions for reducing greenhouse gas emissions, developing adaptation strategies, and integrating climate change considerations across different sectors of the economy.¹⁰⁶ Additionally, in a bid to protect rights holders by mitigating the impacts of climate change the South African government enacted the Carbon Tax Act 15 of 2019 that enables it to tax greenhouse gas emissions. Carbon tax follows the polluter-pay principle since it requires large greenhouse producers to pay for the damage they cause. It is hoped that attaching a fee to emissions will incentivise individuals and corporate companies to emit less. This in turn leverages the country's climate change mitigation strategies and reverses the slow onset effects of climate change such as increases in global temperatures that adversely affect persons with albinism.

To further demonstrate the commendable efforts in fulfilling its obligations, to promote the rights of persons with albinism the government raises awareness of persons with albinism rights. September is designated as an albinism awareness month.¹⁰⁷ Additionally, the government distributes sunscreen lotions free of charge to persons with albinism to safeguard their right to health and life. However, some challenges persist. There have been reports about the poor quality of the sunscreens. In some cases, sunscreens are not consistently available and people in rural areas complain about the accessibility of the product.¹⁰⁸ Furthermore, health professionals such as dermatologists lack sufficient training, and obtaining optical devices remains problematic.¹⁰⁹ All these issues persist despite the commitments outlined in the Ekurhuleni Declaration.¹¹⁰

3.3 State procedural obligations

Apart from the obligations to respect, protect, promote, and fulfil discussed above, states must adhere to their procedural obligations. These include

106 See the CCA chaps 4 and 5.

107 Report of the independent expert on albinism (n 54) para 27.

108 Report of the independent expert on albinism (n 54) para 48.

109 Report of the independent expert on albinism (n 54) para 49.

110 See the Ekurhuleni Declaration (n 101) discussion on access to healthcare services.

facilitating public participation, providing access to justice, and sharing environmental information. Knox in his capacity as the special rapporteur, recognised that ‘these obligations have bases in civil and political rights’.¹¹¹ They also extend to social, economic, and cultural rights, the CRPD and the African Disability Protocol have provisions to that end.¹¹² Furthermore, these obligations find support in international environmental¹¹³ and specifically climate change instruments.¹¹⁴

This discussion focuses on the State’s obligation to facilitate public participation in decision-making in connection with the CCB public hearing sessions. Evidence from hearing footage demonstrates that the public participation processes may not have been disability inclusive.¹¹⁵ The public turnout was extremely poor and persons with albinism who are disproportionately affected by climate change, homogenised as climate ‘victims’, were excluded in the hearings, perpetuating the ‘participation disconnect narrative’ highlighted by the independent expert.¹¹⁶ To ensure inclusivity and prevent anyone from being left behind, the government should have created a space for effective participation for all, particularly persons with albinism who are seriously affected by climate change. Including their voices would have contributed to the creation of effective and sound climate change legislation.

3.3.1 *Obligation to facilitate effective public participation*

The state’s obligation to facilitate the effective participation of persons within its jurisdiction in decision-making and policies stems from the right to participate in public affairs. Both article 29(b) of the CRPD and article 21 of the African Disability Protocol acknowledge the right of persons with disability to participate in public life. States are tasked with actively

111 Report by the special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy environment and sustainable environment (n 43) para 56. See also S Apatattu *Human rights and the environmental key issues* (2019) 129. Apatattu corroborates Knox’s view when he notes that these rights were established under international human rights law. However, they crept into the environmental protection discourse through the environmental impact assessment process at the national level.

112 Art 13 of the CRPD on access to justice; art 21 on freedom of expression and opinion, and access to information; and art 24 of the African Disability Protocol on access to information.

113 Arts 4 and 5 of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters 25 June 1998, 2161, UNTS 447 (Aarhus Convention) on access to environmental information; arts 6-8 on public participation; art 9 on access to justice. Rio Declaration on the Environment and Development, 13 June 1992, UN DOC. A/CONF.151/26. Rev.1 (1992), Principle 10.

114 See arts 4(1)(i) and 6(a)(iii) of the UNFCCC. See further the Preamble, arts 7(5) and 12 of the Paris Agreement.

115 See Climate Change Bill: Public Hearing in Free State, Bloemfontein; Cape Town Metropolitan, available on You Tube https://youtu.be/5eRSht_W23E (accessed 19 January 2024).

116 Report of the Independent Expert on the enjoyment of human rights by persons with albinism, Muluka-Anne Miti-Drummond (n 12) para 57.

promoting an inclusive environment where individuals with disabilities can fully participate in public affairs without discrimination. The term public affair ‘covers all aspects of public administration and formulation and implementation of policy at international, national, regional, and local levels’.¹¹⁷ It is unquestionable that this duty encompasses decision-making in relation to climate policy.

In the climate change regime, states have long emphasised the importance of facilitating an effective public participation process in addressing climate change. This facilitation is crucial for safeguarding a broad spectrum of rights against environmental harm. Moreover, public participation serves as a mechanism for integrating public concerns and knowledge into policies and decision-making affecting the environment.¹¹⁸ The UNFCCC article 4(1)(i) as read with article 6(a)(iii) notes that state parties shall encourage, promote, and facilitate public participation in addressing climate change and its effects and developing adequate responses. Similarly, the Paris Agreement requires state parties to collaborate on implementing measures that enhance public participation.¹¹⁹ South Africa having ratified both instruments¹²⁰ has implemented laws that provide for public participation in legislative processes.

South Africa upholds participatory rights in terms of sections 59(1)(a) and 72(1)(a) of the Constitution which imposes a duty on the government to facilitate public involvement in decision-making. Drawing on the *Doctors for Life* case¹²¹ in the *South African Iron and Steel Institute* case,¹²² the Constitutional Court clarified that the primary purpose of public participation is to influence decision-making processes affecting individuals. Institutions with decision-making powers must involve those likely to be affected by national policies.¹²³ In the context of this discussion, any decisions on climate change should follow a participatory approach, considering the view of vulnerable groups such as persons with

117 United Nations Human Rights Committee, General Comment 25: Art 25: Participation in public affairs and right to vote, 12 July 1996, UN Doc CCPR/C/21/Rev.1/Add.7 (1996) para 5.

118 *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Right to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1 (1) and 2 of the American Convention on Human Rights)* Advisory Opinion OC-23/17, 15 November 2017 para 228.

119 Art 12 of the Paris Agreement.

120 South Africa ratified the UNFCCC on 29 August 1997 and the Paris Agreement on 1 November 2016. See the list of countries that have actioned on the treaties <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> (accessed 21 October 2023).

121 *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC).

122 *South African Iron and Steel Institute v Speaker of the National Assembly* 2023 (10) BCLR 1232 (CC).

123 *South African Iron and Steel Institute* case (n 122) para 28.

albinism, with a view of integrating adaptation measures into relevant socio-economic and environmental policies and actions.

To uphold effective participation standards, the public must be informed, educated, and given a meaningful opportunity to participate in decisions-making. Hence, persons with albinism need awareness on climate change, education on its consequences and related adaptive measure thereof. The CCB underwent public consultations and generated modest public interest, with approximately 13 200 written submissions received by Parliament.¹²⁴ On the face of it, it may appear as though the legislature took steps to afford concerned citizens a reasonable opportunity to participate effectively in the law-making process. After all the CCB has a provision to this end. Article 3 which was retained in the CCA notes that the interpretation and application of the Act must be guided by

[the] need for decision-making to consider the special needs and circumstances of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, especially poor and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and *persons with disability*.

However, the article suggests, based on the public hearing footage, there may not have been enough substantive engagement, particularly from those significantly affected by climate change. Top of Form

4 Conclusion

A substantive body of evidence has substantiated with a considerable degree of certainty that climate change significantly undermines the rights to health and life of persons with albinism. Unfortunately, their plight will not improve unless the global community takes urgent action to combat climate change and its impact. The global pledge to 'leave no one behind' is not a futile oath. It is a highly esteemed universal value, placing an unequivocal commitment on states to reduce the impacts of climate change, especially on vulnerable groups such as persons with albinism. States as duty-bearers are bound by international climate change and human rights laws that they have voluntarily accepted, requiring them not to only mitigate and adapt to climate change, but also to uphold the four specific human rights obligations outlined in this article. The article observed and submitted that climate change and human rights obligations are in part interrelated. When acting to address climate change obligations, states will simultaneously satisfy their human rights obligations. Using South Africa as an example, the article observed that it has endeavoured to

124 N Fumba 'Climate change and parliament' https://static.pmg.org.za/Climate_change_research_piece.pdf (accessed 3 November 2023).

implement legal and practical measures to ensure inclusivity. However, more can be done to ensure that the lived realities of persons with albinism who are impacted by climate change are less brutal. Going forward, South Africa should prioritise both climate change mitigation actions to address the root cause of climate change and strengthen adaptation measures to mitigate its impacts. Additionally, prioritising the healthcare of persons with albinism as an adaptation strategy is crucial. Most importantly, empowering persons with albinism to participate in climate dialogue and policymaking is essential for nothing can be effectively done for them without their involvement.

CHAPTER 3

THE MANDATE OF ZIMBABWE HUMAN RIGHTS COMMISSION IN PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES

Fidelity Nyamukondiwa & Delis Mazambani***

Summary

Persons with disabilities are vulnerable to systematic discrimination, social exclusion and prejudice within political, social and economic spheres. They are at the highest risk of human rights violations. The United Nations Convention on the Rights of Persons with Disabilities (CRPD), of which the main object is to promote and protect human rights and fundamental freedoms for all persons with disabilities, implicitly nominates National Human Rights Institutions (NHRIs) as key institutions in the advancement of rights of persons with disabilities. Similarly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa impliedly designates NHRIs as institutions responsible for monitoring the implementation of the rights of persons with disabilities. In the same spirit, the Office of the United Nations High Commissioner for Human Rights recognises that NHRIs compliant with the Principles on the Status of National Human Rights Institutions commonly referred to as the Paris Principles are the cornerstone of national human rights protection systems. The Paris Principles enjoin NHRIs to take comprehensive action towards both human rights promotion and protection. The Zimbabwe Human Rights Commission is the NHRI of Zimbabwe and is accredited by the Global Alliance of National Human Rights Institutions as fully compliant with the Paris Principles. The ZHRC's mandate to advance the rights of persons with disabilities is drawn from the CRPD, and most importantly, domestic legislation sanctioning its existence. This paper seeks to explore the mandate of the ZHRC in the promotion and protection of the rights of persons with disabilities in Zimbabwe.

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1 Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) estimates that there are around 84 million Africans with disabilities.¹ The 2022 population and housing census conducted by the Zimbabwe National Statistics Agency (ZIMSTAT) estimated that the country had 206 447 persons with disabilities.² Having such a considerable number of persons with disabilities living on the margins of society and encountering infringement of their fundamental rights and freedoms is a cause for concern. To strengthen the protection of disability rights, Zimbabwe launched the National Disability Policy and is also in the process of repealing the now outdated Disabled Persons Act.³ The Persons with Disabilities Bill (the Bill), which seeks to repeal the Disabled Persons Act, was presented in Parliament in May 2024.⁴ It was referred to the Parliamentary Legal Committee which scrutinises proposed legislation for consistency with the Constitution of Zimbabwe.⁵

It is commendable that Zimbabwe ratified the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Optional Protocol) in September 2013.⁶ The CRPD is the first legally binding international instrument aimed at advancing the rights of persons with disabilities.

Article 33(2) of the CRPD enjoins state parties to establish independent mechanisms for the promotion, protection and enforcement of the rights of persons with disabilities.⁷ The provision highlights the critical role of National Human Rights Institutions (NHRIs) in advancing disability rights as human rights defenders and watchdogs that also play a coordinating role of national efforts through thematic committees.

1 OHCHR 'African states affirm the rights of persons with disabilities in a new landmark Protocol' (2018) <https://www.ohchr.org/en/press-releases/2018/02/african-states-affirm-rights-persons-disabilities-new-landmark-protocol> (accessed 10 February 2024).

2 ZIMSTAT *Zimbabwe 2022 Population and Housing Census Report* (2022).

3 Disabled Persons Act [Chap 17:01].

4 Persons with Disabilities Bill (HB 2, 2023).

5 Sec 152 of the Constitution of Zimbabwe, Amendment 20, Act 2013.

6 UNICEF 'Establishment of a common disability assessment and multisectoral referral mechanism and review of disability inclusiveness of social protection programmes in Zimbabwe' <https://www.unicef.org/zimbabwe/media/4246/file> (accessed 12 October 2024).

7 Art 33(2) of the UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution/ adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) (CRPD).

The Zimbabwe Human Rights Commission (ZHRC) is the NHRI of Zimbabwe, established in terms of sections 232(b) and 242 of the Constitution of Zimbabwe with a dual mandate to safeguard fundamental rights and freedoms and administrative justice.⁸ The ZHRC is one of the five independent commissions supporting democracy.⁹ Its functions are outlined in section 243 of the Constitution. The Zimbabwe Human Rights Commission Act (ZHRC Act)¹⁰ and Zimbabwe Human Rights Commission (General) Regulations of 2016 (ZHRC General Regulations)¹¹ guide execution of the ZHRC's mandate.

In terms of commitment to advancement of disability rights at the regional level, Zimbabwe ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Rights Protocol) in May 2024 but ratification formalities were still unfinished as at October 2024.¹² The Protocol entered into force on 5 June 2024 following ratification by the 15th member state.¹³

The main purpose of the paper is to interrogate the role of the ZHRC in advancing the rights of persons with disabilities in Zimbabwe in line with its mandate. The paper has six main parts. The first is the introduction. The second part discusses the constitutional, legislative and policy framework for the rights of persons with disabilities. The third part covers the general mandate of the Zimbabwe Human Rights Commission while the fourth part delves into the human rights promotion mandate. The human rights protection mandate is discussed in the fifth part and the final part is the conclusion which sums up the main points highlighted by the paper.

2 Constitutional, legislative and policy framework for rights of persons with disabilities

Zimbabwe enacted the Disabled Persons Act in 1992¹⁴ to protect the rights of persons with disabilities. This legislative intervention motivated disability rights defenders to upscale sensitisation and advocacy to ensure implementation of the law and ultimate enjoyment of the guaranteed

8 Amendment 20 Act 2023.

9 Zimbabwe Electoral Commission (ZEC), the Zimbabwe Gender Commission (ZGC), the Zimbabwe Media Commission (ZMC) and the National Peace and Reconciliation Commission (NPRC) are the other four independent commissions.

10 Zimbabwe Human Rights Commission Act [Chap 10:30].

11 Zimbabwe Human Rights Commission (General) Regulations, 2016 [SI 77 of 2016].

12 ZHRC Report on Persons with Disability Bill, 2024.

13 Inklusion Leben 'A milestone in disability rights in Africa – Entry into force of the African Disability Protocol' <https://inklusion-leben.org/en/a-milestone-in-disability-rights-in-africa-entry-into-force-of-the-african-disability-protocol-2/> (accessed 25 September 2024).

14 Disabled Persons Act, [Chap 17:01].

rights by the rights holders.¹⁵ The Act ushered in commendable provisions that promoted reasonable accommodation and improved access to public premises, services, amenities and employment by persons with disabilities who encountered exclusion on the grounds of disability.¹⁶ Whilst the Disabled Persons Act was a milestone development, it did not holistically promote and protect disability rights. It was enacted long before the progressive CRPD and is not aligned to the current Constitution of Zimbabwe. As highlighted by Mandipa, the Disabled Persons Act follows an archaic model of disability which perceives persons with disabilities as objects for clinical interventions instead of viewing them as rights holders.¹⁷

The 2005 amendment to the 1980 Constitution of Zimbabwe commonly referred to as the Lancaster House Constitution attempted to protect the rights of persons with disabilities.¹⁸ Section 23 of this Constitution was amended to include physical disability as a ground of discrimination. However, Manatsa argues that the Constitution remained weak in the sense that it only prescribed physical disability and disregarded other forms of disability as grounds for discrimination.¹⁹

Zimbabwe's 2013 Constitution strengthened the guarantee of disability rights. The founding values and principles amplified the need to recognise the inherent dignity and worth of each human being whose protection is viewed as an indicator of good governance.²⁰ The constitutional recognition of sign language as an officially recognised language in Zimbabwe reflects government's commitment towards the realisation of the linguistic rights of persons with disabilities.²¹

One of Zimbabwe's national objectives directs the state and its institutions to recognise the rights of persons with physical and mental disabilities.²² It has been argued that one of the shortfalls of this provision is that it singles out physical and mental disabilities but omits other forms of disabilities such as sensory disabilities.²³ One school of thought argues that this omission was addressed by section 22(3)(b) of the Constitution which requires the state, its institutions and agencies to prioritise specific requirements of persons with all forms of disability in development

15 P Manatsa 'Are disability laws in Zimbabwe compatible with the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)?' (2015) 4 *International Journal of Humanities and Social Science Invention* 25.

16 Sec 8 of the Disabled Persons Act.

17 E Mandipa 'A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe' (2013) 1 *African Disability Rights Yearbook* 73.

18 The 1980 Constitution was a product of the Lancaster House agreement of 1979.

19 Manatsa (n 15).

20 Sec 3(2) of the Constitution of Zimbabwe.

21 Sec 6 of the Constitution of Zimbabwe.

22 Sec 22 of the Constitution of Zimbabwe.

23 Manatsa (n 15).

plans.²⁴ However, Peta and Moyo rightly argue that the obligations in section 22 of the Constitution of Zimbabwe are not justiciable.²⁵ They are mere implementation guidelines for other rights of persons with disabilities specified in the Declaration of Rights. There is therefore still a need to broaden the scope of disabilities for which protection is guaranteed.

Section 83 of the Constitution of Zimbabwe specifically enshrines the rights of persons with disabilities. The provision places an obligation on the state to take measures to ensure realisation of self-reliance as well as full mental and physical potential by persons with disabilities.²⁶ The government is required to take measures that allow persons with disabilities to live with their families and participate in social, creative or recreational activities without being subjected to diverse forms of exploitation and abuse.²⁷ Section 83(d) of the Constitution mirrors article 25 of the CRPD which calls upon governments to take measures to ensure access to healthcare services by persons with disabilities, including access to medical, psychological and functional treatment. With regards to education, section 83 requires the state to take appropriate measures to ensure persons with disabilities are provided with special facilities for their education²⁸ and afforded free education and training where they need it.²⁹

It is however important to emphasise that all obligations imposed on the state through section 83 of the Constitution are subject to the availability of resources.³⁰ The fact that fulfilment of human rights obligations is subject to the availability of resources is controversial in the sense that the government can rely on the provision to plead poverty as a defence for failure to take measures to advance rights of persons with disabilities.³¹ The government must give practical effect to the rights of persons with disabilities by ensuring adequate resources are made available.

Article 29 of the CRPD requires state parties to take measures to ensure persons with disabilities can effectively and fully participate in political and public life, on an equal basis with others. It also provides that state parties must undertake to ensure persons with disabilities enjoy the right to vote and be elected.³² The Constitution made positive strides to ensure persons with disabilities enjoy their political rights on an equal basis with others as provided for in article 29 of the CRPD. The Constitution prescribes that when electing members of the senate, two members must be

24 Sec 22(3)(b) of the Constitution of Zimbabwe.

25 C Peta & A Moyo 'The rights of persons with disabilities in Zimbabwe' in A Moyo (ed) *Selected aspects of the 2023 Zimbabwean Constitution and the Declaration of Rights* (2022) 86.

26 Sec 83(a) of the Constitution of Zimbabwe.

27 Sec 83(b) of the Constitution of Zimbabwe.

28 Sec 83(e) of the Constitution of Zimbabwe.

29 Sec 83(f) of the Constitution of Zimbabwe.

30 Sec 83 of the Constitution of Zimbabwe.

31 Manatsa (n 15).

32 Art 29(a) of the CRPD.

representatives of persons with disabilities.³³ The Constitution places an obligation on political parties to ensure women with disabilities are included on their proportional representation party lists for the purpose of electing members of the National Assembly.³⁴ Most importantly, the Constitution of Zimbabwe mandates government to facilitate voting by persons with disabilities.³⁵ In *Mvindi v President of the Republic of Zimbabwe*, the court held that failure by the government of Zimbabwe to facilitate provision of voting in accessible formats to accommodate visually impaired voters was an infringement of their political rights.³⁶

On 9 June 2021, Zimbabwe launched the National Disability Policy of which the main purpose is to guide government ministries, departments and agencies as well as development partners and other institutions in formulating and supporting the implementation of laws, policies and all intervention strategies to advance the rights of persons with disabilities.³⁷ The National Disability Policy is an overarching policy framework that sets inclusion standards for persons with disabilities.³⁸ Its launch was a major stride towards domesticating the provisions of the CRPD. The National Disability Policy adopted general principles of the CRPD. These include: non-discrimination; respect for human dignity; individual autonomy and independence of persons; respect for diverse cultural and religious values; and full and effective participation and inclusion in society and equality of opportunities.³⁹

As highlighted above, the Disabled Persons Act was enacted before the CRPD and is not aligned with the Constitution of Zimbabwe. In a bid to advance the rights of persons with disability in compliance with international and domestic obligations, the government of Zimbabwe published the Persons with Disabilities Bill in February 2014.⁴⁰

The Bill has several progressive provisions that were not part of the Disabled Persons Act. Unlike the Act, the Bill adopts the CRPD's definition of 'person with disabilities' which encompasses any long-term physical, mental, intellectual or sensory impairments that may hinder them from fully and effectively participating in society on an equal basis with others.⁴¹ The Bill provides for establishment of a Commission for Persons with Disabilities. In terms of the Bill, the functions of the Commission for Persons with Disabilities include cooperating with the

33 Sec 120(1)(d) of the Constitution of Zimbabwe.

34 Sec 124(1) of the Constitution of Zimbabwe.

35 Sec 155(2)(b) of the Constitution of Zimbabwe.

36 SC 106/08.

37 National Disability Policy, 2021.

38 UNESCO 'Zimbabwe launches National Disability Policy' (2021) <https://unesco.org/en/articles/zimbabwe-launches-national-disability-policy> (accessed 25 September 2024).

39 National Disability Policy (n 37).

40 Persons with Disabilities Bill (n 4).

41 Clause 2 of the Persons with Disabilities Bill.

Zimbabwe Human Rights Commission in monitoring and evaluating the extent to which the rights of persons with disabilities are promoted and protected and to propose remedies where there are deficits.⁴²

The Persons with Disabilities Bill recognises that parents of children with disabilities should receive support training and capacity building to enable them to fully cater for the rights of the children.⁴³ In terms of access to education, persons with disability will have a right to education in their preferred language.⁴⁴ The Bill also provides for the promotion of employment of persons with disabilities. It stipulates that, two years after enactment of the law, government institutions and parastatals, with at least 50 employees should ensure that two per cent of its total workforce are persons with disabilities.⁴⁵

The Mental Health Act,⁴⁶ Children's Act,⁴⁷ Criminal Law (Codification and Reform) Act,⁴⁸ Social Welfare Assistance Act,⁴⁹ War Victims Compensation Act,⁵⁰ and the State Service (Disability Benefits) Act⁵¹ are some of the domestic laws with a bearing on the rights of persons with disabilities.

3 General mandate of the Zimbabwe Human Rights Commission

The ZHRC is a hybrid institution with both a human rights and an administrative justice mandate. The functions of the ZHRC as laid down in section 243 of the Constitution include: promoting human rights awareness;⁵² promoting and protecting development and attainment of human rights;⁵³ monitoring the human rights situation in the country;⁵⁴ protecting the public from abuse of power and maladministration by government institutions and officials;⁵⁵ receiving and investigating human rights related complaints;⁵⁶ and visiting and inspecting prisons, police cells, refugee camps, children's homes and other related places.⁵⁷ The Commission is also endowed with powers to direct the Zimbabwe

42 Clause 5(1)(r) of the Persons with Disabilities Bill.

43 Clause 19(3)(b) of the Persons with Disabilities Bill.

44 Clause 34(1)(a) of the Persons with Disabilities Bill.

45 Clause 37 of the Persons with Disabilities Bill.

46 Mental Health Act [Chap 15:12].

47 Children's Act [Chap 5:06].

48 Criminal Law (Codification and Reform) Act [Chap 9:23].

49 Social Welfare Assistance Act [Chap 17:06].

50 War Victims Compensation Act [Chap 11:16].

51 State Service (Disability Benefits) Act [Chap 16:05].

52 Sec 243(1)(a) of the Constitution of Zimbabwe.

53 Sec 243(1)(b) of the Constitution of Zimbabwe.

54 Sec 243(1)(c) of the Constitution of Zimbabwe.

55 Sec 243(1)(e) of the Constitution of Zimbabwe.

56 Sec 243(1)(d) and (f) of the Constitution of Zimbabwe.

57 Sec 243(1)(k) of the Constitution of Zimbabwe.

Republic Police to investigate cases of suspected criminal violation of human rights or freedoms.⁵⁸ The Constitution mandates the ZHRC to recommend to government, effective measures to promote human rights and freedoms.⁵⁹ Section 243(1)(j) of the Constitution mandates the Commission to conduct research on human rights and social justice related matters. As an administrative justice institution, the ZHRC is responsible for the promotion and protection of the right to administrative justice as provided in section 68 of the Constitution.⁶⁰

4 Mandate to promote human rights

This section elaborates on the meaning of human rights promotion and explains how the ZHRC's Special interest Groups Thematic Working Group enhances the human rights promotion mandate. The section goes on to explore the various ways in which the ZHRC can discharge its human rights promotion mandate, through general awareness raising, human rights education and research.

4.1 The meaning of human rights promotion

The Paris Principles require NHRIs to be vested with competence to promote and protect human rights.⁶¹ Human rights promotion refers to the creation of a national culture of human rights where tolerance, equality and mutual respect thrive.⁶² It involves increasing the public knowledge and awareness of basic human rights and fundamental freedoms.⁶³ The Global Alliance of National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation stated that human rights promotion includes functions that seek to create a society where human rights are broadly understood and respected.⁶⁴ Promotion entails, inter alia, public awareness outreaches, education, advocacy and training.⁶⁵

4.2 Special Interest Groups Thematic Working Group

Section 3(2) of the ZHRC Act, read with paragraph 7 of the First Schedule of the same Act provides for the establishment of Thematic Working

58 Sec 243(1)(h) of the Constitution of Zimbabwe.

59 Sec 243(1)(i) of the Constitution of Zimbabwe.

60 C Munguma 'The role of the Zimbabwe Human Rights Commission in the protection, promotion and enforcement of fundamental human rights and freedoms' in Moyo (n 25) 242.

61 GANHRI SCA General Observations as adopted in Geneva in May 2013.

62 OHCHR *National Human Rights Institutions: History, principles, roles and responsibilities* (2010).

63 Amnesty International *Promoting and protecting the rights of persons with albinism: A manual for National Human Rights Institutions* (2021).

64 GANHRI SCA (n 61).

65 As above.

Groups or committees. The purpose of these groups is to enhance the effective exercise of the ZHRC's functions by drawing on the expertise of relevant stakeholders and promoting inclusiveness, transparency, openness participation and accountability.⁶⁶ The ZHRC established a thematic working group on Special Interest Groups of which the purpose is to strengthen collaboration of state and non-state institutions that are involved in the promotion and protection of rights of vulnerable groups such as persons with disabilities, youths, Indigenous minorities and older groups.⁶⁷ In 2021, the thematic working group recommended upscaling of efforts to promote disability rights through awareness raising and training of ZHRC staff on the National Disability Policy and sensitisation of parliamentarians, traditional leaders and councillors on rights of persons with disabilities and disability inclusion.⁶⁸ It also recommended review of the ZHRC complaints handling mechanism with a view of mainstreaming a human rights based approach to disability issues.⁶⁹

4.3 General awareness raising

Human rights promotion ensures that there is information and knowledge sharing on human rights so that a culture of respect for human rights is entrenched.⁷⁰ The Paris Principles provides that all NHRIs should promote human rights, and they refer directly to the obligation to increase public awareness.⁷¹ That is the reason why the ZHRC has mainstreamed disability rights in its programming and intensified awareness raising on the thematic area. Article 8 of CRPD underscores the need to promote rights of persons with disabilities. It reiterates that governments should take measures to raise awareness on rights of persons with disabilities at all levels⁷² and to put in place measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities.⁷³ Duty bearers and persons without disabilities should similarly understand and embrace rights of persons with disabilities to ensure no one is left behind. The ZHRC conscientises persons with disabilities on their rights and access to redress mechanisms in case of infringement of their rights.⁷⁴

The ZHRC executes its human rights promotion mandate using multifaceted approaches through the Education, Promotion, Research and Advocacy Department.⁷⁵ In compliance with section 243(1)(a) of the Constitution as well as article 8(2)(a) of the CRPD, the said department

66 Zimbabwe Human Rights Commission 'Annual Report' (2017).

67 As above.

68 Zimbabwe Human Rights Commission 'Annual Report' (2021).

69 As above.

70 OHCHR (n 62).

71 As above.

72 Art 8(1)(a) of the CRPD.

73 Art 8(1)(b) of the CRPD.

74 OHCHR (n 62).

75 Zimbabwe Human Rights Commission 'Annual Report' (2022).

conducts human rights awareness raising, advocacy, promotion and development. This is done through outreaches, exhibitions, commemorative events, engagement meetings, training seminars and media campaigns.⁷⁶ The ZHRC also utilises its website and social media platforms such as X (formerly Twitter), Instagram and Facebook to disseminate information and publicise its knowledge products. The ZHRC can also embrace community-based initiatives so that human rights awareness is cascaded to grassroots communities at risk of being victims of rights violations.⁷⁷

4.4 Human rights education and training

Since its operationalisation, the ZHRC has been actively involved in human rights education that includes disability rights. The Commission took part in the curriculum review process that culminated in the adoption of the new curriculum which integrated knowledge on disability rights at primary and secondary levels. It has also been involved in high school quiz competitions that covered disability rights as well. The ZHRC can further support other extracurricular activities such as human rights, interact and public speaking clubs.⁷⁸ The ZHRC can also target learning institutions for children with disabilities such as King George VI Centre, Ruvimbo Special School and Margarethe Hugo (Copota) School for the Blind when supporting extracurricular activities.

At a tertiary education level, the ZHRC can support moot court competitions on disability rights that are conducted annually by law schools. The Commission can also participate in guest lectures at colleges and universities since most of them have modules that include human rights.⁷⁹ Other human rights commissions promote human rights research by motivating final year students to research on human rights and then offering prizes for outstanding work.⁸⁰

In so far as training of professionals is concerned, the ZHRC has over the years, been training the Zimbabwe Prisons and Correctional Services and Zimbabwe Republic Police recruit training officers as a way of fostering a culture of human rights-based approaches to law enforcement. In 2022, the ZHRC trained 771 recruit correctional officers and 244 recruit police officers and instructors.⁸¹ To promote the rights of persons with disabilities, the curriculum for the ZHRC training seminars includes rights of persons with disabilities. Volume 2 of the Commission's training

76 As above.

77 OHCHR (n 62).

78 As above.

79 As above.

80 OHCHR (n 62).

81 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

manual on rights of vulnerable groups covers rights of persons with disability.

The ZHRC conducts human rights education and training of stakeholders and duty bearers such as traditional leaders, councillors and other public officials. It is the role of the ZHRC to raise awareness and respect of rights of persons with disabilities in such trainings. Factors to be considered during education and training include literacy rate of the target population, financial resources and the level of awareness among the target population.⁸²

4.5 Publications

Publications such as research papers, annual, investigative, monitoring and special reports are critical resources that can be used in the promotion of rights of persons with disabilities. Such publications should be in accessible formats as both hard and soft copies. The OHCHR emphasises that online publications must be compliant with international standards for persons with visual disabilities.⁸³ Similarly, hard copies should be produced in braille. Where possible, publications should also be available in the form of audiobooks. Zimbabwe has 16 officially recognised languages and efforts must be made towards producing publications in all these languages for easy accessibility.

Preparation of reports on the national situation regarding general or specific human rights issues is one of the responsibilities of NHRIs provided for in the Paris Principles.⁸⁴ The Paris Principles obligate NHRIs to 'submit to the government, parliament and any other competent body, on an advisory basis ... opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights'.⁸⁵ Similarly, section 323 of the Constitution mandates the ZHRC to produce and submit annual and other reports to the parliament.

Annual reports do not only serve as an institutional accountability tool. They are also a platform for the NHRI for public awareness on the work that the NHRI does.⁸⁶ The Commission should utilise annual reports to publicise its work on rights of persons with disabilities and to make appropriate recommendations.

82 OHCHR (n 62).

83 As above.

84 General Assembly, Resolution 48/134: National institutions for the promotion and protection of human rights, 4 March 1994, UN Doc A/RES/48/134 (1994) (Paris Principles).

85 Paris Principles (n 84) para 3(i).

86 OHCHR (n 62).

The United Nations Centre for Human Rights is of the view that NHRIs should have diverse information, education and communication material on human rights that is widely disseminated to reach different constituents including marginalised groups.⁸⁷ The ZHRC can produce specialised human rights material in the form of magazines and newsletters for specific audiences on different human rights thematic areas including disability rights.⁸⁸ The Commission's Education, Promotion, Research and Advocacy Department conducts physical awareness outreaches and these can be conducted to disseminate the material which should be distributed through audio, video and braille for the benefit of persons with visual and hearing disabilities. The website and social media platforms are also used to distribute disability-friendly packaged information materials.⁸⁹

4.6 Human rights research and development

The CRPD obligates state parties to collect information including statistical and research data for the purpose of formulating and implementing policies to give effect to the rights of persons with disabilities.⁹⁰ In the same context, the Constitution of Zimbabwe gives the ZHRC the mandate to conduct research into issues relating to human rights and freedoms and social justice matters.⁹¹ Research can be done through national inquiries which have been identified as effective mechanisms for human rights promotion that enable a comprehensive examination of systematic human rights violations to be conducted.⁹² National inquiry findings lead to the development of recommendations to address the probed situation thereby leading to full realisation of the concerned rights.⁹³

In 2020, the ZHRC conducted a national inquiry on access to documentation in Zimbabwe.⁹⁴ The purpose of the inquiry was to identify challenges faced in accessing national documentation and the effects these challenges had on the enjoyment of fundamental human rights and freedoms.⁹⁵ The inquiry identified persons with disabilities as a group of persons facing specific challenges due to their vulnerability. The ZHRC conducted public hearings and received submissions from 237 persons

87 UN Centre for Human Rights *A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights* (1995).

88 OHCHR (n 62).

89 Zimbabwe Human Rights Commission Five-Year Strategy (2021-2025).

90 Art 31 of the CRPD.

91 Sec 243(1)(j) of the Constitution of Zimbabwe.

92 Asia Pacific Forum 'A Manual on National Human Rights Institutions' (2018).

93 As above.

94 Zimbabwe Human Rights Commission 'Report on National Inquiry on access to documentation in Zimbabwe' (2020).

95 As above.

with disabilities.⁹⁶ Some of the findings were that persons with disabilities were not treated with dignity at the civil registry offices. In some instances, there were no sign language interpreters and there was also lack of user-friendly infrastructure.

5 Human rights protection mandate

Human rights protection is an integral component in the advancement of the rights of persons with disabilities. This section explains the meaning of human rights protection and discusses how the ZHRC can protect rights of persons with disabilities.

5.1 ZHRC's role in protection of disability rights

Human rights protection functions are aimed at providing redress and ensuring accountability for human rights violations. They involve investigation of human right violation cases and bringing to justice those responsible for human rights violations as well as providing remedy and redress for victims of human rights violations.⁹⁷ Human rights protection includes visiting and inspecting places of detention.⁹⁸ Monitoring can be done to identify violations that have occurred, that are occurring and that are at the risk of occurring.⁹⁹ Identifying violations that have occurred is done for the purpose of providing remedy to the human rights violation victims whilst identifying occurring violations should translate to stopping the violations.¹⁰⁰ Human rights violations at a proximate risk of occurring ought to be prevented through monitoring functions. The ZHRC's human rights protection mandate is inclined towards putting in place systems and mechanisms to ensure rights of citizens are not violated and to guarantee redress in cases where human rights violations occur. For an NHRI to be regarded as compliant with the Paris Principles, it must take comprehensive action towards both promotion and protection of human rights. The human rights protection mandate of ZHRC is mainly discharged through three departments, namely: the Monitoring and Inspection Department; the Complaints Handling and Investigations Department; and the Administrative Justice Department. The Monitoring and Inspection Department discharges the human rights monitoring mandate in terms sections 243(1)(c) and (k) of the Constitution.¹⁰¹ The OHCHR defines monitoring as the activity of observing, cataloguing, collecting and analysing data and reporting on a situation or event.¹⁰² The

96 As above.

97 OHCHR (n 62).

98 Asia Pacific Forum (n 92).

99 As above.

100 As above.

101 Zimbabwe Human Rights Commission 'Annual Report' (2020).

102 OHCHR (n 62).

human rights monitoring mandate culminates into submission of situational and alternative reports relevant bodies such as parliament, treaty bodies and mechanisms.

5.2 Submission of alternative reports

One of the responsibilities of NHRIs is to encourage the ratification of human rights instruments, ensure their implementation and contribute to state party reports to regional and international human rights bodies.¹⁰³ NHRIs must strive to ensure implementation of treaty obligations. Ngwena has observed that treaty obligations should be translated into reality if right holders are to derive tangible benefits.¹⁰⁴ Zimbabwe ratified the CRPD and its Optional Protocol. The Committee on the Rights of Persons with Disabilities is one of the treaty bodies requiring regular reports.¹⁰⁵ Article 33 of the CRPD makes provision for domestic monitoring of the implementation of provisions of the Convention and implicitly nominates NHRIs to discharge the monitoring role.¹⁰⁶ It is therefore the role of the ZHRC as the NHRI of Zimbabwe to assess the government's compliance with the CRPD as well as any other treaty mechanisms promoting and protecting rights of persons with disabilities. NHRIs are better placed to promote and monitor the recommendations of international mechanisms.¹⁰⁷ For instance, the CRPD has 189 member states¹⁰⁸ and it can be difficult for the Committee on the Rights of Persons with Disabilities to monitor implementation in all states as international mechanisms do not have the capacity for close monitoring.

To advance the rights of persons with disabilities and comply with the Paris Principles, the ZHRC should regularly prepare and submit periodic alternative reports to government reports on achievements made in so far as the rights of persons with disabilities are concerned. NHRIs should solicit views and submissions from stakeholders when preparing country reports.¹⁰⁹

Article 34(1) of the African Disability Rights Protocol calls upon state parties to indicate, in their periodic reports submitted to the African Commission on Human and Peoples' Rights,¹¹⁰ measures taken to advance the rights of persons with disabilities. The Protocol also

103 Paris Principles (n 84).

104 C Ngwena 'Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139.

105 OHCHR (n 62)109.

106 Asia Pacific Forum (n 92).

107 As above.

108 As at February 2024.

109 OHCHR (n 62).

110 In accordance with art 62 of OAU, African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), 27 June 1981.

nominates NHRIs as institutions responsible for monitoring the implementation of rights of persons with disabilities. The ZHRC should therefore review the government's reports to ensure that representations contained therein are accurately portrayed.¹¹¹ There is also a need to follow up on the implementation of recommendations contained in its own reports.¹¹²

Zimbabwe submitted its first state party report to the Committee on the Rights of Persons with Disabilities on 8 June 2022.¹¹³ The tentative date for adoption of the list of issues is March 2026 and the dialogue between the members of the Committee and a delegation of the state party in which they discuss the implementation of the Convention by the state party at the national level will take place in March 2029.¹¹⁴ The ZHRC is called upon to submit an alternative report to the Committee. It should not only submit alternative reports to the Committee on the Rights of Persons with Disabilities proffering recommendations to advance rights of persons with disabilities, but should also conduct monitoring exercises to follow up on the implementation of the provisions of the CRPD as well as implementation of recommendations contained in its own reports. The ZHRC should thereafter publish progress reports on the implementation of recommendations to advance rights of persons with disabilities. These progress reports increase both accountability and transparency in the implementation process and they act as advocacy tools to put pressure on the government to implement the recommendations.¹¹⁵

5.3 Human rights monitoring

The ZHRC has the constitutional mandate to visit and inspect prisons, police cells, refugee camps, children's homes, old people's homes, mental health institutions and any other places where persons with disabilities are institutionalised.¹¹⁶ The purpose of these monitoring visits is to ascertain the conditions under which persons are kept there and thereafter make recommendations to advance the rights of the detained persons.¹¹⁷ Zimbabwe's legislation is silent on whether the ZHRC should give notice or not before embarking on a monitoring mission. Where possible and in the spirit of the OHCHR, the ZHRC should conduct impromptu visits at places where persons with disabilities are institutionalised. Monitoring visits' findings and recommendations are directed to the respective heads

111 OHCHR (n 62).

112 Asia Pacific Forum (n 92) 138.

113 UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=29 (accessed 24 September 2024).

114 As above.

115 As above.

116 Sec 243(1)(k) of the Constitution of Zimbabwe.

117 As above.

of institutions and to the Ministers responsible for administering the law related to those places.¹¹⁸

The ZHRC conducted its inaugural monitoring and inspection visit to a mental health institution at Ingutsheni mental hospital in 2015.¹¹⁹ One of its findings was that most of the infrastructure was dilapidated and needed rehabilitation.¹²⁰ Ngomahuru and Mlondolozhi mental hospitals were later visited in 2019.¹²¹ After monitoring visits to the institutions, the ZHRC made recommendations to the Ministry of Health and Child Care to rehabilitate the dilapidated infrastructure. From 22 to 24 October 2019, the ZHRC conducted follow up inspections at the three institutions to monitor implementation of its recommendations.¹²²

When inspecting places where persons with disabilities are institutionalised, the ZHRC should check if the institution meets the standards required for such an institution. The inspection should cover aspects such as the right to barrier free access to the physical environment, transportation and information among other rights.¹²³ The CRPD requires governments to monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services.¹²⁴

Article 18(4) of the Banjul Charter provides that older persons with disabilities have the right to special measures of protection in keeping with their physical and moral needs.¹²⁵ The ZHRC should visit and inspect old people's homes and during those visits, due considerations should be taken in monitoring and assessing the enjoyment of rights of older persons with disability. Article 30 of the African Disability Rights Protocol directs state parties to ensure that older persons with disabilities are fully protected by adopting policy, legislative and other measures including for ensuring access to social protection and protection from neglect and violence.¹²⁶ In 2022, the ZHRC visited Melfort Old People's Home and proffered recommendations to government to ensure that the rights of older persons with disabilities are realised.¹²⁷

5.4 Advisory responsibilities

Provision of advice on human rights matters is one of the roles of an institution like the ZHRC. This can be achieved through submission of

118 As above.

119 Zimbabwe Human Rights Commission 'Annual Report' (2015).

120 As above.

121 Zimbabwe Human Rights Commission 'Annual Report' (2019).

122 As above.

123 African Disability Rights Protocol (n 16) art 15.

124 Art 9(2)(a) of the CRPD.

125 Banjul Charter came into force on 21 October 1986.

126 African Disability Rights Protocol (n 16) art 30(2)(e).

127 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

advisory opinions to relevant duty bearers. An NHRI like the ZHRC may, during the exercise of its functions, identify gaps and problems in the existing legislation from a human rights perspective.¹²⁸ The United Nations Centre for Human Rights explains that in cases where the mandate of a NHRI does not specify the procedure to be followed after making a finding, the NHRI must detect the inadequacies and conduct a study of the human rights implications with reference to both domestic and international standards. It should thereafter identify the relevant government ministry, department or agency responsible for administering the legislation.¹²⁹ The ZHRC mandate does not specify the procedure to be followed if an inadequacy is identified on any piece of legislation. It follows that, as part of its activities, the ZHRC should scrutinise legislation that is relevant to persons with disabilities.

NHRIs should have the ability to make contributions by commenting and playing an advisory role to the government on proposed laws before they are passed into law for it is easier to change a draft law than to amend or repeal an already existing one.¹³⁰ The ZHRC should in this regard make written representations to parliament advising on any bill with a bearing on the rights of persons with disabilities. In 2019, the ZHRC made representations to the Ministry of Public Service, Labour and Social Welfare with regards to the Persons with Disabilities Bill.¹³¹

In its General Comment 10, the Committee on Economic Social and Cultural Rights details that the roles of the NHRIs in promoting and protecting human rights includes scrutinising existing laws, draft bills and administrative acts.¹³² The Parliament of Zimbabwe conducted public consultations on the Persons with Disability Bill in May 2024.¹³³ The ZHRC attended the public hearings and thereafter submitted an advisory report to the Parliament of Zimbabwe.¹³⁴ The report analysed the Bill and assessed its compliance with the Constitution, international and regional instruments on the rights of persons with disabilities. The ZHRC further recommended that there be provisions on persons with disabilities living and working on the streets.¹³⁵

Most of the key national legislation for the advancement of rights of persons with disabilities was enacted before the coming into force of the

128 As above.

129 As above.

130 UN Centre For Human Rights (n 87) para 195.

131 Zimbabwe Human Rights Commission (n 121).

132 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 10: The role of national human rights institutions in the protection of economic, social and cultural rights, 10 December 1998, UN Doc E/C.12/1998/25 (1998)

133 Bill Watch Parliamentary Committees Series 10/24 <https://www.veritaszim.net/node/6930>(accessed 24 September 2024).

134 ZHRC Report on Persons with Disability Bill, 2024.

135 As above.

current Constitution of Zimbabwe. This legislation is in many respects inconsistent with the Constitution which is supreme. The ZHRC should lobby for alignment of these laws with the Constitution. Most importantly, the ZHRC must continue lobbying for the alignment of its own enabling Act with the Constitution. The ZHRC Act came into operation in October 2012¹³⁶ whilst the current Constitution was adopted in April 2013 and it came into force in August 2013. This anomaly impedes full execution of the Commission's mandate.

5.5 Complaints handling

Human rights protection is chiefly centred around complaints handling and investigations so that victims of human rights violations are afforded remedies. The investigation of alleged human rights violations is one of the most critical functions of the ZHRC which enables it to secure appropriate remedies for those seeking redress.¹³⁷ Effective execution of this investigative mandate requires adequate powers that are legally conferred.¹³⁸ The ability to receive and investigate complaints against both public and private bodies, the ability to conduct investigations at its own initiative, the power to compel the production of evidence and witnesses and the ability to visit places of detention are some of the powers a NHRI is expected to have.¹³⁹

The conferring of power on the ZHRC to receive and investigate human rights-related complaints through the Constitution of Zimbabwe,¹⁴⁰ reflects a positive commitment by the government of Zimbabwe to human rights protection and its willingness to take international and domestic obligations seriously.¹⁴¹

Section 28 of the 2016 ZHRC General Regulations allows the ZHRC to initiate investigations on human rights violations, maladministration or abuse of power.¹⁴² The ZHRC General Regulations empowers the ZHRC to issue summons for attendance to a hearing or for the production of evidence and such summons must be served by a police officer.¹⁴³

As mentioned earlier, the ZHRC serves as both the institution responsible for advancement of human rights and the public protector. As public protector, the ZHRC receives complaints and investigates allegations of maladministration and abuse of office by the state and state

136 ZHRC Act (n 10).

137 UN Centre for Human Rights (n 87).

138 Asia Pacific Forum (n 92).

139 GANHRI SCA (n 61).

140 Secs 243(1)(d) and (e) of the Constitution.

141 UN Centre For Human Rights (n 87) para 216.

142 ZHRC General Regulations (n 11).

143 ZHRC General Regulations (n 11) sec 18.

institutions.¹⁴⁴ Besides mental health centres, persons with disabilities are often captive populations in places such as prisons, refugee camps, and children's and old people's homes. Most of these places are administered by public officials. To this end, persons with disabilities are exposed to the risk of suffering maladministration and abuse. The ZHRC should therefore regularly conduct monitoring visits at such places.

Over the years, the ZHRC has been conducting Mobile Human Rights Clinics in prisons and in rural communities. The purpose of the MHRCs is to raise awareness on the work of the NHRI and to increase knowledge on reporting and enforcement mechanisms and remedies.¹⁴⁵ During the year 2022, the ZHRC received 624 cases on alleged human rights allegations.¹⁴⁶ However, only two of the cases were on the rights of persons with disabilities.¹⁴⁷ One way of securing an increase in the number of disability-related cases, would be for the ZHRC to regularly conduct Mobile Human Rights Clinics in places where persons with disabilities are kept. In addition, the ZHRC should intensify collaboration and partnerships with Organisations for Persons with Disabilities.

It is worth noting that the powers of the Commission to investigate complaints are not a substitute of law enforcement officials and judicial processes.¹⁴⁸ The United Nations Centre for Human Rights has similarly observed that the ability of a NHRI to receive and act on human rights violation complaints as a complimentary mechanism established to ensure the rights of all persons are fully enjoyed.¹⁴⁹

6 Conclusion

From the discussion, it is evident that the ZHRC has a huge responsibility in as far as advancement of disability rights is concerned. Its broad constitutional and legislative mandate give it a central role of implementing its own initiatives ranging from awareness raising, monitoring observance of human rights, securing appropriate remedies for aggrieved persons and holding state and public institutions and their officials to account as they provide services to persons with disabilities. It also has the obligation to collaborate with other disability rights defenders and advocates so that all rights of persons with disability that are inalienable and indivisible are enjoyed on an equal basis with able-bodied persons. However, the ZHRC needs to upscale its efforts especially in empowerment of the persons with disability with information that enables them to hold the duty bearers and society at large to account and ensure

144 Sec 243(1)(e) of the Constitution of Zimbabwe.

145 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

146 As above.

147 As above.

148 OHCHR (n 62).

149 UN Centre for Human Rights (n 87).

inclusivity that does not leave them behind as required by the CRPD and the Sustainable Development Goals.

A CRITICAL ANALYSIS OF ACCESS TO MATERNAL, SEXUAL AND REPRODUCTIVE HEALTH SERVICES FOR WOMEN WITH DISABILITIES IN UGANDA

Florence Ndagire*

Summary

Global statistics indicate that 15 per cent of the world's population experience some form of physical, sensory, developmental, intellectual or psychosocial disability. Over 12 per cent of Uganda's population lives with some form of disability. Disability is an evolving concept that requires adequate attention if barriers, including access to maternal, sexual and reproductive health (MSRH) services, are to be overcome. The interface of MSRH rights and disability rights highlights the intersectionality of discrimination in terms of gender; SRH – as a discourse under the second generation of rights; and women with disabilities as a marginalised group. Hence, this paper positions disability rights as the individual right of a woman with disability requiring specific attention, and as a collective right that must be mainstreamed in all legal and policy frameworks. Although experiencing the same maternal healthcare needs as non-disabled women, women with disabilities face different challenges in both the seeking of and the delivery of MSRH services. Reproductive health laws and policies guiding MSRH planning and budgeting, have poorly acknowledged women with disabilities' voices and lived experience. Consequently, barriers continue to manifest themselves, not only in social attitudes but also in women with disabilities' priorities, environmental access to, and appropriately formatted information on MSRH services. This paper provides a critical analysis of existing laws and policies on MSRHR for women with disabilities. It identifies gaps and provides recommendations to promote inclusive MSRHR services for women with disabilities. It presents a qualitative study of literature on existing policies, frameworks, laws and reports, benchmarking them against global commitments and international human rights instruments. It is also enriched by in-depth interviews of key stakeholders in the central region of Uganda.

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1 Introduction

The overlap of maternal, sexual and reproductive health rights (MSRH) and disability rights highlights the intersectionality of discrimination. Discrimination is explored from the perspective of gender and the positionality of women in society, looking at power, poverty, levels of education and employability. It is examined from the perspective of SRH as a discourse under the second generation of rights that highlight health, accessibility, reasonable accommodation and sexual orientation. Discrimination is also examined under the women with disabilities discourse, seen as a marginalised group who experience multiple forms of discrimination and exclusion in society, and for whom the Convention on the Rights of People with Disabilities (CRPD) was developed as late as 2006. Hence, this paper positions disability in terms of both individual and collective rights. As an individual right, it addresses a woman with disability in her pursuit to access maternal and reproductive rights on an equal basis with others, given her unique needs, which requires specific attention. As a collective right access to MSRH must be mainstreamed in all legal and policy frameworks.

The main objective of this paper is to analyse the legal and policy frameworks on access to MSRH services to ascertain whether they appropriately address the MSRH of women with disabilities in Uganda. It examines the level of inclusion and priority given to disability in the policy frameworks and services on access to MSRH and whether the needs of diverse women with disabilities are taken into consideration at the design phase of policies and implementation of programmes. It highlights the positive measures made by the government of Uganda to ensure access to MSRH services by persons with disability. Finally, the paper makes recommendations to ensure inclusive access to MSRH services by women with disability.

The paper is a qualitative study based on a literature review of existing policies, frameworks, laws and reports, benchmarking them against global commitments and international human rights instruments. It was also enriched by in-depth interviews of key stakeholders in the central region of Uganda comprised of the districts of Kampala, Wakiso, Luwero and Mpigi. The central region provides a prototype of women with disabilities within a larger Ugandan population of persons with disabilities.¹ The key informants included women with disability, health workers, representatives from organisations of persons with disabilities, civil society organisations implementing MSRH services, health service providers,

1 Uganda Bureau of Statistics (UBOS) 'National population and housing census 2014 – Main report' (2016) https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf (accessed 20 February 2020).

Government ministries, departments and agencies and development partners. In the interest of confidentiality, pseudonyms are used.

In section 2 of this paper I map global commitments and legal and policy frameworks to provide MSRHR services to women with disabilities. Section 3 maps and examines such legal and policy commitments in Uganda. Section 4 presents the fieldwork findings on how such commitments have been implemented. It examines policy-making processes for MSRHR service delivery in Uganda, and the lived experiences of such service delivery for women with disabilities – including of discriminatory attitudes, practices and environments. It also highlights health workers positive attempts to adapt implementation of MSRHR services for women with disabilities within limited institutional capacity and budgetary support. Sections 5 and 6 offer recommendations to promote more inclusive access to MSRHR services.

2 Mapping global commitments, and legal and policy frameworks on access to MSRHR services for persons with disabilities

There is significant progress in the recognition and provision of MSRHR services in general. However, this is yet to become a reality for women with disabilities at the international, regional and national level in respect of the MSRHR rights and services.

2.1 The international framework

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), under article 12, recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Further, it prescribes measures for, among others: the reduction of the still birth rate and infant mortality; the provision of health development of the child; the prevention, treatment and control of epidemics, endemics and other diseases; and the creation of conditions which would assure access to all medical services and medical attention in the event of sickness.² These measures guide states in strengthening the policy framework on MSRHR. General Comment 22 of the ICESCR Committee recognises disability as a factor of social inequality and obliges state parties to consider disability during the provision of the information on SRH as well as for goods and services.³ State parties therefore must take specific

2 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol 993, p 3, 16 December 1966, art 12.

3 Committee on Economic, Social and Cultural Rights, General Comment 22 (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, UN Doc E/C.12/GC/22 (2016).

measures to provide SRH information in accessible formats – such as braille, sign language, and easy-to-read – failure of which is a violation of SRH rights.

Likewise, article 12 of the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) requires states to guarantee protection to women by ensuring that they have access to reproductive healthcare, and are protected from coercive pressures.⁴ Although CEDAW has been celebrated for recognising the rights of women, it does not include women with disabilities in the articulation of obligations to states to fulfil MSRH services that accommodate their needs. However, General Recommendation 18 recognises the importance of states parties to provide information on disability in their periodic reports.⁵ It also recommends for measures to be taken to deal with the situation of women with disabilities in all aspects including SRH rights. General Recommendation 39 recognises the intersectionality of discrimination faced by Indigenous women and girls with disabilities and obliges states to take measures in the form of laws and policies to prohibit discrimination based on gender and disability.⁶

Progressively, the 1989 Convention on the Rights of the Child (CRC) protects the rights of children and adolescents with disabilities and obliges states to ensure that they have effective access to health services.⁷ The most outstanding articulation of the rights of women with disabilities in respect of MSRH is the CRPD of 2006. The CRPD is generally acclaimed as the best progressive human rights instrument for advancing the rights of persons with disabilities, and a key global policy document with commitments to promote disability inclusion. Its purpose is to promote the full and equal enjoyment of all the fundamental rights and freedoms by persons with disabilities on an equal basis with others.⁸ The CRPD seeks to address the widespread discrimination among women with disabilities in securing many rights, including the right of access to MSRH.⁹ It has contributed to the recognition of disability as part of the human rights arena by upholding equality as an essential component of human rights and diversity.¹⁰

4 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol 1249, p 13, 18 December 1979.

5 CEDAW, General Recommendation 18: Disabled Women (Tenth Session 1991), UN Doc A/46/38 (1993) para 6.

6 CEDAW, General Recommendation 39 (2022) on Indigenous women and girls, 31 October 2022, UN Doc CEDAW/C/GC/39 (2022) paras 3, 23(a.)

7 UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol 1577, p 3, 20 November 1989, art 2.

8 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) art 1.

9 As above.

10 F Jaramillo Ruiz 'The Committee on the Rights of Persons with Disabilities and its take on sexuality' (2017) 25 *Reproductive Health Matters* 92 <https://doi.org/10.1080/09688080.2017.1332449> (accessed 3 December 2024).

Article 2 of the CRPD defines the concept of ‘reasonable accommodation’ as the necessary modifications and adjustments put in place to meet the needs of persons with disabilities. Addressing these needs is based on the individual and requires consultations to understand the solutions required to meet each individual’s needs. Article 23 of the CRPD guarantees to women with disabilities the right to a family, including the right to marry, with full consent, deciding freely on the number and spacing of their children, to have age-appropriate information, family planning and reproductive health education as well as the retention of their fertility. Article 25 also guarantees the enjoyment of the highest attainable standard of health without discrimination on the basis of disability and obliges states to provide the same range, quality and standard of free or affordable healthcare and programmes as provided to other persons in the area of SRH. Further, it requires that health services be as close as possible to people’s own communities; ensure same quality of care by the health professionals and to seek the free and informed consent of persons with disability. Article 6 of the CRPD recognises the multiple forms of discrimination faced by women with disabilities¹¹ and article 12 recognises the right to legal capacity of women with disabilities, which includes the right to contract a marriage, access reproductive health services and supported decision-making.¹² Article 12 obliges service providers to respect and give preference to women with disabilities.

The Global Disability Action Plan of 2014-2021 elaborates on the implementation of the framework of the CRPD with the aim of removing barriers to access to health services, including MSRH services.¹³ Importantly, it urges member states to implement the recommendations of the CRPD, working towards the inclusion of persons with disabilities in healthcare with the goal of attaining good health for all persons with disabilities.¹⁴ Subsequently, the 2022 Global Disability Summit came up with 26 commitments that states parties agreed to implement, including ensuring inclusive access to MSRH services. This political commitment is an important milestone that builds the country’s national development plan by providing benchmarks and indicators of success to be emulated at the national level.

The 2030 Agenda for Sustainable Development also espouses the healthier lives for all, including access to MSRH services for persons with disabilities.¹⁵ The 2030 Agenda mentions disability in several of its targets 11 times and is inclined to ensure that states meet the goal of disability

11 CRPD, art 6.

12 CRPD, art 12.

13 WHO ‘WHO global disability action plan 2014-2021: Better health for all people with disability’ (2015) https://iris.who.int/bitstream/handle/10665/199544/9789241509619_eng.pdf?sequence=1 (accessed 20 March 2023).

14 As above.

15 UNDP ‘The 2030 Agenda for Sustainable Development’ (2015).

inclusion by 2030.¹⁶ Particularly, Goal 3 aims to ensure healthy lives and promote well-being for all at all ages by improving reproductive, maternal and child health. Target 3.7 calls for universal access to SRH services, while target 5.6, on gender equality, further calls for ensuring access to sexual and reproductive health services and reproductive rights.

Article 6 of the CRPD reinforces the non-discriminatory approach of the Convention, in particular in respect of women and girls, and requires that states parties go beyond refraining from taking discriminatory actions to adopting measures aimed at the development, advancement and empowerment of women and girls with disabilities. It promotes measures to empower them by recognising that they are distinct rights' holders, providing channels to have their voice heard and to exercise agency, raise their self-confidence and increase their power and authority to take decisions in all areas affecting their lives.¹⁷ Article 25 of the CRPD provides that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. Further, it enjoins states parties to take all appropriate measures to ensure that persons with disabilities have access to health services, including reproductive health services, that are gender sensitive.¹⁸

The aim of General Comment 6 is to clarify states party obligations regarding non-discrimination of persons with disabilities as enshrined in article 5 of the CRPD. The broadening of anti-discrimination laws and human-rights frameworks has led to extended protection of the rights of persons with disabilities in many states parties.

In addition to the above covenants, there are many policy agreements in place that provide for the right to health for all. The WHO Constitution of 1946 recognised the rights to sexual and reproductive health and defined the right as a state of complete physical and mental wellbeing of a reproductive health system with the absence of disease or infirmity.¹⁹ The first declaration to call for urgent global action by all governments, and health and development workers to protect and promote the health of all the people of the world, was the 1978 Alma-Ata Declaration.²⁰ Its Preamble affirmed that health, which is a state of complete physical, mental and social wellbeing, was not merely the absence of disease or infirmity but is a fundamental human right crucial for the attainment of the highest possible level of health. It urged governments to mobilise resources to provide for health of all people. Section VIII calls upon all governments to formulate national policies, strategies and plans of actions to launch national health systems in coordination with other sectors. This implies

16 As above.

17 CRPD, General Comment 3 on article 6: Women and girls with disabilities, 25 November 2016, UN Doc CRPD/C/GC/3 (2016) para 2.

18 CRPD, art 25.

19 WHO Constitution, 1946.

20 WHO, Alma-Ata Declaration, 1978.

that the fulfilment of MSRHR services for women with disabilities requires the development of inclusive policies and strategies, and to utilise the available resources to meet the needs of women with disabilities. This Declaration also provides that the people have a right and duty to participate individually and collectively in the implementation of their healthcare.²¹

The UN's flagship Disability and Development Report of 2024 acknowledges that, six years from the end of the implementation of the sustainable development goals, women with disabilities are still left far behind in the provision of sexual and reproductive health rights.²² Across countries, it states, women with disabilities fall behind non-disabled women in comprehensive knowledge of HIV/AIDS prevention and treatment; have not had their need for modern family planning satisfied; their births are not attended by skilled personnel; they fail to access post-natal care; they do not have the autonomy to make informed decisions regarding their bodies; and are not empowered to exercise their reproductive rights.

Following the 2022 Global Disability Summit in Oslo, the Government of Uganda pledged and committed to review in-service training packages for health workers including management of health conditions, and committed to prioritise disability related support including sign language interpretation.²³ If the Government of Uganda honours her commitment to implement inclusive health services, the support needs of persons with disabilities will be highlighted and addressed.

The Uganda Bureau of Statistics' (UBOS) 2022 statistics show that the infant mortality rate is at 36 per 100 live births (down from 80 in 2000-2001) and the maternal mortality rate in the 7-year period before the survey is 189 deaths per 100 000 live births (down from 336 per 100 000 live births between 2009-2016). These 2022 UBOS statistics show considerable progress in access to MSRHR services. Further, they show the fertility rate for women aged 15-49 is 5.2 per 1 000 live births, use of contraceptives is 43 per cent for married and 47 per cent for sexually active women, and teenage pregnancy is 24 per cent.²⁴ Disappointingly, the key UBOS 2022 findings do not address disaggregated data by disability.²⁵ This absence limits policy formulation, planning and implementation of maternal health services based on the needs of women with disabilities. For example, the

21 Alma-Ata Declaration, sec IV.

22 UN Department of Social and Economic Affairs 'Disability and development report 2024: Accelerating the realization of the Sustainable Development Goals by, for and with persons with disabilities' (2024) Executive Summary (full report yet to be published).

23 Government of Uganda 'Uganda's commitments to Disability Summit, February 2022' Second Global Disability Summit 2022, Oslo, Norway (2022).

24 Uganda Bureau of Statistics (UBOS) *Report on Uganda household and health demographic survey (2022)*.

25 UBOS *Key findings of Uganda demographic and health survey (2022)*.

2019 statistics by the UBOS, specifically on disability, indicate that the fertility rate of women with disabilities was 6,3 per cent compared to 5,8 per cent for women without disabilities in the same reproductive age bracket.²⁶ As the 2019 document was titled 'Bridging the Gap', this level of comparison should have also been mainstreamed into the 2022 statistics to indicate progress in MSRH services for women with disabilities.

The ICPD spotlights the reproductive health needs of women with disabilities as a vulnerable group whose challenges include early/unwanted pregnancies and its negative consequences on the education, economic empowerment and social status of young women and girls with disabilities, as well as sexually transmitted diseases such as HIV/AIDS.²⁷ Further, to address the MSRH needs and rights of women with disabilities, the ICPD urged states to take the necessary and appropriate measures to establish a range of SRH related programmes and services, including the provision of family planning information, counselling and support during pregnancy and early child care, as well as information on sexuality.²⁸ On the negative side, it did not consider the accessibility needs of women with disabilities, such as accessible formats of braille, audio and large print for the blind and partially sighted, alternative and augmentative means of communication including plain language, symbols and pictures for women with psychosocial and intellectual disabilities, sign language interpretation for the deaf, tactile for the deaf or blind and captioning.

At the 1995 Beijing Conference, several states, including Uganda, agreed to intensify efforts to ensure the equal enjoyment of all human rights and fundamental freedoms by women with disabilities who face multiple barriers to their empowerment, and to enhance their sexual and reproductive health.²⁹ The 2019 Nairobi Conference, which reviewed the progress of implementation of the SRHRs, found that while the number of persons infected with HIV/AIDS had decreased and access to family planning services had improved, this was not the case for women with disabilities.³⁰

Nevertheless, laws and regulatory frameworks often remain imperfect and reflect an inadequate understanding of the human rights model of disability. Equality and non-discrimination are among the most fundamental principles and rights of international human rights law. Since

26 UBOS *Persons with disability: Bridging the gap through statistics* (2019) https://www.ubos.org/wp-content/uploads/publications/09_2019DISABILITY_MONOGRAPH_-_FINAL.pdf (accessed 3 December 2024).

27 Report of the International Conference on Population and Development (ICPD), Cairo, 5-13 September 1994, para 6.30.

28 ICPD (n 27) sec 1.12.

29 Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, 15th September 1995. Women with disabilities, as one of many marginalised groups, are addressed in all sections of the declaration.

30 Nairobi statement on ICPD25: Accelerating the promise.

they are interconnected with the right to human dignity, they are the cornerstone of all rights. The duty to prohibit ‘all discrimination’ must include all its forms. States parties have an obligation to respect, protect and fulfil the right of all persons with disabilities to non-discrimination and equality. In particular, states parties must modify or abolish existing laws, regulations, customs and practices that constitute such discrimination.³¹

The ICSCR Committee has interpreted the right to maternal health to include the obligation to create measures to reduce still births, improve reproductive health services, family planning, pre and postnatal care, emergency obstetric care, and access to information.³²

2.2 Regional frameworks

At the regional level, article 16 of the 1986 African Charter on Human and Peoples’ Rights (ACHPR), provides for the right to the highest attainable standard. Article 18(4) provides for the right to special measures of protection to persons with disabilities that are appropriate to their physical and moral needs. General Comment 2 of the Protocol to the ACHPR recognises that it is crucial for states to ensure the availability, financial and geographical accessibility, and quality of women’s sexual and reproductive health services without discrimination relating to disability or sexual orientation. Enjoyment of rights, therefore, is non-discriminatory, promotes gender equality, and informs women with disabilities of products and health services that are specific to them – including in the area of family planning and safe abortion. The Committee therefore obliges states to provide a comprehensive national health plan with sexual and reproductive health services consistent with the World Health Organisation.³³

Further, article 14 of the 2003 Maputo Protocol on the Rights of Women in Africa guarantees respect and promotion for the rights to health, including SRH of women. SRH is defined to entail the rights to: control their fertility; to decide on the number and spacing of their children; choice of contraceptive methods; to self-protection and to be protected from sexually transmitted infections including HIV/AIDS; to be informed of one’s status/partner’s status especially if suspected of having sexually transmitted infections in accordance with agreed international standards and practices; and to receive family planning education, among others. Outstandingly, article 14 obliges states to take effective and appropriate measures to provide adequate, affordable and accessible

31 CRPD, General Comment 6 on equality and non-discrimination, 26 April 2018, UN Doc CRPD/C/GC/6 (2018) paras 2, 4 & 30.

32 CESCR, General Comment 14: The right to the highest attainable standard of health (art 12), 11 August 2000, UN Doc E/C.12/2000/4 (2000) para 14.

33 ACHPR, General Comment 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights, 2014.

health services including information, education and communication programmes to women; establish and strengthen pre-natal, delivery and postnatal health and nutritional services for women during the period of pregnancy and breast-feeding; protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest and where the pregnancy endangers the life of the mother. The obligations and measures stipulated therein have very good intentions geared towards the implementation of quality reproductive health services by states. Significantly, the combined interpretation of article 14 on reproductive rights, with article 23 on the special protection of women with disabilities, provide a robust policy framework for the protection of MSRH rights for women with disabilities.

The African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities' 2018 Protocol is yet another supportive instrument on the rights and reproductive needs of persons with disabilities.³⁴ This instrument came into force in June this year, yet has still only been ratified by ten states parties. The instrument reiterates the provisions of the UN CRPD under articles 6 on non-discrimination, 23 on the right to family, and 25 on sexual and reproductive health rights. The Protocol enjoins states to take all effective and appropriate measures to ensure that persons with disabilities have access to health services including SRH on an equal basis with others. It brings on board the concept of reasonable accommodation requiring: access to quality reproductive health services based on individual disability needs; accessibility to information and communication; informed consent; supported decision making premised on the fundamental concept of legal capacity of persons with disabilities; and, training of health workers on disability inclusion.³⁵ It provides a framework and guiding principles for the state party in formulating an inclusive MSRH policy for women with disabilities.

3 The legal and policy framework in Uganda

An analysis of the inclusivity of the Ugandan legal and policy framework in respect to MSRH for women with disabilities is the focus of the proceeding debate. Uganda is a state party to several human rights instruments and is bound by international customary law to implement the obligations stipulated therein, enshrined under article 287 of the Constitution, failure of which is a violation of international human rights law.³⁶

34 African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, 29 January 2018.

35 As above.

36 Constitution of the Republic of Uganda, 1995, as amended, art 287.

Generally, Uganda has relatively progressive laws and policies that provide for MSRHR services for all citizens. In 2008, Uganda ratified the CRPD without any reservation.³⁷ This noble action notwithstanding, there is a huge gap between policy and practice in respect to MSRHR services for persons with disabilities.

Having ratified the CRPD, the following analysis assesses the extent to which Uganda has incorporated the rights of persons with disabilities in the MSRHR. Objective XIV of the Constitution of 1995 is to the effect that the state shall endeavour to fulfil the fundamental rights of Ugandans to social justice and economic development and shall in particular ensure that all Ugandans have access to health services, including sexual and maternal health services.³⁸ Objective XX guarantees access to basic medical services to the population which includes women with disabilities.³⁹ Article 8A of the Constitution provides that Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.⁴⁰ It enjoins parliament to make laws to give effect to article 8A, placing on it the responsibility to enact a law on MSRHR rights. Article 32 of the 1995 Constitution provides for affirmative action for marginalised groups, including persons with disabilities, disadvantaged by the past injustices. The terms affirmative action, equality and non-discrimination and respect for the inherent dignity of persons with disabilities, implies a positive obligation by the Ugandan government to prioritise women with disabilities in access to MSRHR services and to address their needs through reasonable accommodation. Article 35 of the Constitution guarantees the rights of persons with disabilities to respect for their inherent dignity and pledges to take measures to realise their rights.⁴¹ Article 45 of the Constitution provides for non-derogable rights, including freedom from torture, inhuman or degrading treatment or punishment.⁴²

In the 2020 case of *CEHURD v Attorney General*, the Constitutional Court judged maternal health services and obstetric care as a constitutional right. The government's omission to adequately provide basic healthcare services, including sexual and reproductive health, was characterised as a violation of the right to health, and inconsistent and in contravention of articles 8A, 39, 45 and objectives and directive principles of state policy 14

37 Forward, Ministry of Gender, Labour and Social Development *The national comprehensive action plan on the rights of persons with disabilities, 2020-2025* (2020) https://www.apminebanconvention.org/fileadmin/_APMBC-DOCUMENTS/StatePlans-policies/Uganda-Disability-Plan-2020-2025.pdf (accessed 3 December 2024).

38 Constitution of the Republic of Uganda, 1995 (as amended), Objective XIV, directive principles of state policy.

39 Constitution, as amended, Objective XX of the directive principles of state policy.

40 Constitution, as amended, art 8A.

41 Constitution, as amended, art 35.

42 Constitution as amended, art 45.

and 20. Further, it undermines the right to life implicit in article 22 of the Constitution, and the rights of women as defined in article 33.⁴³

Nevertheless, the Constitution appears to provide a right with one hand and takes it away with the other. At the intersection of women with disability, lies the LGBTIQ+ community with disabilities who are criminalised and discriminated by Uganda's legal framework. Although a state party to the International Covenant on Civil and Political Rights (ICCPR) and bound by international law to implement non-derogable rights, the Government of Uganda's 2023 Anti-Homosexuality Act remains unique in its vindictiveness.⁴⁴ Uganda is one of only 12 countries where, according to section 3 of the Act, private, consensual same-sex sexual activity is punishable by the death penalty. This is a violation of article 5 of the ACHPR which recognises the right for every individual's dignity to be respected and prohibits all forms of exploitation and degrading treatment. It is also a violation of article 5 of the Universal Declaration of Human Rights that provides for the same provisions, and article 3 of ICCPR enjoins states to ensure equal rights of men and women to the enjoyment of all civil and political rights set out in the Covenant. The death penalty set out in the Anti-Homosexuality Act violates international human rights standards since it is tortuous and degrading to those who identify as LGBTIQ+. To later embed this position, the Constitutional Court found that individual identity rights (including autonomy) might be waved in favour of majority cultural values, holding that the Constitution's mandate in Objective XXVI(a) provides for the state to enact laws that 'promote and preserve those cultural values and practises which enhance the dignity and well-being of Ugandans', where individual autonomy can be constrained by societal interests.⁴⁵

Using similar legal relativism, article 22 of the Constitution prohibits and restricts the legalisation of abortion in Uganda by providing that no person shall be allowed to take the life of the unborn child. In order to reinforce this provision, section 141 of the Penal Code Act criminalises abortion and imposes a penalty of 14 years' imprisonment.⁴⁶ Thus, although the right to safe abortion for women and girls with disabilities is recognised in article 14 of the Maputo Protocol and ICESCR's General Comment 22,⁴⁷ Uganda has put a reservation on article 14, rejecting the obligation to implement safe abortion services.⁴⁸ This violates the rights to maternal, sexual and reproductive health and impedes the purpose of the

43 *CEHURD v Attorney General* Constitutional Petition 16 of 2011.

44 Anti-Homosexuality Act, 2023 <https://ulii.org/akn/ug/act/2023/6/eng@2023-05-30> (accessed 15 September 2024).

45 *Fox Odoi-Oywelowo and 21 others v Attorney General and 3 others* Consolidated constitutional petitions 14, 15 & 85 against the Anti-Homosexuality Act, Judgment of 2023, 231-234.

46 Penal Code Act, sec 141, cap 120, Laws of Uganda.

47 Maputo Protocol on the Rights of Women in Africa, 2003, art 14.

48 A Kagaha & L Manderson 'Power, policy and abortion care in Uganda' (2021) 36 *Health Policy Plan* 187.

Protocol, contrary to the Vienna Convention on the Law of Treaties.⁴⁹ Indeed, Uganda's reservation to legalise safe abortion, enshrined in article 22 of its Constitution, Kagaha & Manderson (2021) argue, remains a considerable contributor to maternal deaths among women and girls, including with disabilities, using unsafe practices.⁵⁰

Although more persuasive than directive, section 7 of the 2006 Persons with Disability Act broadly provided that persons with disabilities should enjoy the same rights with others in all health and medical care institutions. It exempted health materials and equipment relating to disabilities from government levies, promoted the introduction of sign language in the curriculum for medical personnel, recruitment of interpreters in hospitals, and pre-brailled labels on drugs.⁵¹ Imposing no obligations on the Ministry of Health, the law was repealed by the 2020 Persons with Disabilities Act.

The 2020 Persons with Disabilities Act ushered in major improvements in access to health services, domesticating article 25 of the CRPD.⁵² Further, section 7 of the Act addresses non-discrimination against persons with disabilities in the provision of health services and is to the effect that:

A health unit shall not discriminate against a person with a disability on the basis of the disability. The Unit shall comply with accessibility standards stipulated under section 10 of the Act; provide wheel chairs and accessible examination tables; provide labor beds for expectant women with disabilities.

These important components should be replicated in the National Policy on Reproductive Health of 2012 to promote inclusive access to MSRHR services. Overall, disability inclusive policies on access to MSRHR services requires the development of a number of strategies in order to guide the implementation of inclusive MSRHR services for women with disabilities at all levels.

3.1 The national policies in relation to disability

Meeting the MSRHR needs of women with disabilities has become an important public policy paradigm in many parts of the world, including in Uganda, over the past two decades. A number of policies, programmes

49 United Nations, Vienna Convention on the Law of Treaties, 1969, Treaty Series 1155, 331 art 19.

50 Kagaha & Manderson (n 48).

51 Persons with Disabilities Act, 2006, sec 7(2).

52 Art 25 of the CRPD provides that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. It further enjoins states parties to take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.

and legal frameworks have been designed to promote a friendly environment for safe motherhood, prevention of unintended pregnancies, safer sex and the reduction of maternal complications. Although is not a policy as such, the 1999 Uganda National Minimum Healthcare Package (UNMHCP), put in place a framework for the delivery of universal health coverage (UHC). Whilst this has been replaced by the 2024 National Essential Health Care Package for Uganda, priority is still given to the delivery of maternal health services rather than disability.⁵³

The National Policy on Disability was adopted in January 2006 to guide and inform the planning process, resource allocation, implementation, monitoring and evaluation for activities with respect to persons with disabilities.⁵⁴ The major aim of this policy is to promote equal opportunities for enhanced empowerment, participation and protection of the fundamental rights and freedoms of persons with disabilities irrespective of gender and age. Although the policy has a section on health, it does not prescribe adequate access to MSRH services for persons with disabilities. This omission is problematic as it fails to offer guidance during service provision, ensure resource allocation, monitoring and evaluation of activities on access to MSRH services for persons with disabilities. This shortcoming may be attributed to the fact that the policy predates the CRPD, and hence does not consider the provisions of article 25 on reproductive health services that accommodate the needs of women with disabilities.

The 2010 Second National Health Policy refers to persons with disabilities only three times: first, in the list of acronyms as PWD; second, in respect to the physical access to health centres; and third, around lack of material for assistive devices. The policy fails to prioritise disability in the universal access to healthcare, yet disability may be aggravated by poor health or be prevented upon earlier diagnosis. Focusing the Policy on health promotion, disease prevention and early diagnosis and treatment, and categorising persons with disabilities among broader vulnerable groups, fails to address their unique health needs. None of the district health provision guidelines mention disability inclusion. The failure to mainstream disability in the entire policy contravenes the aspirations of the CRPD, especially article 25 on health, including MSRH services. This lacuna also explains the reasons for lack of prioritisation of disability in healthcare, lack of disability inclusive budgeting and the associated policy barriers that limit physical and information access to the health infrastructure and service delivery.

53 National Essential Health Care Package for Uganda, August 2024, sec 4.9.

54 Government of Uganda 'National policy on disability' (January 2006).

The 2011 National Physical Planning Guidelines and Standards⁵⁵ require having ramps and designated parking at public buildings such as schools and hospitals. However, it is unclear what steps the Ministry of Lands, Housing and Urban Development has taken to budget for and implement these guidelines.

3.2 The 2012 national reproductive health policy and service standards: The national policy guidelines for sexual and reproductive health services

The first Family Planning and Maternal Health Policy was developed in 1993.⁵⁶ The second edition of the policy was developed in 2001 to domesticate the recommendations of the ICPD of 1994 that recommended the comprehensive SRH components.⁵⁷ Subsequently, the current 2012 National Policy Guidelines for Sexual and Reproductive Health Services and Service Standard was developed to address technological updates, emerging issues such as new-born care, and sexual gender-based violence.⁵⁸

Overall, the policy aims to improve SRHRs for all citizens of Uganda. This, it states, is through guided planning, implementation, monitoring and evaluation of quality integrated reproductive health services. These are to include the standardisation of the delivery of services, the optimisation of the use of resources for the sustainability of MSRHR services, and the promotion of SRH services.⁵⁹ To guide the delivery of quality integrated SRH services from the community up to the national level, the policy makes no reference to disability, nor representation of organisations of persons with disabilities. This implies that women with disabilities were barely involved and consulted throughout all the processes of developing the policy. This oversight is inexcusable because, four years before the policy was enacted, Uganda had ratified the CRPD without reservations, therefore accepting to take all effective and appropriate measures to promote disability inclusion in all legal, policy and administrative frameworks as outlined under article 25.

Regrettably, for a number of reasons, the policy therefore fails to guide resource allocation, monitoring and implementation of MSRHR programmes for the holistic protection, promotion and fulfilment of the

55 Uganda Ministry of Housing, Planning & Urban Development 'National physical planning guidelines and standards' (2011).

56 Uganda Ministry of Health 'National policy guidelines and service standards for sexual and reproductive health and rights' (2006) <https://library.health.go.ug/> (accessed 10 September 2024).

57 As above.

58 Uganda Ministry of Health 'National policy guidelines for sexual and reproductive health services and service standards' (2012).

59 Uganda Ministry of Health 'National policy on reproductive health' (2012).

rights of women with disabilities. First, while the policy mentions other marginalised groups, such as women adolescents, women with disabilities were left out. Second, the policy fails to incorporate disability in the health workers' training curriculum. Third, although the CRPD makes informed consent mandatory for persons with disabilities accessing SRH services, the policy does not emphasise the respect of their rights, needs, will and preferences. Any policy review, therefore, must outrightly uphold the self-determination of persons with disability. Informed consent of women with disabilities must precede, for instance, undertaking major medical procedures such as tubal ligation, sterilisation and abortion. Fourth, although the policy guarantees access to reproductive health services for all, women with disabilities in Uganda face multiple forms of discrimination while accessing reproductive health services. Safe motherhood, prenatal and postnatal care, remain a big challenge for women and girls with disabilities. Fifth, the Policy fails to emphasise the need to facilitate strict communication measures, such as, regional and national availability of sign language interpreters at all community health centres, the provision of braille and large print, or audio for prescriptions, or alternative communication for persons with intellectual and psychosocial disabilities (plain and simple language, pictures or symbols). Sixth, although the policy guarantees capacity building programmes to address new issues around access to MSRH services, it does not build the knowledge base for nurses and midwives on the reasonable accommodation as required by CRPD and the ICPD. Finally, the policy does not guide the Ministry of Health to allocate resources to persons with disabilities. Clearly, meeting the needs of women with disabilities desiring access to MSRH services comes with cost implications, without which catering for their needs becomes complicated and untenable.

Following a consultative process, the 2023 National Policy for Persons with Disability adopted a human rights approach towards disability inclusion and prioritised access to MSRH services with actions for its implementation.⁶⁰ Section 5.2 of the Policy incorporates the constitutional provisions as well as the Persons with Disabilities Act, 2020, with emphasis on the protection of the rights of persons with disabilities. Under sections 4.6 and 4.7, it domesticates the CRPD by including the principles of accessibility, non-discrimination, respect for the inherent dignity, autonomy and independence of persons with disabilities, acceptance of disability as part of human diversity and difference, equality between men and women, equality of opportunities, and respect for the views of children with disabilities. It recognises the existing exclusion and vulnerability of persons with disabilities under section 3.3. Therefore, sections 3.4 and 3.5 address the barriers experienced in accessing MSRH services and recommends a situation analysis that pays particular attention to the

60 Uganda Ministry of Labour, Gender and Social Development, 'National policy for persons with disability' (2023) 15, supported through Technical Working Groups at national level.

challenges faced by women with disabilities. Importantly, it provides a budget framework for the allocation of resources towards disability inclusion.

4 Findings on the implementation of inclusive access to MSRH services for women with disabilities

The above legal and policy framework notwithstanding, there is a disconnect between the ideals of the law and the lived reality of women with disability. Field research reveals that diverse barriers result in women with disabilities receiving only a fraction of MSRH services. This paper highlights the weaknesses in ‘reasonable accommodation’ of disability through a two-pronged analysis of accessibility that addresses information and communication, physical accessibility and social acceptance in terms of stereotypes and sexuality dilemmas.

4.1 Weak policy guidelines and strategies for the inclusion of women with disabilities during access to MSRH services

Almost all the respondents from the key informant interviews decried the lack of a deliberate policy directive on MSRH that mainstreams the needs of persons with disabilities. A government representative observed:

Although some aspects of the National Development Plan (NDP) III and the reproductive health guidelines and service standards are not discriminative, they do not have clear indicators or strategies on how we should address disability during the provision of MSRH Services.⁶¹

The lack of clear guidance has compounded the lack of harmonised practice and diverging views regarding prioritising women with disabilities at the health centres.

4.2 Budgetary implication

MSRH service providers affirmed that daily they meet with different categories of women with disabilities seeking antenatal services, pregnancy tests, management and treatment of sexually transmitted diseases and infections, and counselling and guidance resulting from domestic violence.

According to the respondent from the Ministry of Gender, ‘many women with disabilities are poor and therefore cannot afford to pay for

61 Ministry of Health, Kampala.

MSRH Services'. A midwife noted, 'some MSRH Services are not available at the health centres and they require payment of some money to get them', and yet 'women with disabilities are usually very poor and neglected by their relatives that they cannot afford to pay for the services'.⁶²

4.3 Reasonable accommodation

Women with disabilities present unique needs during access to MSRH services, making their consultations in the design of policies and programmes related to MSRH services imperative.⁶³ It is noteworthy that the CRPD Committee has constantly reiterated the mandatory obligations of state parties to undertake consultation of wide diversity of persons with disabilities, right from initiation of the policy to implementation.⁶⁴

There are divergent views over the quality of the consultations. Some agree that the government holds consultations with women with disabilities themselves, their representative organisations and caregivers whenever new programmes are introduced.⁶⁵ Another respondent from an Organisation of Persons with Disabilities (OPD), observed:

In 2017, women with disabilities were invited to be part of the review of the national guidelines and services standards of reproductive health. However, whenever we present our issues, they are never considered.⁶⁶

Similarly, another respondent from the NCPD indicated that disabled people's organisations are not consulted whenever government introduces new programmes. According to the respondent:

Particularly in the area of maternal, sexual and reproductive health, I am not sure whether women with disabilities and their representative organizations have been consulted. Whenever I went to the hospital, they just took me like an ordinary woman.⁶⁷

In the study, the interviewed respondents from organisations of persons with disabilities say that consultations are technically done as public

62 Gwatiro Health Centre.

63 UN '11th session of the Conference of States Parties to the CRPD, 12-14 June 2018' <https://www.un.org/development/desa/disabilities/conference-of-states-parties-to-the-convention-on-the-rights-of-persons-with-disabilities-2/cosp11.html> (accessed 3 September 2024).

64 CRPD Committee, General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, 9 November 2018, UN Doc CRPD/C/CG/7 (2018).

65 Interview with an official from the Ministry of Gender, held at her office in Kampala on 30 September 2022.

66 Interview with a key informant from Uganda National Action for Persons with Physical Disabilities at their office in Kampala, October 2021.

67 National Council for Persons with Disabilities, at their offices in Kireka.

relations gimmicks with hardly any follow-up of the recommendations of persons with disabilities.

4.4 Appropriateness of MSRH services to the needs of women with disabilities

The lack of guidelines and requisite resources has also adversely shaped the inappropriateness and ad-hoc nature of MSRH services offered to persons with disabilities and their needs in respect to communication and physical accessibility. A respondent in the doctoral study from the Uganda National Association of the Deaf, in Mukono, said that maternal healthcare services are under-budgeted and cannot take care of sign language interpreters to provide sign language during anti-natal and postnatal care.

4.5 Participation, communication and self-determination

One of the indices of participation is mutual and effective communication. However, a gynaecologist respondent found it challenging that he could not communicate with expectant women with hearing impairments because he did not know sign language.⁶⁸ Clearly, without sign language interpreters, persons with hearing impairments struggle to make their needs known to MSRH service providers. With no sign language interpreters, health workers address the person escorting the hearing-impaired person, denying them the opportunity to express themselves about their unique needs. Similarly, health workers tend to bypass persons with vision or hearing disability in consultations about their health needs.⁶⁹

Indeed, health workers provide prescriptions of medicine in print form which visually impaired cannot read without assistance.⁷⁰ Lack of accessible formats means that the visually-impaired patients, or persons with psychosocial and intellectual disabilities struggle to understand the available services.

A respondent from Marie Stopes, specialising in providing contraception and family planning services, observed that most of the MSRH decisions are influenced by support persons and caregivers of persons with disabilities under the pretext that is very difficult to obtain consent from them.⁷¹

68 Interview at Bombo Military Hospital, 14 October 2021.

69 Interview with a respondent from Show Abilities Uganda, at her office in Kampala on 29 September 2022.

70 Interview with a Youth with Visual Disability on 5 October 2021.

71 Interview with a respondent from Marie Stopes.

4.6 Physical accessibility

Many facilities lack the requisite equipment to enable access to the built environment, information and communication to persons with disabilities seeking MSRH services. A medical gynaecologist at Bombo Medical Centre complained that examining persons with physical disabilities is often a challenge, '[w]e did not have examination beds that lower down and go up. I needed support to lift her up and bring her down'. Nurses also observed that the health facilities are full of staircases that lack ramps for wheelchairs and crutches for persons with physical disabilities. Likewise, a key informant from the umbrella organisation for persons with disabilities noted that, in the absence of accessible labour beds, mothers with physical disabilities end up delivering on the floor. Indeed, although some women with disabilities are unable to walk to health centres, there are no community channels to deliver home-based services such as family planning, antenatal and other related services.⁷² Uganda lacks mobile clinics that could deliver family planning services, including contraceptives, as well as MSRH services.⁷³

As a potential legal precedence, in the case *Nyeko Okello and Santo Dwoka v Centenary Rural Development Bank Limited* in 2022, the plaintiffs (both with disabilities) sued the bank on the grounds that the lack of ramps prevented their access to its main banking hall.⁷⁴ Afraid of the potential court settlement, the bank rapidly constructed the ramps, allowing the plaintiffs to settle the matter out of court. Such a precedence perhaps acts to prompt the Government of Uganda to ensure that all health centres have ramps.

4.7 Stereotypes and attitudes

Stigma and discrimination associated with disability still persist in Uganda today. Societal attitudes about access to MSRH services by women with disabilities clearly affects the doctor-patient relationships. The research finding reveals that a recognisable number of health workers do not want to provide MSRH services to women with disabilities because of the negative assumptions they have about disability. As one respondent noted: 'When health workers see Women with Disabilities approaching the health centres, they disappear because they do not want to serve them or find it difficult to'.⁷⁵

72 As above.

73 Interview with Diana, a respondent from NUDIPU on 2 September 2021.

74 Civil Suit 23 of 2008.

75 Interview with a respondent from the disability movement on 10 October 2021.

In the 2011 case *Centre for Health, Human Rights and Development and Iga Daniel v Attorney General*,⁷⁶ a petition was filed in the Constitutional Court in light of the derogatory language used in most of Uganda's legal framework. The Constitutional Court found that the words 'idiot and imbecile' that appear in sections 130 of the Penal Code Act contravened articles 20, 21, 23, 24, 33 and 35 of the Constitution by reason of their being derogatory, dehumanising and degrading, and accordingly struck them out from the statute books. The case is instructive on unacceptable language not to be used by health service providers while providing treatment to persons with disabilities.

Indeed, health workers without disabilities generally present very negative attitudes towards women with disabilities, have limited knowledge and capacity on disability mainstreaming and inclusion, stigma and discrimination. For example, they keep women with disabilities in long queues or shout at them and rebuke them for seeking MSRH services. Likewise, escorts of expectant mothers with disabilities are often perceived as an irritant. A midwife observed, 'soldiers who escort their wives with disabilities keep knocking on the door say, I want to go, you are delaying me, and they put us on tension'.⁷⁷

The idea of asexuality of women with disabilities cuts across many African and Asian societies.⁷⁸ Medical professionals and individuals within the community were often surprised when people with disabilities came to seek MSRH services.⁷⁹ A deaf informant from Kampala, narrated her experience of such obstetric violence during access to MSRH services:

I am a woman with hearing impairment. I experienced labour pain and went to hospital, but health workers kept shouting at me, I didn't know what they were saying. I kept signing to inform them that I was in pain, but they just walked bypassed me, which I thought was discrimination resulting from their negative attitudes.⁸⁰

There has also been a myth that Women with Disabilities in Uganda are virgins and therefore a cure to HIV/AIDS. In Nampewo's study on disability and sexuality in Uganda, respondents recount how men came to women with disabilities at night to have sexual intercourse with the view

76 Constitutional Petition 64 of 2011.

77 A key informant midwife from Bombo Military Hospital on 22 October 2021.

78 UN Women *Mapping of discrimination against women and girls with disabilities in East and Southern Africa* (2020) 81.

79 R Addlakha, J Price & S Heidari 'Disability and sexuality: Claiming sexual and reproductive rights' (2017) 25 *Reproductive Health Matters* 4.

80 Barbara, a deaf woman from Kampala.

to be cured of HIV/AIDS.⁸¹ Here, persons with disabilities neither had sex by choice nor were issues of safe sex considered.⁸²

4.8 Sexuality and stigma

In most of these legal frameworks, persons with disabilities have been left out and excluded due to myths and misconceptions that treat them as asexual and unable to bare children. According to a key informant from the Ministry of Education, ‘many men who sexually relate with women with disabilities do not want to take up responsibility of their actions including relationships and pregnancies’.⁸³

A key informant from the disabled people’s organisation stated that health workers believe that it is wrong for persons with disabilities to have sex or to get pregnant. A key informant from Light for the World, an international disability NGO, recounted: ‘There was a time I was in hospital and someone made a statement: “how did this happen that the husband and the wife are both blind! God is unfair”’. Such prejudicial statements discourage women with disabilities from accessing MSRHR services.

A related challenge is the lack of choice and control over the methods of family planning. Respondents said that, on many occasions, young women and girls do not have a chance to make decisions about the methods of family planning they should utilise. A key informant from NUDIPU offices in Kampala explained:

Health workers have predetermined attitudes. They think since you cannot talk, you cannot make MSRHR related decisions. Often health workers end up making decisions for a woman with disability without consulting her.

However, women with disabilities experiences with MSRHR services are not all negative.

4.8.1 Innovative strategies by health workers to provide quality MSRHR services to women with disabilities

Nurses and gynaecologists with disabilities provide priority to women with disabilities because they have a personal understanding of the discrimination barriers experienced in accessing the health facility. One of the respondent nurses said:

81 Z Nampewo ‘Young women with disabilities and access to HIV/AIDS interventions in Uganda’ (2017) 25 *Reproductive Health Matters* 121.

82 B Guzu ‘Experiences of gender-based violence against women and girls with disabilities: A case study of Uganda’ Submission to the UN Committee on the rights and protection of Persons with disabilities.

83 Interviewed at the Crested Towers offices in Kampala on 20 October 2021

Since many expectant mothers with disabilities come on boda boda (a motor cycle used in private transport at a fee) and experience waiting charges as a result of the long stay at the hospital, I try and serve them first to avoid these charges and the associated torture of keeping them for long.⁸⁴

While striving to ensure the provision of quality services to women with disabilities, some health workers have taken a number of positive measures to actualise the practice of inclusive MSRHR services. Such measures include: learning of sign language to facilitate communication with women with hearing impairments; provision of support to women with physical disabilities to access examination tables; sensitising fellow health workers to provide friendly MSRHR services to women with psychosocial disabilities; and avoiding diagnostic overshadowing to different categories of women with disabilities.

A midwife key informant states that she has put in place mechanisms to support the Village Health Teams (VHTs) to deliberately identify women with disabilities in need of MSRHR services and refer them to the facility. She stated:

As a health worker, I have done mentorship to fellow service providers and continuous medical education called PMS where I take them through ways of handling mothers with disabilities by prioritizing them during the provision of MSRHR services.⁸⁵

Another midwife revealed that they have put a number of relevant MSRHR services in one place for ease of access, including testing, immunisation, antenatal, and drug dispensation after prescription from the doctor.⁸⁶ Yet another nurse key informant says she has also taken steps to create rapport with women with disabilities who seek for MSRHR services in order to build trust to discuss their concerns, enable them make informed MSRHR decisions, and promote service delivery.⁸⁷

5 Recommendations to promote inclusive access to MSRHR services by women with disabilities

While acknowledging the progress ushered in the 2023 Persons with Disability Policy, it is too early to assess its impact. Hitherto, there has been a lack of attention and prioritisation of disability in most of the legal and policy frameworks on access to MSRHR services, and in particular the Reproductive Health Policy of 2012. Simon Duffy's citizenship theory argues that, by focusing on the experiences of disabled people and other excluded groups, we can achieve a much better account of social justice for

84 Interview with a nurse from Mpenja Health Centre on 2 February 2022.

85 Interviewed at Gwatiro Health Centre in Kampala on 14 November 2022

86 Interviewed at Bombo Health Centre on 12 November 2022

87 Interviewed at Mpenja Health Centre in Mpigi on 30 October 2022.

everyone.⁸⁸ As a self-reflective process, therefore, it is critical to address the lived experiences of women with disabilities in accessing MSRH services. This is because of the way women with disabilities are perceived by society, which requires the designing of policies and public services with their involvement in order to lead to a fundamental change that promotes equal citizenship and promotes positive inclusion of persons with disabilities.⁸⁹ Person-centred planning is therefore meant to address individual needs of women with disabilities using their experiences while simultaneously addressing their collective rights in accessing MSRH services.

The paper acknowledges government's positive action in putting in place an adolescent policy on MSRH. It therefore urges for a similar specific policy on MSRH services for women with disabilities to address their unique needs. It is lauded that the 2023 policy operationalises article 25 of the CRPD. The following recommendations are intended to breathe life into the legal and policy framework to improve the lived realities of women with disability.

5.1 Improve data collection to support budgetary allocation

In order to support adequate planning, implementation and monitoring of the delivery of MSRH services, there is need to improve the statistical data on the nature and numbers of women with disability. Additionally, policy guidelines must be supported with the necessary resources to implement inclusive MSRH programmes for women with disabilities. Although, in theory, MSRH services are planned, budgeted and implemented through the Third National Development Plan (NDP) III 2020-2025, this is not the case for persons with disability. As disability cuts across the delivery of MSRH services, targeted budgeting for disability should be mainstreamed in the design of all programmes and services.

As a starting point, the data collected at the health centres should be expanded from the indicators of male, female and residences, to include whether the patient has some form of disability. Further, equipping the VHTs to map and ascertain the numbers of women with disabilities within the reproductive age would augment the empirical data collection.

88 S Duffy 'The Citizenship Theory of social justice: Exploring the meaning of personalization for social workers' (2010) 24 *Journal of Social Work Practice* 253.

89 C Leadbeater 'Personalisation through participation: A new script for public services' (2004) <https://static1.squarespace.com/static/6098eb1bb86d9454e6f1a0e6/t/61b758dc9c8cc34906647688/1639405789444/PersonalisationThroughParticipation.pdf> (accessed 15 August 2020).

5.2 Participation of women with disabilities in the policy making bodies

Women with disabilities have lacked a voice at various levels of health care provision and attempts to identify and meet their needs have met with limited success.⁹⁰ As a general human rights principle, women with a disability have the right to participate in decisions that relate to them, to improve their appropriateness and relevance. The involvement of people with disability in the decision-making processes and in the delivery of services would foster fundamental and lasting change. As was rather tritely opined by the Minister in charge of disability, ‘nothing about us without us’ has been a slogan and integral message from the disability-rights movement for decades.

Hence, it is imperative to engage women with disability to participate in the review of related policy guidelines to incorporate the principles of the CRPD, such as inclusive MSRH services and reasonable accommodation, so as to promote tailor-made measures for comprehensive accessibility, awareness-raising and a twin-track approach that promotes disability mainstreaming alongside specific measures in the course of accessing MSRH services.

5.3 Training

Government has the primary responsibility to raise general public awareness about disability rights in order to build shared understanding of disability as a rock to engage with women with disabilities as inherent human beings. This would combat the negative stereotypes, deconstruct stigma, myths and misconceptions associated with disability. One of the strategies that could best help women with disabilities to access MSRH services is capacity building for health workers on the unique needs of women with disabilities and factors affecting their accessibility to MSRH services. This would foster positive mindset change to improve the attitudes of health workers towards women with disabilities.⁹¹

Incorporating disability rights within the curriculum and refresher training as well as the referral pathways of stakeholders is essential. Further, availing the contacts of the heads of the health facilities to be on call whenever persons with disabilities require MSRH services is a good strategy that would ensure that those in charge may instruct health workers

90 Report of the Special Rapporteur on the Rights of Persons with Disability ‘Disability inclusive policies’ (2016).

91 Interview with a respondent from a Disabled People’s Organization on 11 September 2021 at the Uganda National Action of Persons with Physical Disability Offices (UNAPID) offices.

on duty to prioritise persons with disabilities during the provision of MSHR services.

5.4 Improve accessibility of MSRH to persons with disability

Accessibility is both a general principle applied across the CRPD as well as specifically provided under article 9. Accessibility is key for the autonomy, independence and dignity of persons with disabilities by ensuring that they can live independently and make choices on an equal basis with others; exercise their human rights and freedoms; and fully participate in all aspects of political, social, cultural and economic life.⁹²

Accessibility entails both communication and physical accessibility. First, a key dimension of accessibility is effective communication. Information about laws, policies and services needs to be tailored to the different needs of people with disability to encourage them to seek out health services when a need arises as well as receive quality services. Further, the government should designate and remunerate sign language interpreters at each health centre to ease communication between health workers and persons with hearing disabilities. Second, accessibility entails physical accessibility and it involves the removal of physical barriers in the environment of MSRH services. In addition to enforcing the guidelines for having ramps and designated parking at public buildings, there is need to ensure the availability of adjustable beds at each health centre, assistive devices and wheelchairs to ease the movement of patients with disabilities.

6 Conclusion

This paper analyses the existing laws and policies in relation to access to MSRH services by persons with disabilities and presents the gaps therein. It notes the gaps in the implementation and enforcement of the policies and laws and also provides solutions and strategies to address the challenges that hinder persons with disabilities in accessing MSRH services. As a state party to the CRPD, Uganda has an obligation to undertake measures to ensure the availability and accessibility of inclusive MSRH services for persons with disabilities. Some of the measures would include training health service providers on the needs and rights of persons with disabilities.

This paper recommends a twin-track strategy of both mainstreaming disability in all MSRH policies and programmes, as well as having specific measures targeting women with disabilities to address their unique needs during access to MSRH services. The mainstreaming approach requires MSRH programmes to be fully accessible by paying attention to physical

92 BG Link & JC Phelan 'Conceptualizing stigma' (2001) 27 *Annual Review of Sociology* 363.

health facilities, MSRH information, removal of any other barriers, and the training of health service providers to enable them provide equitable access to MSRH services to persons with disabilities. Inclusion and participation of persons with disabilities in the design of policies is an effective strategy to address individual needs for reasonable accommodation as well as streamline enforcement. Public awareness raising is also recommended to deconstruct stigma and myths associated with disabilities and provides a platform for mindset change on the part of service providers.

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Summary

This paper offers a historical overview of the perception and treatment of persons with disabilities in Zambia, focusing on the pre-independence era. It begins with an examination of cultural understandings of disability prior to British colonisation and then explores how colonial rule influenced these perspectives. A significant finding is the enduring impact of colonial mental health legislation on mental healthcare and support for individuals with cognitive disabilities. By tracing disability narratives through this pivotal period, the paper provides insights into how socio-cultural attitudes have shaped the real-world experiences of persons with disabilities over time.

1 Introduction

Zambian law is characterised by a pluralistic system that integrates various legal traditions and social influences.¹ It comprises of the Constitution, laws enacted by Parliament, statutory instruments, Zambian customary

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1 M Ndulo 'African customary law, customs, and women's rights' (2011) 18 *Indiana Journal of Global Legal Studies* 87.

law, and applicable British statutes.² Disability rights in Zambia are primarily governed by the Persons with Disabilities Act³ and the Mental Health Act.⁴

Historically, individuals with disabilities have been subjected to systemic discrimination and exclusion. During the Nazi era, for instance, over 200 000 children and adults with disabilities were systematically murdered under the guise of eugenic justification.⁵ Similarly, in the United Kingdom, the sterilisation and incarceration of individuals with disabilities was widely implemented to prevent the 'multiplication of the unfit'.⁶ However, the late twentieth century witnessed the emergence of global movements led by disability rights activists and organisations, such as the Union of the Physically Impaired Against Segregation (UPIAS), which began to challenge these deeply entrenched perspectives. They argued that the exclusion and discrimination of persons with disability was a result of the disability that society placed on top of their impairment.⁷

To this end, UPIAS distinguished an impairment from a disability. It defined impairment as 'lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body'.⁸ In addition, it defined disability as

the disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities.⁹

According to UPIAS, disability is a socially constructed phenomenon different from impairments.¹⁰ By redefining the problem, UPIAS sought to address the issues of discrimination and exclusion by ensuring that society realised that the problem to social participation was not caused by a person's impairment but by society itself. While the distinction between disability and impairment by UPIAS was a welcomed move by disability

2 Constitution of Zambia (Amendment) Act of 2016, art 7. Note that with English Laws and Statutes, the English Law (Extent of Application) Act Chapter 11 of the Laws of Zambia, subject to the Constitution and to any other written law, extends the application of English common law, the doctrines of equity and English statutes in force in England on 17th August 1911 (being the commencement of the Northern Rhodesia Order in Council 1911) to Zambia. Under this Act, Parliament can also extend the Application of English statutes of a later date as well (See English Law (Extent of Application) (Amendment) Act of 2011).

3 Act 6 of 2012.

4 Act 6 of 2019.

5 L Burch *Understanding disability and everyday hate* (2021) 13-14.

6 As above.

7 Union of the Physically Impaired Against Segregation & Disability Alliance *Fundamental principles of disability: Being a summary of the discussion held on 22nd November, 1975 and containing commentaries from each organisation* (1976).

8 As above.

9 As above.

10 M Retief & R Letšosa 'Models of disability: A brief overview' (2018) 74 *HTS Theologiese Studies/Theological Studies* 3-4.

activists because it created a clear agenda for social change,¹¹ it did not lack criticism. The criticism levelled against it is the fact that some impairments limit peoples' ability to function independently.¹²

In 2012, to reflect global changes in the understanding of disability and give effect to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), Zambia passed the Persons with Disabilities Act which amended the definition of disability as outlined in the 1996 Persons with Disabilities Act.¹³ The 1996 Act defined disability as:

Any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other trained animals trained for that purpose.

The Persons with Disabilities Act of 2012 moved away from the notion that the hindrance to social integration is to be blamed solely on an individual's impairment, but that society also plays a role in the disablement process. This Act defines disability as:

A permanent physical, mental, intellectual or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others.¹⁴

This new definition therefore acknowledges the significant role of societal and environmental factors in the disablement process, aligning Zambia's legal framework with contemporary global understandings of disability. By adopting the social and human rights model, Zambia has shifted away from a purely medical perspective, recognising that disability is not solely a personal limitation but is also shaped by societal barriers and discrimination. This shift is crucial for promoting inclusion, equality, and the full participation of individuals with disabilities in all aspects of society.

However, this paper seeks to demonstrate colonialism's insidious legacy entrenched ableist ideals within Zambia's legal structures, rooted in hegemony, patriarchy, and oppression. Guided by 'scientific' racism and at times religion, colonialism established social inequalities and economic disparities, placing white people at the top of a racial hierarchy and marginalising black people. The entire colonial apparatus reflected harmful prejudices, stereotypes, and fears about Indigenous black people,

11 T Shakespeare 'The social model of disability' in LJ Davis (ed) *The disability studies reader* (2006) 216-217.

12 DB Creamer *Disability and Christian theology: Embodied limits and constructive possibilities* (2009) 27-28; M Oliver & C Barnes *The new politics of disablement* (2012) 23; Shakespeare (n 11) 219.

13 Act 33 of 1996.

14 The Persons with Disabilities Act of 2012, sec 2.

who were considered inferior, unintelligent, and unsophisticated. African culture was deemed primitive and backward, judged against Western norms of normalcy. This racialism extended to the treatment of persons with disabilities, who were often seen as objects of pity or charity rather than individuals with inherent rights. As Heaton observes 'the general narrative of colonial regimes particularly early on in the colonial encounter was that Africans were naturally diseased, unsanitary people, ignorant of basic hygiene and medical practices'.¹⁵ While these colonial views may not fully capture the nuances of pre-independence Zambian customs and beliefs, they provide valuable insights into the prevailing attitudes towards disability during that period.

This paper adopts a historical-legal approach to examine how colonialism influenced the treatment of individuals with disabilities in pre-independent Zambia. It seeks to uncover how certain attitudes and practices that continue to drive discrimination and exclusion of persons with disabilities today are rooted in Zambia's colonial history. Zambia, like other African nations, cannot escape the influence of its colonial past. This legacy has shaped how disability has been understood and approached in the country.

The paper is divided into five parts. Part 1 is the introduction. Part 2 commences by discussing disability during the pre-colonial era – before 1890. This part demonstrates how disability was understood before the territory now called Zambia became a British Protectorate. Part 3 proceeds by exploring disability during the colonial era until 1924. It discusses how the colonial powers, particularly the British South African Company (BSAC) influenced the native understanding of disability and how this subsequently affected the treatment of persons with disabilities. Part 4 discusses disability from 1924 until the late 1950s when the territory of Northern Rhodesia (now Zambia) was ruled by the British Colonial Office. This part explains, among other things, how the introduction of the 1927 Lunacy Ordinance further influenced the comprehension and treatment of disability and persons with disabilities. Part 5 provides the concluding remarks.

2 Disability during the pre-colonial era – Before 1890

In the pre-colonial era, Zambia was not a unitary state but a region made up of different ethnicities ruled by chiefs.¹⁶ The ethnicities had their own governing rules and laws passed down orally from generation to

15 MM Heaton 'Health and medicine in colonial society' in MS Shanguhya & T Falola (eds) *The Palgrave handbook of African colonial and postcolonial history* (2018) 307.

16 HW Langworthy *Zambia before 1890: Aspects of pre-colonial history* (1972) 21-26.

generation.¹⁷ To illustrate, in Barotseland (Zambia's Western region) a child born with a deformity¹⁸ was believed to be bad omen.¹⁹ Typically, the mother would kill the child by forcing the breast into its mouth, thus, choking it.²⁰ The Ambo of Zambia's North-Eastern region believed that a child who grew upper teeth before the lower (this was referred to as *lutala* or sometimes *lutara*) had a disability.²¹ The child was taken and cast into the nearest stream to drown.²² It is said that the drowning was performed without regret or remorse for it was believed that should the child be allowed to live, the loss of each tooth would entail the death of a person.²³

Conversely, other impairments were seen as punishments for misdeeds and, therefore, regarded as symbols of wrongdoing.²⁴ For instance, in the North-Eastern region of Zambia, it was reported that 'in nearly every village there were men and women whose eyes were gouged out, whose ears, noses and lips were sliced off while others had both hands amputated'.²⁵ In some extreme instances, offenders were mutilated and later impaled or roasted to death.²⁶ Similarly, in the North-Western region, punishment for certain crimes such as theft, left the offender impaired. A person who was found guilty of theft would have all his possessions seized by the aggrieved party.²⁷ Further, the thief's fist would be tightly enclosed with the pieces of a smashed clay pot made red-hot, which resulted in the hand being maimed for life as it festered and rotted away in most cases.²⁸ In this era, because disability either meant a bad omen or a symbol of wrongdoing, persons with disability were looked at with revulsion, horror or fear and were treated as outcasts by society and a nuisance by their parents.²⁹

However, in as much as persons with disabilities were considered to be bad omens, society believed disability can befall anyone. Those who dared to laugh at persons with disabilities were warned through the saying '*Lesa ni malumalu*' meaning God changes fortune.³⁰ It was not always the case that all persons with disabilities in Africa experienced discrimination, exclusion or oppression. For some, the clustered families to which they

17 MM Munalula *Legal process: Zambian cases, legislation, and commentaries* (2004) 46-47.

18 Note that the language used in this text reflects the terminology used at the time of writing, which is now considered insensitive and unacceptable.

19 DW Strike *Barotseland: Eight years among the Barotse* (1922) 61-63.

20 As above.

21 B Stefaniszyn *Social and ritual life of the Ambo of Northern Rhodesia* (1964) 78-79.

22 As above.

23 As above.

24 LH Gann *A history of Northern Rhodesia: Early days to 1953* (1964) 91; LA Wallace 'The beginning of native north administration in Northern Rhodesia' (1922) 21 *Journal of the Royal African Society* 167.

25 As above.

26 G Pirie 'North-Eastern Rhodesia: Part IV' (1906) 6 *Journal of the Royal African Society* 43-58.

27 Strike (n 19) 109-110.

28 As above.

29 PD Snelson *Educational development in Northern Rhodesia 1883-1945* (1990) 80.

30 Stefaniszyn (n 21) 134.

belonged sheltered them.³¹ There is evidence that in some parts of African societies, persons with disabilities integrated well into society. For instance, ‘in ancient Egypt, people with physical impairments, especially persons with dwarfism, were well treated and often included in the mainstream of social life’.³² This is likely to have been the case in some parts of Zambia as well.

During the pre-colonial era, missionaries made their way into the region. Their focus was on spreading the gospel of Christ, providing education and healthcare to the local population.³³ In fact, in the history of Northern Rhodesia, the first attempt to teach persons with visual impairment was by a missionary’s wife in 1905.³⁴ Missionaries enforced the idea that disability was needs-based and a problem that required correcting either through medicine or the church’s deliverance. Kalusa observes that the missionaries in Mwinilunga (Zambia’s North-Western region) regarded their medicine as the only means of addressing human disease and suffering.³⁵ Further, Hamel and Falola observe that:

Christian missionaries tended to see the health problems of Africans in terms of their lack of Christian morals, in which physical illness was a representation of African moral failing, very much in keeping up with images of Africa as a ‘Dark Continent’ of ‘backward’ and child-like people in need of education and salvation.³⁶

It therefore follows that during the pre-colonial era two constructions of disability were prominent, and these constructions emanated from the indigenous people and later on the missionaries. According to the natives, disability was a symbol of either a wrongdoing or a bad omen, thus, persons with disabilities experienced some level of segregation. In addition, the missionaries promoted the idea that persons with disabilities were charity cases and that due to their impairments, they were somewhat incomplete because they did not fit into the definition of an ‘able bodied man’.

31 Gann (n 24) 440. It has been recorded that a man and his several wives lived in one homestead and close to him might be the huts of his full and half-brothers and those of his paternal uncles and these groups helped each other in both peace and war: Gann (n 24) 5.

32 N Hamel and others ‘Disability in Africa: Inclusion, care, and the ethics of humanity’ in T Falola & N Hamel (eds) *African history and the diaspora* (2021) 10-11.

33 N Ndangwa ‘Origins and development of social welfare and social work in Zambia’ in N Ndangwa (ed) *Social welfare and social work in Southern Africa* (2021) 263-265.

34 Snelson (n 29) 79-80.

35 WT Kalusa ‘Missionaries, African patients, and negotiating missionary medicine at kalene hospital, Zambia, 1906-1935’ (2014) 40 *Journal of Southern African Studies* 286-289.

36 Hamel and others (n 32) 15.

3 Disability dynamics in the Missionary and British South African Company Era (1890-1924): Colonial impact and social transformation

In the late nineteenth century, Cecil John Rhodes along with his quest for minerals wished to extend British power inland to create an African empire that would stretch from Cape to Cairo.³⁷ In 1890, Barotseland entered into a treaty with the British South African Company (BSAC) granting the company acquired mineral rights concessions. Similarly, in 1900, North-Eastern Rhodesia entered a comparable agreement with the BSAC.³⁸ The treaties under which the BSAC acquired its mineral rights concessions were also the source of its administrative powers.³⁹

The administration of the BSAC in North-Western and North-Eastern Rhodesia resulted in the abolishment of the mutilations practised in these regions. The substitutions for these punishments were fines, imprisonment, and lashes.⁴⁰ However, these substitutions equally meant oppression for the natives in Northern Rhodesia. Chanock submits that 'the courts that administered justice were informally run, the charges were rarely recorded and when they were, they were frivolous'.⁴¹ For example, persons were charged with 'wasting time instead of buying *food*' which attracted a punishment of four lashes.⁴² In one recorded instance, a man was fined for absenting himself from the hospital whilst on treatment.⁴³ Corporal punishment in Zambia was only abolished in 1999.⁴⁴

Further, the arrival of the British South African Company (BSAC) marked the onset of industrialisation in Northern Rhodesia, significantly impacting the livelihoods of persons with disabilities. There was an

37 Gann (n 24) 56-57. The Royal Charter was signed for the British South African Company on 29 October 1889.

38 In 1899, Barotseland and North-Western regions were amalgamated through the Barotseland-North-Western Rhodesia order-in-council. To indicate the British sphere north of the Zambezi, the area was referred to as Northern Zambezia. Later, for the ease of administration, Northern Zambezia was split into Barotseland-North-Western Rhodesia and North-Eastern Rhodesia. This was because access to North-Western Rhodesia was easiest from the south and North-Eastern Rhodesia easiest from the east: Gann (n 24) 79-80.

39 P Slinn 'Commercial concessions and politics during the colonial period: the role of the British South Africa Company in Northern Rhodesia 1890-1964' (1971) 70 *African Affairs* 365-366.

40 M Chanock *Law, custom, and social order: The colonial experience in Malawi and Zambia* (1998) 106-108.

41 As above.

42 As above.

43 Chanock (n 40) 71-74.

44 This was after the judgment in the case of *John Banda v The People* HP A/6/1998 where the Court held that corporal punishment contravened art 15 of the Bill of Rights-Part III of the Constitution of Zambia 1991, which prohibits the use of torture or inhumane or degrading punishment or other like treatment.

emergence of manufacturing industries⁴⁵ and the introduction of taxation – hut tax.⁴⁶ By 1905, the tax was collected in cash only and was levied on adult males and wives except for the first wife.⁴⁷ The punishment imposed for the failure to pay one's tax, which was the same as that used to compel those unwilling to work, was the burning down of their huts.⁴⁸ These systems introduced by the BSAC resulted in the migration of many men to the more prosperous mines in Southern Rhodesia for paid employment because the economy now demanded Africans to generate income to pay for certain services and taxes.⁴⁹ Ndangwa highlights that the

migration resulted in distorted demographic patterns in the communities in that only the women, children, the old and the infirm remained and the women had to take on new roles and responsibilities which were previously the domains of men.⁵⁰

The fact that the majority of the native workforce in Northern Rhodesia was comprised of a male 'able-bodied' population working away from their homes, inevitably meant that women were left to care and provide for the children and those with disabilities in the communities.⁵¹ This would have obviously put a strain on women, inevitably resulting in some of them developing disabilities as well. In the same way, those who developed disabilities due to occupational injuries or disease lost out on wage labour, thereby ushering them and their families into poverty.

This era also experienced the advent of World War One (WWI). In WWI, the people of Northern Rhodesia took part in the war as carriers, soldiers, messengers and spies.⁵² In this era, many African families lost their relatives and property.⁵³ Once again there was a massive outflow of

45 C Phiri 'Constraints on industrialization in colonial Zambia, 1890-1964' Masters thesis, University of Zambia, 2021 17-19.

46 Gann (n 24) 100-104. In North-Eastern Rhodesia tax was introduced in 1900 and in Barotseland-North Western Rhodesia it was authorised in 1901. As compared to North-Eastern Rhodesia where tax was imposed almost immediately, the collection of tax in Barotseland only commenced in 1904. The delay being attributed to the fact that they had to get authorisation from the Barotseland paramount chief who became the only chief in Northern Rhodesia to hold a considerable financial stake in the collection of the tax.

47 Gann (n 24) 105; Strike (n 19) 45.

48 Gann (n 24) 102-104.

49 Gann (n 24) 100-104. In addition to the tax and fine payments imposed for certain punishments, there also arose other charges that natives needed to pay. For instance, in 1906 in Livingstone when purified pumped water started being supplied, the people of the town had to draw water from the galvanised pumps using buckets and other utensils at a charge of ten shillings per month.

50 Ndangwa (n 33) 265.

51 By 1939 more than half of the male able-bodied population was working away from home: KT Hansen 'Urban research in a hostile setting: Godfrey Wilson in Broken Hill, Northern Rhodesia, 1938-1940' (2015) 41 *Kronos* 207.

52 B Phiri 'The African participation and experiences in the First and Second World Wars in Northern Rhodesia: A historical perspective 1914-1948' (2022) 57 *Journal of Asian and African Studies* 48.

53 As above.

labour from the villages.⁵⁴ Frederiksen observes that at the end of WWI, Northern Rhodesia's future looked bleak in that it was 'a sparsely populated land-locked country with few resources and little investment and had poor prospects in a policy climate which demanded that the colonies pay their way'.⁵⁵ Consequently, the country continued being a labour reserve for the more prosperous mines in Southern Rhodesia.⁵⁶

Evidently, it became difficult for Africans to thrive, their simple lives and barter system could no longer sustain them, more so, persons with disabilities who could not even sell their labour. In 1924, the BSAC's administration of Northern Rhodesia ended and was taken over by the Colonial Office.⁵⁷

Clearly, the demand for labour in the period discussed above was great and it revolved around the dexterity of Africans, primarily, those persons without disabilities.⁵⁸ Consequently, persons with disabilities experienced alienation and stigmatisation.⁵⁹ In essence, persons with disabilities were considered weak and unable to conform to the productivity demands that arose in this era.⁶⁰ Under his study of disability in the United Kingdom (UK), Finkelstein observed that disability was essentially a creation of the industrial revolution.⁶¹ However, in the African context, disability linked with the lack of productivity was not only a creation of the industrial revolution but also a colonial import.⁶²

4 Disability in transition: The shift from British South African Company Rule to Colonial Office Administration, 1924-1953

The history of disability regulation dates back to when the territory which was to become Northern Rhodesia was first administered by the BSAC, and then as two separate territories: Barotseland North-Western Rhodesia (under the High Commissioner for South Africa) and North-Eastern Rhodesia (under the BSAC), which by virtue of their respective Orders in Council (The North-Western Rhodesia Order in Council 1899 and The North-Eastern Rhodesia Order in Council 1900), extended the application

54 As above.

55 As above.

56 Slinn (n 39).

57 T Frederiksen 'Authorizing the "natives": Governmentality, dispossession, and the contradictions of rule in colonial Zambia' (2014) 104 *Annals of the Association of American Geographers* 1278.

58 Gann (n 24) 107-108.

59 FN Gebrekidan 'Rethinking African disability studies: From the cultural-deficit model to a socioeconomic perspective' in Falola & Hamel (eds) (n 32) 94.

60 As above.

61 V Finkelstein 'Disability and the helper/helped relationship: An historical view' (1981) *Handicap in a Social World* 1-5.

62 Hamel and others (n 32) 8.

of the law of England in these territories.⁶³ Generally, the laws in England relating to the treatment of persons with disabilities (mainly mental health laws), could be applied in the territories as far as local circumstances permitted.⁶⁴ Upon the establishment of the Northern Rhodesia Order in Council 1911 (which also extended the application of English law), the two territories were united into one territory, which came to be known as Northern Rhodesia.

4.1 Early legislation – The Lunacy Ordinance of 1927

One of the earliest pieces of legislation affecting persons with disabilities in Northern Rhodesia was the Lunacy Ordinance of 1927 (the Ordinance), passed by the Northern Rhodesia Legislative Council.⁶⁵ By enacting this Ordinance, Northern Rhodesia was simply following the legislative developments that had occurred in other colonies such as Southern Rhodesia, Uganda and Nigeria. The Ordinance was modelled on the Ugandan Lunacy Ordinance of 1906.⁶⁶ Commenting on the Ugandan Ordinance, Pringle notes that the Ordinance ideally aimed at addressing the ‘European cases of insanity, rather than African patients’.⁶⁷ The Preamble to the Ordinance stated that it was ‘an Ordinance for the detention of lunatics and suspected lunatics and to regulate the law relating to lunacy in the territory’.⁶⁸ The Ordinance granted the High Court jurisdiction in lunacy⁶⁹ and went on to define the term lunatic as ‘including any idiot and any other persons of unsound mind’.⁷⁰ The use of such language, though less common today but still present in some statutes, to describe mental illness is open to broad and arbitrary interpretation.⁷¹ Terms like ‘idiot’ or ‘unsound mind’ do not specifically define or accurately represent mental illness.⁷² In modern times, these terms are deemed unacceptable and unconstitutional, as will be further discussed below.

The works of Vaughan give some insight into the treatment of mental health and psychiatry in British Colonial Africa and the treatment of Africans. Referencing the Nyasaland Native Lunatics Ordinance of 1913, Vaughan describes how defining insanity was a very confusing matter for white colonialists because of a failure to understand and appreciate the

63 See The Barotziland – North-Western Rhodesia Order in Council 1899 art 16; The North-Eastern Rhodesia Order in Council 1900, art 21 and 22.

64 As above.

65 Colonial Office *Northern Rhodesia: Report for 1930* (1932).

66 ‘South Africa’ (1930) 12 *Journal of Comparative Legislation and International Law* 141, 162.

67 Y Pringle *Psychiatry and decolonisation in Uganda* (2019) 32.

68 Lunacy Ordinance of 1927, Preamble.

69 (n 68) sec 2.

70 (n 68) sec 3.

71 M Freeman & S Pathare *WHO Resource book on mental health, human rights and legislation* (2005) 25.

72 As above.

culture, customs, and practices of the native Africans. Observing also that the courts were usually presided over by 'British district officials' ill-qualified in legal matters, Vaughan notes how defining insanity in another culture was equally challenging, and the use of African court assessors as linguistic translators, only made the situation worse.⁷³

Despite the ambiguity surrounding the definitions of lunacy or insanity, the ultimate authority for determining who was considered mentally ill rested with white British officials. These officials likely relied on their subjective interpretation of lunacy, as terms like 'unsoundness of mind' are fluid legal concepts rather than clear medical classifications of mental disability. Native Africans were particularly vulnerable to discriminatory legislation due to the custodial approach to 'lunacy' in Northern Rhodesia and prevailing racist stereotypes. These stereotypes characterised Africans as fundamentally different and intellectually inferior, believing they needed to be 'civilised' from a primitive state to the modern standards of Western civilisation.⁷⁴ It should be noted that the enactment of Lunacy legislation in colonial Africa coincided with the peak of European scientific racism, which viewed Africans as 'the most primitive of all people'.⁷⁵ It was during this era, therefore that the tools of scientific racism were used to justify discrimination, segregation, and the unequal treatment of Africans.⁷⁶ Vaughan, McCulloch, and Campbell, in their separate works on African psychiatry during colonial times, explore the writings on African psychology and psychiatry by famous psychiatrists such as Carothers, Gordon and Vint, who plied their trade in colonial Africa and whose writings provided 'scientific proof' that the Africans were racially inferior owing to their underdeveloped brains and frontal lobes in comparison to the Europeans.⁷⁷ These descriptions of the intellectual ineptitude of Africans were not just restricted to the Africans on the African continent but the same was also said to be true of African descendants in America as well. Thus, in his essay 'Race intelligence', Du Bois chronicled how science was used to justify the racial discrimination of blacks through continued attempts to prove that they were of a lesser intelligence and not fully human.⁷⁸

73 M Vaughan *Curing their ills: Colonial power and African illness* (1991) i.

74 RI Rotberg *Christian missionaries and the creation of Northern Rhodesia: 1880-1924* (1965) 37.

75 J McCulloch *Colonial psychiatry and 'the African mind'* (1995) 46; H Deacon 'Racism and medical science in South Africa's Cape Colony in the mid- to late nineteenth century' (2000) 15 *Osiris* 190. Deacon observes that racist medical theories on insanity did not necessarily influence the timing of racial discrimination, but they did, however, justify to an extent differential treatment based on race and the creation of separate asylums for black and white mental patients.

76 SA Annamma and others 'Dis/ability critical race studies (DisCrit): Theorizing at the intersections of race and dis/ability' (2012) 16 *Race Ethnicity and Education* 1.

77 M Vaughan *Curing their Ills: Colonial power and African illness* (1991); McCulloch (n 75); C Campbell *Race and empire: Eugenics in colonial Kenya* (2007).

78 WEB DuBois 'Race intelligence' (1920) 20 *The Crisis* 117, 118.

It was also claimed that certain mental health conditions, like depression, were uncommon among Africans.⁷⁹ When these conditions were found to exist, it was often suggested that they were caused by exposure to European culture.⁸⁰ Carothers thus stated:

In general, it seems, therefore, that classical depressive syndromes are seldom seen, at least in Africans untouched by alien influences; and it behoves one to consider whether other cases do occur but are not disclosed.⁸¹

The purported increase of schizophrenia among Africans was also explained along similar lines.⁸² It is, therefore, possible that the reported increase of these 'exclusively European' mental conditions in Africans was seen as another indicator of the colonialists' civilising mission of the natives.⁸³ These theories gained much traction in the perception and treatment of Africans by the colonial governments such that any other theories which proposed a contrary view were often dismissed. For example, in their respective works, Vaughan and McCulloch both refer to Wulf Sachs, a South African psychiatrist and psychoanalyst whose early research on African and European patients concluded that there were no inherent differences between their minds. However, colonial authorities frequently dismissed these findings.⁸⁴ In referencing the Kenyan colonial experience, Campbell notes that in the 1930s, Gordon's eugenic views became a key focus for the medical profession in Kenya. Doctors who supported eugenics placed these ideas at the centre of debates concerning African welfare, development, and related medico-legal issues.⁸⁵ In Northern Rhodesia, the establishment of the Rhodes-Livingstone Institute (RLI) in 1937 as the first anthropological research institution in Africa and the various works published under it were influential in steering colonial perceptions and attitudes about African bodies, minds and social conditions.⁸⁶

Although established as an independent institute, free from direct colonial governmental control, the RLI still received funding from the

79 McCulloch (n 75) 110; J Carothers *The African mind in health and disease: A study in ethnopsychiatry* (1953) 148; M Summers 'Suitable care of the African when afflicted with insanity: Race, madness, and social order in comparative perspective' (2010) 84 *Bulletin of the History of Medicine* 58, 76.

80 LA Jackson *Surfacing up: Psychiatry and social order in colonial Zimbabwe 1908-1968* (2005); HL Gordon 'The mental capacity of the African: A paper read before the African circle' (1934) 33 *Journal of the Royal African Society* 226.

81 Carothers (n 79) 123.

82 Carothers (n 79); HL Gordon 'An inquiry into the correlation of civilization and mental disorder in the Kenya native' (1936) 12 *East African Medical Journal* 327.

83 R Keller 'Madness and colonization: Psychiatry in the British and French empires, 1800-1962' (2001) 35 *Journal of Social History* 295. Keller shows how social scientists' false racial divisions were instrumental in establishing mechanisms of domination in the colonies of Africa and Asia.

84 Vaughan (n 77) 114; McCulloch (n 75) 87.

85 Campbell (n 77) 39.

86 After independence the RLI was renamed the Institute for African Studies at the University of Zambia.

colonial government. It had two important missions. Firstly, by utilising tools in social anthropology it would generate 'scientific' knowledge about Africans and the effects of colonialism on them. Secondly, 'it would provide the colonial authorities with useful information that could be used to facilitate the smooth and humane operation of colonial rule'.⁸⁷ The researchers at the RLI considered themselves as progressive but the colonial government sometimes viewed them with a sense of ambivalence owing to their highest academic and scholarly approach towards anthropological research concerning the colonial subjects.⁸⁸ However, despite some of their works being critical of Gordon and Vint's phrenological conclusions on African intelligence and mental defects, there is a palpable sense that their writings stemmed from perspectives that essentialised the differences between the European and the Black African. Davidson's writings on 'Psychiatric work among the Bemba' clearly demonstrate this.⁸⁹ Kalusa and Phiri also observe that the knowledge generated by colonial anthropologists about African society was used by colonial authorities to maintain their hold on colonial power.⁹⁰

During this period, the preoccupation of the colonial psychiatrist lay in trying to figure out what characterised a 'normal' African as opposed to investigating mental illness. Thus, by pathologising what constituted 'normal' African psychology, colonial psychiatry's main goal was to provide compelling scientific arguments about the inferiority of Africans to Europeans. Vaughan, therefore, notes that:

Colonial psychiatry did identify the 'lunatic' and sometimes incarcerated her or him ... but in general the need to objectify and distance the 'Other' in the form of the madman or the leper, was less urgent in a situation in which every colonial person was in some sense, already 'Other'.⁹¹

With the legislative use of words such as 'idiot' to describe 'lunacy', coupled with the racist scientific beliefs, it is easy to see how the Colonial government could use the Lunacy Ordinance as a means of social control over the African.⁹² In addition, as per its Preamble, the Lunacy Ordinance did not have any provision for treatment, but instead it provided for custodial confinement.⁹³ As such, the ordinance gave magistrates the authority to hold hearings regarding an individual's sanity upon the receipt of sworn information from an informant who believed that any person

87 K Crehan *The fractured community: Landscapes of power and gender in rural Zambia* (1997).

88 As above.

89 S Davidson 'Psychiatric work among the Bemba' (1949) 7 *Rhodes-Livingstone Journal* 75.

90 WT Kalusa & BJ Phiri 'Introduction: Zambia's postcolonial historiography' (2014) 5 *Zambia Social Science Journal* 1.

91 Vaughan (n 77) 10.

92 M Summers 'Suitable care of the African when afflicted with insanity: Race, madness, and social order in comparative perspective' (2010) 84 *Bulletin of the History of Medicine* 58.

93 Lunacy Ordinance of 1927, sec 6.

within the magistrate's jurisdiction was a 'lunatic'.⁹⁴ The determination of whether the suspected individual was a lunatic required an examination by two registered medical practitioners who would have to certify 'stating that the suspected person was in their opinion a lunatic and a proper subject for confinement'.⁹⁵ In the event that no medical practitioner was available, a magistrate could authorise the apprehension and detention of a person considered to be of unsound mind pending an examination by a medical practitioner.⁹⁶ If the suspected individual were a native African, the certification by one medical practitioner would suffice.⁹⁷ Native commissioners were also given the authority to order apprehensions and detentions in certain circumstances however the exercise of such power had to be reported to the nearest magistrate, who would then take over the matter.⁹⁸

In exceptional cases 'persons of unsound mind' would by special arrangement with the Southern Rhodesian Government be admitted to the Ingutsheni Asylum (Ingutsheni Mental Hospital) in Bulawayo.⁹⁹ This situation continued until 1962 after the establishment of the first and at the time the only mental health hospital in Zambia, the Chainama Hills Hospital.¹⁰⁰ Like everything else, the wards at this facility were segregated on racial lines as well. Europeans were well housed in comparison with the African patients who were housed in less than conducive and generally overcrowded wards.¹⁰¹ This racially segregated environment made it possible for whites to receive better treatment and attention than their African counterparts who were highly susceptible to gross abuse.¹⁰² Where confinement was deemed unnecessary, the magistrate could direct that the suspected lunatic be placed in the care of their relatives or friends. If they were African, they would be handed over to a chief or headman.¹⁰³ African beliefs in witchcraft as the cause of insanity in certain instances were readily dismissed by the colonial authorities, who were quick to deny

94 (n 93) sec 4.

95 (n 93) sec 5.

96 (n 93) sec 7.

97 (n 93) sec 5.

98 (n 93) sec 8.

99 McCulloch (n 75) 20; Jackson (n 80) 24, who states that: 'The birth of Ingutsheni Lunatic asylum was an expression of the British invaders' reorganization of both space and meaning in their ongoing attempt at establishing social order and domesticating "fields of difference", a task for which they first employed mostly terror and violence, but gradually developed infrastructures and institutions of social control and regulation.'

100 A Haworth 'Foreign report: Psychiatry in Zambia' (1988) 12 *Bulletin of the Royal College of Psychiatrists* 127.

101 LA Jackson 'The place of psychiatry in colonial and early postcolonial Zimbabwe' (1999) 28 *International Journal of Mental Health* 38.

102 As above; McCulloch (n 75), referencing the ZNA, 'Inspection of Ingutsheni': Inspector of Chests for the Auditor General, 10 June 1914 report, noted that: 'The best-treated patients at Ingutsheni were the Europeans. Few of them paid fees, the majority being supported at public expense. Whereas the diet for Europeans consisted of bread, meat, sugar, vegetables, butter and coffee, the Africans' rations were limited to second-grade meal, coffee, sugar and vegetables.'

103 (n 93) sec 9.

its existence.¹⁰⁴ The existence of legislation such as the Witchcraft Ordinance also made it more challenging for Africans to explain certain classifications and causes of insanity for fear of being punished under the Witchcraft Ordinance.¹⁰⁵ All in all, the responsibility for making decisions of whether one was a 'lunatic' was a legal one and not necessarily a medical one. Based on that, the law could then be used to justify unnecessary and unreasonable detentions or to constrain individuals perceived to be troublesome by certifying them as insane.

The introduction of European-styled asylums to Africa was predominantly used to confine and house the 'African insane' and, to a lesser extent 'the European insane, for fear that they would become vagrant or otherwise compromise British prestige'.¹⁰⁶ However, as Vaughan observes, there was no 'great confinement' for natives with mental illness in African asylums during the colonial era in comparison with what was happening in European asylums at the same time.¹⁰⁷ Fernando notes that the introduction of asylum-psychiatry into sub-Saharan Africa did not necessarily meet the needs of the Natives with mental disabilities who in most instances got help from their family and community, and resorted to religious and indigenous medicines for treating their mental health problems.¹⁰⁸ These observations reflect Carothers' views who noted that institutionalisation was mainly reserved for those who proved to be a nuisance and could not be managed at home.¹⁰⁹ McCulloch goes on to indicate that the common African psychiatric inmate was male, and had either been in the prison system or displayed violent and unmanageable behaviour.¹¹⁰ These observations were also true for Northern Rhodesia as confirmed by Haworth who observes that the transfer of patients to neighbouring Southern Rhodesia was seen by the colonial officials as being too cumbersome and administratively challenging.¹¹¹ To this end it was more convenient and obviously cheaper for the colonial government to return patients to their villages for supervision by the headman instead of going through with the

ordeal of certification, confinement in a gaol and subsequent transfer hundreds of miles by train under an escort and across an inter-territorial border to an asylum where few if any of the staff or inmates can speak their language.¹¹²

104 S Davidson 'Psychiatric work among the Bemba' (1949) 7 *Rhodes Livingstone Journal* 75, 77. Davidson observed that insanity among the Bemba of Northern Rhodesia was usually attributed to possession by evil spirits.

105 Jackson (n 80) 7.

106 J Sadowsky 'Confinement and colonialism in Nigeria' in R Porter & D Wright (eds) *The Confinement of the insane: International Perspectives, 1800-1965* (2003) 301.

107 Vaughan (n 77).

108 S Fernando *Mental health worldwide: Culture, globalization and development* (2014).

109 Carothers (n 79).

110 McCulloch (n 75).

111 Haworth (n 100).

112 Sadowsky (n 106) 127, quoting Dr Haslam.

4.2 The 1949 Mental Disorders' Ordinance

A landmark piece of legislation in Northern Rhodesia was the Mental Disorders' Ordinance of 1949. This Ordinance repealed the 1927 Lunacy Ordinance and was later incorporated as an Act after Zambia gained independence. The Ordinance proceeded from the recommendations of a 1947 committee that had been set up to examine the operations of the 1927 Lunacy Ordinance. According to Haworth, the committee strongly advocated for the construction of an asylum in Northern Rhodesia, arguing that it was in the real interest of African communities to keep those with mental illness detained for long periods.¹¹³ The Ordinance also coincided with developments in mental health views on the need to provide curative treatment and not merely custodial confinement for those with mental health challenges. There was thus a shift from trying to investigate what 'normality' and 'abnormality' meant for an African, to one aimed at researching mental illness.¹¹⁴ This was premised on the recurring fears among European psychiatrists of the effects that urbanisation, industrialisation, and detribalisation were likely to have on the African mind at the time.¹¹⁵ It was about exploring how the Africans would cope or were coping with changes to their social order in the advent of industrialisation.¹¹⁶

The threats of decolonisation and fears of the rise of nationalist anti-colonial sentiments only heightened the sense of urgency amongst European psychiatrists who called for accelerated efforts in assessing mental health risks which were expected to befall the Africans due to the drastic changes they would experience.¹¹⁷ Keller therefore notes that, 'under colonialism, where the ruling state is in almost constant tension with the population, the position of psychiatric knowledge becomes even more complex'.¹¹⁸ To this effect, the 1949 Ordinance proceeded earlier calls by Donald Mackay, a mission doctor in Northern Rhodesia, on the need to conduct 'extensive research on African Mental health'.¹¹⁹ Mackay called for the establishment of

113 Haworth (n 100).

114 IY Sun 'Population as discourse: Medicine in late colonial Kenya' Honours Degree Thesis, Harvard University, 2007.

115 Vaughan (n 77); Carothers (n 79); EB Forster 'The theory and practice of psychiatry in Ghana' (1962) 16 *American Journal of Psychotherapy* 5; WV Brelford 'Insanity among the Bemba of Northern Rhodesia' (1950) 20 *Africa* 46, 51.

116 Vaughan (n 77).

117 A Antic 'Decolonizing madness? Transcultural psychiatry, international order and birth of a "global psyche" in the aftermath of the second world war' (2022) 17 *Journal of Global History* 20.

118 Keller (n 83).

119 D Mackay 'A background for African psychiatry' (1948) 25 *East African Medical Journal* 4.

mental clinics in every township and men trained in psychiatry and steeped in African background to stem the tide of threatening maladjustment. We hear much of development – but where is their development so pressing as this.¹²⁰

For Mackay, it was not enough for psychiatrists to understand the African mind from the European perspective of what it meant to be normal or abnormal. There was instead the need to take a holistic approach to understand the African mind in his own setting by considering the Africans ‘background, his faiths, his hopes, his fears, his sex life – and everything else that makes up the mosaic of his mental environment’.¹²¹

It was also around this period that the likes of Davidson, a psychiatrist, writing for the Rhodes-Livingstone Institute Journal, called for the use of shock therapy as part of the treatment for some psychiatric cases.¹²² Davison in advocating for collaborative work between the study of psychiatry and anthropology, argued that work in this area would ‘be of great value both to the Government and to the private industrial concerns’.¹²³ The benefits would therefore result ‘in more efficient administration, reduced policing costs, better physical health and worker discipline, and an improved international image for enlightened colonial rule’.¹²⁴ He also made recommendations for the establishment of a psychiatric hospital for Northern Rhodesia. Thus according to the colonial office report, the purpose of this Ordinance was ‘to bring the law relating to the care and treatment of mentally disordered and defective persons into line with modern medical practice’ (at the time).¹²⁵ The Ordinance was modelled on the Southern Rhodesia Mental Disorders Act of 1936 (also formulated after the England and Wales Mental Treatment Act of 1930) since most patients of mental illness were ‘detained’ there for treatment.¹²⁶ Apart from amending the terminology to conform to the medical standards of the time, the Ordinance also sought to ‘permit administrative improvements in adjudication and the detention and release of patients’.¹²⁷ The Ordinance in keeping with the individual and clinical view that mental disability is an individual defect of intelligence, defined ‘mentally disordered’ or ‘defective person’ as:

Any person who in consequence of mental disorder or disease or permanent defect of reason or mind, congenital or acquired –

- (a) is incapable of managing himself or his affairs; or
- (b) is a danger to himself or others; or

120 Mackay (n 119) 4.

121 Mackay (n 119) 2.

122 Davidson (n 104).

123 Quoted in M Epprecht *Heterosexual Africa? The history of an idea from the age of exploration to the age of AIDS* (2008) 80.

124 As above.

125 Colonial Reports *Northern Rhodesia 1949* (1950) 44.

126 AEM Jansen and others ‘South Africa’ (1951) 33 *Journal of Comparative Legislation and International Law* 96, 107.

127 P Pike and others ‘East Africa’ (1951) 33 *Journal of Comparative Legislation and International Law* 107.

- (c) is unable to conform to the ordinary usages of the society in which he moves; or
- (d) requires supervision, treatment or control; or
- (e) (if a child) appears by reason of such defect to be incapable of receiving proper benefit from the instruction in ordinary schools.¹²⁸

And continuing on the same trajectory of ambiguously defining mental health conditions, the Ordinance further provided for six classifications of a mentally disordered or defective person namely: mental disorder; mentally infirm; idiot; imbecile; feeble minded; and moral imbecile.¹²⁹ The classification system was intended to distinguish between different types of mental illness, with the goal of providing appropriate treatments and preventing generalisations about housing the insane in the same facilities. This was particularly important for differentiating between serious mental disorders that required certification and less serious ones.¹³⁰

Commenting on the Southern Rhodesian Act which had the exact same categorisations and definition of mental disorders as the Northern Rhodesian Ordinance, Jackson argues that the terminology used facilitated the merger of 'the colonial social agendas with science'.¹³¹ It therefore seems that the passage of time had not changed the views of colonial psychologists and psychiatrists' views as regards the African mind as they were still keen to establish a causal link between the African contact with 'European civilisation' and African mental illness. The classifications of mental disorders or insanity for the colonial psychiatrist and psychologists was unquestionably targeted at not just understanding mental illness among Africans but had the ulterior motive of describing and defining African inferiority generally. Thus, despite replacing the Lunacy Ordinance 1927, any reference to the term lunacy remained unaffected going by the wording of section 37 of the Mental Disorders Act 1949 which read:

Wherever in any law any reference to a lunatic or to lunacy or to an asylum is contained, that reference shall be read and constructed as a reference to a patient or to a mentally disordered or defective person within the meaning of this Ordinance, or, as the case may be, to mental disorder or defect or to a mental hospital.¹³²

Although the Act provided for the treatment and care of those with 'mental disorders' it extended the powers of the Magistrates and other officers to

128 Mental Disorders Ordinance of 1949, sec 2.

129 Mental Disorders Ordinance of 1949, sec 5.

130 ED Myers 'The 1959 United Kingdom Mental Health Bill: Comparison of some aspects with the Mental Disorders Act of Southern Rhodesia' (1962) *The Central African Journal of Medicine* 139.

131 Jackson (n 80) 138.

132 Mental Disorders Ordinance of 1949, sec 37.

apprehend and detain suspected 'mentally defective and persons' without the necessity of a warrant or medical certification from a medical practitioner in certain cases where a person was considered to be a danger to themselves or others, or wandering at large and unable to take care of themselves.¹³³ The Ordinance also contained provisions for the temporary and involuntary detention of those suspected of having a mental disorder for a period not exceeding 14 days for the purposes of inquiring into the state of mind of the 'patient'. The period of detention could be further renewed for another 14 days.¹³⁴ Admission into a specialised facility required the opinion and certification of two medical practitioners.¹³⁵ It is also important to note that the specialised facilities that had been designated for the reception, treatment or detention of persons suffering from mental disorders were less than pleasant. Davidson observed that the absence of a mental hospital in Northern Rhodesia meant that many persons with mental disabilities were kept amongst criminals in deplorable conditions in prisons.¹³⁶ Unfortunately, even the few mental observation centres which were attached to some of the general and district hospitals were also no different from the prisons 'with high barred windows and heavy doors giving access to rows of small cell-like rooms'.¹³⁷

The enactment of the Mental Disorders Ordinance 1949 cannot be understated as it is a clear demonstration of the long-lasting legacy of colonialism as it pertains to the treatment of persons with mental disabilities in Zambia. This piece of legislation remained on the Zambian statute books until 2019, when it was repealed and replaced by the Mental Health Act 2019. Thus, most of the institutions and the methods of treatment and care for persons with mental disabilities in Zambia reflect the 1949 Ordinance, which according to one commentator, 'criminalises those with mental disabilities'.¹³⁸ The enactment of mental health legislation in Zambia under colonialism marked the entry of Western influence and methods of treating mental health and persons with mental disabilities with very little regard for the African models of managing mental health. The creation of psychiatric institutions, the institutionalisation of persons with mental disabilities and the administration of questionable forms of treatment, has to this day continued to contribute to the discrimination and stigma faced by those with mental disabilities.

133 Mental Disorders Ordinance of 1949, secs 7 & 8.

134 Mental Disorders Ordinance of 1949, sec 9.

135 Mental Disorders Ordinance of 1949, sec 10.

136 Davidson (n 104).

137 Haworth (n 100) 128.

138 K Karban and others 'Scaling up mental health services in Zambia: Challenges and opportunities reported in an education project' (2013) 42 *International Journal of Mental Health* 60, 62.

The case of *Gordon Maddox Mwewa v Attorney General (Mwewa)*,¹³⁹ serves as a stark reminder of the enduring legacy that colonial legislation can have on a nation's social and legal systems. Despite Zambia's independence, the Mental Disorders Ordinance 1949 (reframed as the Mental Disorders Act after independence), continued to shape the treatment of persons with mental disabilities in the country until the enactment of the 2019 Mental Health Act. In *Mwewa*, the petitioners, persons with mental disabilities challenged the constitutionality of the Act, arguing that it violated their rights to dignity, personal liberty, and freedom from discrimination. The court agreed with some of these arguments, finding that certain provisions of the Act were discriminatory and unconstitutional. Specifically, section 5 of the Act, which used derogatory terms such as 'mentally infirm', 'idiot', 'imbecile', 'feeble-minded', and 'moral imbecile' to describe persons with mental disabilities, was declared void. However, the court did not strike down the entire Act, demonstrating the continued influence of colonial laws in the country's legal framework. This highlights how the legacy of colonialism can persist in a nation's laws and policies, even decades after independence.¹⁴⁰

4.3 Blind Persons' Ordinance 1961

An important development in 1961 was the enactment of the Blind Persons' Ordinance for the welfare of the blind in Northern Rhodesia. The Ordinance provided for the creation and establishment of the Northern Rhodesia Council for the Blind under the chairmanship of a Commissioner for Blind Welfare.¹⁴¹ The role of the Commissioner for the Blind was to advise the Minister on all matters affecting the education, training, and employment of blind persons.¹⁴² The Council's aim was to coordinate the work of existing organisations in the field of blind welfare, which also included supporting the Royal Commonwealth Society for the Blind,¹⁴³ in its campaign with mobile clinics in certain provinces of Northern Rhodesia.¹⁴⁴ This Ordinance also provided for the voluntary registration of blind persons by the Boards for the blind established by the Council for the Blind and where no Board was in place to the District Commissioner having jurisdiction in an area.¹⁴⁵ Where an application was made, the individual was required to be examined by an authorised officer who was required to certify whether or not they were satisfied that the

139 [2017] ZMHC 77.

140 FK Kalunga & CM Nkhata 'Protection of the rights of persons with mental disabilities to liberty and informed consent to treatment: A critique of *Gordon Maddox Mwewa & others v Attorney-General & another*' (2018) 6 *African Disability Rights Yearbook* 60.

141 Blind Persons Ordinance 27 of 1961, secs 3 & 4.

142 Colonial Office *Report on Northern Rhodesia for the Year 1961* (1962).

143 This society was formed in Bulawayo in 1955 with the help of the British Society for the Blind (later known as the Royal Commonwealth Society for the Blind and now Sight Savers International).

144 Colonial Office (n 142).

145 Blind Persons Ordinance of 1961, sec 10.

person examined was indeed blind.¹⁴⁶ As the name suggests, the Blind Persons Ordinance as well as the Northern Rhodesia Council for the Blind, were not all-encompassing of other impairments but restricted their reach to the blind only.¹⁴⁷ The main reason for concentrating efforts on the blind was because of the high prevalence rate of blindness among children in the northern provinces of Northern Rhodesia.¹⁴⁸

The government's predominant concentration on the welfare of the blind, did not necessarily imply that other forms of impairment were left unattended. The care for other persons with disabilities, especially those with physical impairments, was mainly the responsibility of the Ministry of Local Government and Social Welfare in collaboration with grant-aided voluntary organisations. Thus, through the Ministry's Social Welfare Division, adults with physical disabilities could obtain assistance either in the form of some subsistence or 'in deserving cases, help with vocational training and the provision of tools or equipment to enable [them] become self-sufficient'.¹⁴⁹ The Federal Government, through the Ministry of Health, also provided services for juveniles with mental disabilities (referred to at the time as 'ineducable juveniles'), whilst specialised training facilities were made available for children with mental disabilities and learning difficulties (referred to at the time as 'educable defective children') through the Ministry of Education.¹⁵⁰ The Territory also had leper schools for persons suffering from leprosy. From 1960, the leper schools were the responsibility of the Ministry of Local Government and Social Welfare having assumed responsibility from the Ministry of African Education. Other categories of physical disabilities were catered for by voluntary bodies, such as the Northern Rhodesia Society for Handicapped Children, The Northern Rhodesia Polio Fund, and the Lusaka Society for African Cripples.

From this, it is clear that the formal education system during the colonial era was both segregationist and discriminatory not only on the grounds of race but on the grounds of impairment as well. Speaking on the South African school system during the apartheid-era Ndlovu, however, argues that whilst it is easier for us to focus on the negatives of these segregated special schools for persons with impairments, it is also

146 Blind Persons Ordinance of 1961, sec 10(3). Note that 'authorised officer meant, the commissioner, a juveniles inspector, a District Officer, a registered medical practitioner, an inspector of schools and any other person duly authorised by the Minister' in Blind Persons Ordinance of 1961, sec 2.

147 Ministry of Community Development, Mother and Child Health *National Policy on Disability: Empowering Persons with Disabilities* (2013).

148 Colonial Office *Report on Northern Rhodesia for the Year 1961* (1962); J Wilson 'Blindness in the Northern Provinces of N. Rhodesia' (1962) *The Central African Journal of Medicine* 105.

149 Colonial Office (n 142).

150 As above.

important to address some of the positive elements as well.¹⁵¹ Thus, although the system could be viewed as segregationist, it can also be viewed as a system that recognised the humanness of learners with impairments.¹⁵² In effect, these special segregated schools were designed and built in such a way that they could be accessible for those with impairment. They also had trained teachers and specialised equipment to cater for the unique needs of those with impairments.¹⁵³ Nonetheless, as already mentioned earlier, it cannot be overlooked that because segregation was an entrenched system in the entire socio-economic fabric of Northern Rhodesia, the best schools with the best equipment and the best teachers were largely located and designated in white settler neighbours. Facilities for the native black Africans were usually given secondary priority, whose welfare was often left to the benevolence of the various missionary societies scattered around the country.

4.4 Progressive developments and reforms in disability advocacy, 1930s-1960s

The late 1930s also experienced the advent of World War Two (WWII). Meshack points out that ‘after the Second World War broke out, it quickly spread into the African continent and the British and French immediately started mobilising their African Troops and preparing for war’.¹⁵⁴ Further, Geurts notes that:

WWII was a pivotal moment for disability theories because there was an emergence of the ideology of equal chances ... however, this ideology was not extended to the African Population because Africa was still perceived as a disease-ridden place where impairment was considered natural.¹⁵⁵

Despite the above perception, there was a progression in the education, and to an extent the care of persons with disabilities. To start with, after the death of Issie Hofmeyr, a missionary’s wife who founded the first school of the blind, Ella Botes started a class for visually impaired students in 1914 consisting of 12 students at Madzimoyo in the Eastern Province. In 1940, Ella Botes later opened a school solely for blind boys with the help of the young men trained at Magwero.¹⁵⁶ In 1952 schools and centres for the blind such as Kangonga and Kambowa rehabilitation centres in Ndola were established. These centres not only provided sheltered employment but training in various skills. For instance, the Kangonga rehabilitation

151 S Ndlovu ‘Humanness and ableism: Construction and deconstruction of disability’ in M Steyn & W Mpfu (eds) *Decolonising the human: Reflections from Africa on difference and oppression* (2021).

152 As above.

153 As above.

154 M Owino ‘Africa and the Second World War’ in Shanguhya & Falola (eds) (n 15) 357.

155 KL Geurts ‘Disability and cultural meaning making in Africa’ in T Falola & N Hamel (eds) *Disability in Africa: Inclusion, care, and the ethics of humanity* (2021) 138-139.

156 PD Snelson *Educational development in Northern Rhodesia 1883-1945* (1990) 80.

centre taught the making of baskets, cane furniture and brooms while the centre in Kambowa mainly focused on agriculture. By 1963, a total of 27 pupils who were visually impaired had passed standard VII from the school in Magwero. These pupils were subsequently trained as teachers, telephone operators and evangelists.

5 Conclusion

The era before independence in Zambia saw the development of social and cultural belief systems that led to the marginalisation, exclusion and oppression of persons with disabilities. Well before the term 'disability' came into common usage, there existed a general understanding in society that those with impairments were unfortunate and that their conditions precluded them from participating in community life. This understanding of disability centred around four groups: the indigenous Africans of pre-colonial times; Christian missionaries; the British South Africa Company (BSAC); and the Colonial Office. Among indigenous African societies, disability was regarded as a bad omen or sign of wrongdoing. The missionaries, meanwhile, viewed disability as a personal tragedy requiring medical assistance or spiritual healing through the church. On the other hand, the BSAC regarded those with disabilities as weak and unable to meet productivity demands. Similarly, when the Colonial Office took over, they enacted ordinances that led to the detention of those with mental health conditions, effectively contributing to the discrimination against and segregation of persons with mental disabilities.

CHAPTER 6

ENGENDERING FINANCIAL INCLUSION FOR PERSONS WITH DISABILITIES IN NIGERIA

Anwuli Irene Ofuani-Sokolo & Ogochukwu Monye***

Summary

The Central Bank of Nigeria introduced the National Financial Inclusion Strategy in 2012 to tackle financial exclusion and push back on the barriers that debar financial access in Nigeria. Subsequently, women, youth, rural dwellers, and persons in the North-East and North-West of Nigeria, who represent the most excluded societal segments, have been the focus of financial inclusion laws, policies, and initiatives. One group of persons, however, that seems to be overlooked and not adequately catered for by financial inclusion laws, policies and interventions are persons with disabilities. This article examines the challenges of accessing and using financial services for persons with disabilities as well as the regulatory framework for financial inclusion in Nigeria. The article further elucidates the criticality of financial services for persons with disabilities whilst highlighting the negative impacts of lack of access to finance. It finds that persons with disabilities are confronted with multidimensional difficulties due to the inadequacy of laws to advance financial access to them. Seven recommendations are proffered by the authors. These are to: strengthen relevant laws and institutions; tailor financial services to the needs of persons with disabilities; prioritise accessibility as a minimum benchmark for financial services; improve staff training for financial service providers; foster stakeholder collaboration; promote enforcement and implementation of laws; and adopt monitoring and evaluation mechanisms. It is expected that these recommendations will demonstrate the gap in the legal framework on financial access for persons with disabilities and the attendant need for ameliorating policy initiatives.

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1 Introduction

The World Health Organisation (WHO) reports that about 1.3 billion people, representing 16 per cent of the global population, have a significant disability.¹ Thus, disability is part of the human experience and diversity.² The Convention on the Rights of Persons with Disabilities (CRPD) conceptualises disability as ‘an evolving concept’ resulting from the interaction between persons with impairments and the attitudinal and environmental barriers hindering their full and effective participation in society on the same basis as others.³ It results from the interaction between impairments and an array of contextual factors including societal attitudes, environmental barriers, social inequalities and inequitable laws and policies.⁴ Accordingly, the CRPD describes persons with disabilities as:

[T]hose who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.⁵

There are about 29 million Nigerians with disabilities, including those with visual, hearing, physical, intellectual, and communication impairments.⁶ Many are faced with social, cultural, political, and economic barriers to their inclusion in society.⁷ They are more likely to be excluded from formal education, healthcare, and employment and suffer discrimination, disempowerment, stigmatisation, and poverty.⁸ There are few financial inclusion initiatives addressing the needs of persons with disabilities.⁹

1 World Health Organisation (WHO) *Global report on health equity for persons with disabilities* (2022) 2.

2 WHO (n 1) 2.

3 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007), Preamble (e).

4 WHO (n 1) 2; K Imandojemu and others ‘Financial inclusion and people living with disabilities in Nigeria: A disaggregated analysis’ (2018) 42 *CBN Bullion* 60, 65.

5 CRPD (n 3) art 1.

6 K Shettima & E Sines ‘Make way for the disability rights agenda in Nigeria’ MacArthur Foundation (18 January 2023) <https://www.macfound.org/press/perspectives/make-way-for-the-disability-rights-agenda-in-nigeria> (accessed 10 February 2024).

7 RM Martinez & V Vemuru ‘Social inclusion of persons with disabilities in Nigeria: Challenges and opportunities’ (29 September 2020) <https://blogs.worldbank.org/en/nasikiliza/social-inclusion-persons-disabilities-nigeria-challenges-and-opportunities> (accessed 7 March 2024); V Vemuru and others ‘Disability inclusion in Nigeria: A rapid assessment’ (2020) 1 <https://documents1.worldbank.org/curated/en/780571593336878236/pdf/Disability-Inclusion-in-Nigeria-A-Rapid-Assessment.pdf> (accessed 10 February 2024); B Bailey ‘How technology can accelerate financial inclusion for disabled people’ *Business Day* 13 July 2022 <https://businessday.ng/financial-inclusion/article/how-technology-can-accelerate-financial-inclusion-for-disabled-people/> (accessed 10 February 2024); O Victor-Laniyan ‘Towards economic and social inclusion of persons with disabilities’ *Financial Nigeria* 20 June 2022 <https://www.financialnigeria.com/towards-economic-and-social-inclusion-of-persons-with-disabilities-sustainable-1551.html> (accessed 10 February 2024).

8 Victor-Laniyan (n 7); Vemuru and others (n 7).

9 Imandojemu and others (n 4) 61.

Most of the laws and policies regulating financial inclusion in Nigeria are also not attuned to the needs of persons with disabilities.

Financial services and products are often inaccessible to persons with disabilities and financial service providers (FSPs) generally fail to provide information in accessible formats to persons with disabilities. FSPs also fail to provide support personnel and assistive devices for accessing such services and products.¹⁰ The buildings and facilities of FSPs such as banking halls, doors, counters, and automated teller machines (ATMs) are also usually inaccessible to persons with disabilities, on account of unsuitable architectural designs.¹¹ Also, negative attitudes of staff of FSPs and limited access to digital financial service solutions such as e-banking and mobile banking, contribute to their exclusion and financial disenfranchisement.¹²

The lack of attention to persons with disabilities by FSPs overlooks the opportunity to promote diversity, equity, and inclusion. Notably, FSPs that practice inclusion as a minimum benchmark achieve universality of services, customer loyalty and reputational gains, and strengthen risk management and mitigation strategies.¹³ This is because persons with disabilities, being the world's largest unbanked minority, present a substantial unexploited market for financial products and services, offering a key opportunity for FSPs.¹⁴ FSPs that are disability-inclusive could improve their profit margins by also attracting customers and investments from friends and families of persons with disabilities.¹⁵ FSPs must therefore prioritise addressing the accessibility needs of persons with disabilities while ensuring that their policies and practices align with legal frameworks that promote inclusion and prohibit discrimination.

This article examines what financial inclusion entails for persons with disabilities and how it can be achieved in the Nigerian context. The paper

- 10 O Tade 'Solving financial exclusion of people living with disabilities' *Vanguard* 28 April 2021 <https://www.vanguardngr.com/2021/04/solving-financial-exclusion-of-people-living-with-disabilities/> (accessed 22 February 2024); K Adebajo 'How banks in Nigeria, Ghana deny people with disabilities services' *Premium Times* 23 April 2022 <https://www.premiumtimesng.com/news/headlines/525180-how-banks-in-nigeria-ghana-deny-people-with-disabilities-services.html?tztc=1> (accessed 22 February 2024).
- 11 Adebajo (n 10).
- 12 Infibranches Technologies 'Advancing financial inclusion for people with disabilities in Nigeria' (8 December 2023) https://www.linkedin.com/pulse/advancing-financial-inclusion-people-disabilities-nigeria-rfy2f/?trk=public_post_main-feed-card_feed-article-content (accessed 12 March 2024).
- 13 International Finance Corporation 'Inclusive banking: Emerging practices to advance the economic inclusion of persons with disabilities' (2022) 10 <https://www.ifc.org/content/dam/ifc/doc/mgrt/202203-inclusive-banking-for-persons-with-disabilities.pdf> (accessed 12 March 2024).
- 14 Centre for Financial Inclusion 'Panel discussion: Key to the future, financial inclusion and opportunity for all' (3 December 2013) at the s?2723br?board room, Secretariat Building United Nations Headquarters, New York <https://www.un.org/disabilities/documents/idpd/idpd2013financialinclusionpanel.pdf> (accessed 20 September 2024).
- 15 International Finance Corporation (n 13) 10.

is divided into five sections. This section introduces the article. The second section explains the concept of financial inclusion. The third section assesses the legal and regulatory framework guaranteeing persons with disabilities access to financial services and the extent of compliance by Nigerian FSPs and examines the CRPD, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol),¹⁶ the Discrimination against Persons with Disabilities (Prohibition) Act (Discrimination Prohibition Act) of 2018¹⁷ and five Central Bank of Nigeria (CBN) policies. The fourth section examines proffers recommendations to address the challenges while the fifth section concludes the article.

2 Financial inclusion and persons with disabilities in Nigeria

Financial inclusion is simply access to quality and varied financial services at an affordable cost to users, including low-income and underserved groups.¹⁸ It grants women including women with disabilities, better control over their finances resulting in improved educational opportunities, better health outcomes, and increased decision-making power within households.¹⁹ It also aids better financial management and increases economic opportunities that contribute to their households, businesses, and society.²⁰ Financial inclusion encourages innovation in the financial sector by influencing the development of new technologies that meet the needs of underserved populations such as persons with disabilities, and promoting digital inclusion through access to digital financial services.²¹

16 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf (accessed 18 October 2024).

17 Discrimination against Persons with Disabilities (Prohibition) Act of 2018 <https://ncpwd.gov.ng/pdfs/6document.pdf> (accessed 18 October 2024).

18 Corporate Finance Institute (CFI) 'Financial inclusion' <https://corporatefinanceinstitute.com/resources/economics/financial-inclusion/> (accessed 12 March 2024); Credolab '2023 Expert guide: The importance of financial inclusion strategies and policies' (29 June 2023) <https://www.linkedin.com/pulse/2023-expert-guide-importance-financial-inclusion-strategies-policies/> (accessed 12 March 2024); Central Bank of Nigeria (CBN) 'Frequently asked questions (FAQs)' 3 https://www.cbn.gov.ng/Devfin/CPD_FAQs.pdf (accessed 14 March 2024); Financial Action Task Force (FATF) 'FATF guidance: Anti-money laundering and terrorist financing measures and financial inclusion' (2013) 38 <http://www.fatf-gafi.org/media/fatf/content/images/Updated-2017-FATF-2013-Guidance.pdf> (accessed 14 March 2024); M Grant 'Financial inclusion: Definition, examples, and why it's important' <https://www.investopedia.com/terms/f/financial-inclusion.asp> (accessed 14 March 2024).

19 Grant (n 18).

20 Consultative Group to Assist the Poor (CGAP) 'What is financial inclusion' <https://www.cgap.org/financial-inclusion> (accessed 14 March 2024).

21 Grant (n 18).

Furthermore, financial inclusion is crucial for improving access to social protection programmes, such as unemployment benefits and conditional cash transfers, for marginalised groups, including persons with disabilities.²² By utilising FSPs to deliver cash transfers and voucher assistance through mobile money platforms and digital payment systems, the distribution of social benefits can be enhanced, reducing barriers to participation in government-driven social protection initiatives.²³ However, lack of inclusive financial services can place persons with disabilities at a disadvantage, further excluding them from such programmes despite the fact that they are part of the intended beneficiaries.²⁴ Additionally, the effectiveness of cash transfers and electronic/mobile payments may be hindered by factors such as limited mobile phone ownership, poor network coverage, unreliable electricity, and inadequate financial literacy.²⁵

Disability often intersects with multiple vulnerabilities such as gender, poverty, geography, type of disability, age, and mental health conditions, compounding challenges in accessing financial services. For example, a rural-dwelling woman with a disability, low education levels, and material deprivation may experience significant difficulties. Similarly, older adults living in rural areas with mobility, visual, or cognitive impairments face added obstacles. These layered vulnerabilities create complex barriers to financial inclusion, highlighting the need for targeted policies and adaptive financial products that consider the unique challenges faced by these populations.

Financial inclusion in Nigeria exhibits notable regional disparities, with the South, particularly the South-West, achieving higher inclusion rates than the North, especially the North-East due to low levels of education and financial literacy, and some religious tenets.²⁶ It could therefore be inferred that persons with disabilities in the north may be more financially excluded than those in the South.

22 S Kidd 'The perils of linking social protection to financial inclusion' Development Pathways (21 August 2020) <https://www.developmentpathways.co.uk/blog/the-perils-of-linking-social-protection-to-financial-inclusion/> (accessed 22 September 2024); H Ullmann and others *Non-contributory cash transfers: An instrument to promote the rights and well-being of children with disabilities in Latin America and the Caribbean* (2021) 19-20; M Rutkowski and others 'Responding to crisis with digital payments for social protection: Short-term measures with long-term benefits' *World Bank blogs* 31 March 2020 <https://blogs.worldbank.org/en/voices/responding-crisis-digital-payments-social-protection-short-term-measures-long-term-benefits> (accessed 23 September 2024); United Nations Department of Economic and Social Affairs *Promoting inclusion through social protection – Report on the World Social Situation* (2018) 63-76.

23 G Iazzolino 'Digitising social protection payments: Progress and prospects for financial inclusion' (2018) 57 *Bath Papers in International Development and Wellbeing* 6-13.

24 Kidd (n 22).

25 Kidd (n 22); Enhancing Financial Innovation and Access (EFInA) and others 'Opportunities and barriers to digitising social protection and humanitarian payments in Nigeria' (2022) <https://www.fsdafrica.org/wp-content/uploads/2022/02/Nigeria-Digitisation-of-Cash-Transfers-MAIN-REPORT.pdf> (accessed 21 September 2024).

26 EFInA (n 25) 18.

Gender further complicates financial inclusion patterns, as men are more financially included than women, with 79 per cent of men and 70 per cent of women having access to financial services according to Enhancing Financial Innovation and Access (EFInA)'s 2023 report.²⁷ The gender gap in access to finance is more pronounced in rural areas, where 54 per cent of men own formal accounts, compared to only 24 per cent of women.²⁸

The absence of specific data on financial inclusion for persons with disabilities requires us to infer that women with disabilities are more likely to face compounded challenges, experiencing discrimination both as women and as persons with disabilities.

Cultural norms and patriarchal structures in Nigeria such as the belief that women's role is primarily that of caregiving, also limit women's mobility and decision-making power, leading many to defer to their partners without exercising financial autonomy.²⁹ Some women may be excluded from formal financial services due to their inability to provide collateral, such as property title, registered under male relatives' names.³⁰ Religious norms also limit the financial inclusion of women. In the North, the charging of interest known as 'riba',³¹ on conventional banking products like loans, are considered unjust and exploitative, and therefore discouraged.³²

Another significant intersection in financial inclusion involves the type of disability, specifically physical and intellectual disabilities, which presents distinct challenges for persons with disabilities. For persons with physical impairments, accessing banking infrastructure such as ATMs or buildings without ramps or elevators, can be highly restrictive.³³ Those

27 EFInA (n 25) 17.

28 Alliance for Financial Inclusion (AFI) 'Increasing women's financial inclusion and closing the women's SME credit gap in Nigeria through enabling financial policy and regulation' (2022) 4 <https://www.afi-global.org/wp-content/uploads/2023/03/Increasing-Womens-Financial-Inclusion-and-Closing-the-Womens-SME-Credit-Gap-In-Nigeria-Through-Enabling-Financial-Policy-Regulation-1.pdf> (accessed 21 September 2024).

29 Rockefeller Philanthropy Advisors 'Understanding women's access to credit and loans overview and gender-disaggregated data analysis of the Nigerian lending market' (2022) 72 https://poverty-action.org/sites/default/files/publications/Deep-Dive-Report-on-Womens-Access-to-and-Use-of-Credit-in-Nigeria_Gender-Centre-of-Excellence-RPA.pdf (accessed 29 September 2024).

30 Rockefeller Philanthropy Advisors (n 29). See also Women Entrepreneurs Finance Initiative 'Solving the access to finance challenge for Nigerian women entrepreneurs' (2023) <https://we-fi.org/finance-access-gap-in-nigeria/> (accessed 29 September 2024).

31 Riba means 'charging interest, usury, or high-interest rates' which is proscribed in Islam because it is considered unfair, exploitative, and detrimental to society. See F Akinnibi 'Riba in Islam: Unpacking riba in the context of investing' <https://cowrywise.com/blog/riba-in-investing/> (accessed 2 October 2024).

32 Akinnibi (n 31); A Demirguc-Kunt and others 'Islamic finance and financial inclusion-measuring use of and demand for formal financial services among Muslim adults' (2013) *World Bank Policy Research Working Paper* WPS 6642 2 <https://documents1.worldbank.org/curated/en/611351468337493348/pdf/WPS6642.pdf> (accessed 2 October 2024).

33 Adebajo (n 10).

with intellectual or cognitive disabilities may face barriers in accessing FSPs as they may be perceived as incapable of fulfilling financial obligations.

An intersectional approach is therefore crucial for understanding the structures of inequality and exclusion experienced by persons with disabilities.³⁴ Addressing social, political, and economic inequalities requires a holistic approach. Intersectionality highlights the unique obstacles faced by persons with disabilities with regards to accessible and inclusive financial services while offering strategies to tackle these complexities.³⁵ It underscores the importance of policymakers addressing the financial access barriers faced by persons with disabilities. Empowering schemes that enhance their financial participation and independence are essential. For women with disabilities, gender-disaggregated data, gender-blind application processes, and alternative credit-scoring methods can help eliminate bias.³⁶ Gender-sensitive product design, such as flexible payment schedules, longer-term loans, and capacity building, will further support this demographic.³⁷

There are few financial schemes that cater to the needs of persons with disabilities in Nigeria. Persons with disabilities often lack access to the financial services provided by FSPs such as payment services, loans, pensions, insurance, and investment portfolios.³⁸ Clients with disabilities, particularly visually impaired clients, often depend on third parties such as family, friends, caregivers and escorts for access to financial services at the risk of disclosure of their personal information such as their personal identification numbers.³⁹ A key consequence of this disclosure is increased susceptibility to fraudulent practices, financial exploitation and abuse perpetrated by such parties whom persons with disabilities rely on and trust to assist them navigate the non-inclusive elements of financial services provision.⁴⁰ Some clients with disabilities also have to arrange for third parties to go with them to banks to aid them in filling out documents, sometimes at extra cost, due to unavailability of documents in braille, sign language interpretation, audio-visual aids, voice guides, and disability-friendly apps.⁴¹

34 S El Gharib 'What is intersectionality and why is it important?' <https://www.globalcitizen.org/en/content/what-is-intersectionality-explained/> (accessed 29 September 2024); M Wickenden 'Disability and other identities? – How do they intersect?' (2023) 4 *Frontiers in Rehabilitation Sciences* 2 <https://doi.org/10.3389/fresc.2023.1200386> (accessed 2 October 2024). See also K Crenshaw 'Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics' (1989) 1 *University of Chicago Legal Forum* 139.

35 See Crenshaw (n 34) 139-167; El Gharib (n 34).

36 Rockefeller Philanthropy Advisors (n 29).

37 Women Entrepreneurs Finance Initiative (n 29).

38 Imandojemu and others (n 4) 61.

39 Tade (n 10).

40 L Puli and others 'Financial inclusion for people with disability: A scoping review' (2024) 17 *Global Health Action* 7 doi: 10.1080/16549716.2024.2342634 (accessed 2 October 2024).

The structures and facilities of FSPs such as banking halls, doors, counters, ramps and automated teller machines (ATMs) are usually inaccessible occasionally resulting in persons with disabilities being attended to outside banking halls and exposed to the elements.⁴² Some security measures, such as metal detectors installed in the doors of banks in Nigeria, restrict access for persons with physical impairments, including wheelchair users. Findings from a study involving 70 banks in Lagos State showed that less than 50 per cent of the banks have ramps for persons with wheelchairs and about 57.1 per cent of the banks do not have accessible doors for persons on wheelchairs.⁴³ The study also revealed that only 29 per cent of security officials working in banks with facilities for persons with disabilities are aware they have ramps.⁴⁴ Persons with visual impairment have also acknowledged their decisions not to own ATM cards of their own volition or on the advice of bank staff. This is because ATM galleries are not disability-friendly and the likelihood of their dependence on others to perform transactions could result in fraud or data compromise.⁴⁵ Poor treatment by staff of FSPs and limited access to digital financial service solutions such as phone-based banking, e-banking and mobile banking, also contribute to their exclusion and financial disenfranchisement.⁴⁶

The exclusion of persons with disabilities by FSPs disregards the potential benefits of fostering customer loyalty and enhancing reputational standing.⁴⁷ Essentially, this could improve FSPs profit margins, attract investments for FSPs, and expand their customer base (including persons with disabilities, their families and friends).⁴⁸ Besides, the failure of FSPs to attend to accessibility needs of persons with disabilities disregards the provisions of laws and policies that prohibit discrimination. There is therefore need for adequate legal and policy frameworks to facilitate financial inclusion for persons with disabilities.

41 Adebajo (n 10).

42 Tade (n 10), Adebajo (n 10).

43 B Jamiu 'Reporter's diary: Inside Lagos banks where people with disabilities are neglected' *Foundation for Investigative Journalism* 8 August 2022 <https://fij.ng/article/reporters-diary-inside-lagos-banks-where-people-with-disabilities-are-neglected/> (accessed 27 March 2024). See also V Ogunlade 'Self-advocacy: A study of access to banking halls and services by persons with disabilities in Southwest Nigeria' (2015) 14 *Journal of Culture, Society and Development* 1, 6. 'Challenges of visually impaired in using banking apps' *Radio Nigeria* 22 October 2023; LS Rawen & KS Yise 'Influence of bank access on persons with disabilities in Plateau North, Nigeria' (2022) 2 *AAU Journal of Business Educators* 72, 77-78.

44 Jamiu (n 43).

45 Adebajo (n 10); Tade (n 10).

46 Puli et al (n 47) 6; Infibranches Technologies (n 12).

47 International Finance Corporation (n 13) 10.

48 As above.

3 Legal and policy framework for financial inclusion for persons with disabilities in Nigeria

This section examines the provisions of the CRPD, African Disability Protocol, the Discrimination Prohibition Act and the CBN policies pertaining to financial inclusion.

3.1 Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD,⁴⁹ to which Nigeria is a party,⁵⁰ contains several provisions pertinent to financial inclusion for persons with disabilities. They include articles 12(5), 3, 9, 21 and 5, as well as Preambles (v) and (o).

Article 12(5) on the legal capacity to control one's financial affairs provides that appropriate and effective measures be taken to guarantee that persons with disabilities manage their financial affairs and have equal access to bank loans, mortgages, and other forms of financial credit. According to the Committee on the Rights of Persons with Disabilities (CRPD Committee), this requires states to adopt legislative, administrative, judicial and other practical measures, to safeguard their rights with respect to their financial dealings, on the same basis as others.⁵¹ Thus, legal frameworks that deny legal capacity to persons with disabilities regarding their financial affairs must be replaced with those that ensure support in the exercise of legal capacity.⁵² This is pertinent because as the CRPD Committee points out, the right to legal capacity cannot be enjoyed by persons with disabilities if they are prevented from making financial decisions, on an equal basis with others.⁵³ As such, disability may not be used to justify discrimination in finance matters.⁵⁴

Despite article 12(5), persons with disabilities in Nigeria have traditionally been excluded from accessing financial services because of exclusionary practices and policies.⁵⁵ Article 12(5) is therefore germane to their involvement and empowerment in matters pertaining to access to finance and to services offered by FSPs. Unfortunately, there is no

49 CRPD (n 3).

50 Nigeria signed the CRPD on 30 March 2007 and ratified it on 24 September 2010. See Status of the CRPD <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=IV-15&chapter=4&clang=en> (accessed 22 March 2024).

51 Committee on the Rights of Persons with Disabilities, General Comment 1 (2014): Article 12: Equal recognition before the law, 19 May 2014, UN Doc CRPD/C/GC/1 (2014) para 23.

52 As above.

53 P Oyugi 'The implementation of article 12 of the Convention on the Rights of People [Persons] with Disabilities in Kenya' (2021) 3 *Kabarak Journal of Law and Ethics* 21, 27.

54 As above.

55 Imandojemu and others (n 4) 61; Adebajo (n 10).

provision in this regard in the Nigerian Discrimination Prohibition Act and the CBN policies do not contain adequate provisions to enable persons with disabilities to exercise legal capacity to control their financial affairs.

Article 3(c) on the principle of full and effective participation and inclusion in society is a core principle whose achievement underscores the enjoyment of the rights in the CRPD.⁵⁶ Inclusion requires respect for persons with disabilities and their right to have meaningful relationships, and engagement in society.⁵⁷ It provides an avenue for countering systemic and structural barriers to full participation in society.⁵⁸ According to Jones, there are three facets to inclusion:

a non-discriminatory attitude towards people with disabilities; the guarantee of access to participation in every area of life; and the facilitation of people with disabilities to limit the impact of disability.⁵⁹

Inclusion therefore requires dynamic policymaking, proactive thinking, and unending commitment.⁶⁰

Preamble (o) to the CRPD affirms the principle of participation and inclusion to the effect that 'persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them'.⁶¹ Similarly, the CRPD requires States Parties to eliminate all barriers that could hinder the full and effective participation of persons with disabilities in society on an equal basis with others.⁶²

Additionally, the provisions of the CRPD on accessibility, as a value in the Preamble⁶³ and as both a principle⁶⁴ and a substantive right, are pertinent to the financial inclusion of persons with disabilities.⁶⁵ Article 9 provides for measures to be taken to ensure accessibility to the physical environment, transportation, information and communications, including information and communications technologies and systems, and to other amenities and services afforded to the public in urban and rural areas.⁶⁶ The measures recommended comprise the identification and removal of obstacles and barriers to accessibility and are applicable to a wide range of areas. They include buildings, roads, transportation, and other indoor and

56 VD Fina 'Article 3 [general principles]' in VD Fina and others (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (2017) 119, 126.

57 M Jones 'Inclusion, social inclusion and participation' in MH Rioux and others (eds) *Critical perspectives on human rights and disability law* 57.

58 Jones (n 57) 57.

59 Jones (n 57) 58.

60 Jones (n 57) 57.

61 CRPD (n 3) Preamble (o).

62 CRPD (n 3) art 1.

63 CRPD (n 3) Preamble (v).

64 CRPD (n 3) art 3(f).

65 CRPD (n 3) art 9.

66 CRPD (n 3) art 9(1).

outdoor facilities, including schools, housing, medical facilities and workplaces, information, communications and other services, including electronic services and emergency services.⁶⁷

Article 9 also requires appropriate measures to be taken to ensure access to public facilities and services, information, public signage in easy to read and understandable formats, and new information and communications technologies and systems, including the internet.⁶⁸ Stakeholders should be trained on accessibility issues facing persons with disabilities⁶⁹ and support personnel including guides, readers and specialised sign language interpreters, should be provided to enable access to public buildings and facilities.⁷⁰ In line with this, the CRPD Committee in *Lockrey v Australia* stated that in denying the claimant steno-captioning to perform jury duty, Australia had violated the accessibility standards in article 9 along with his rights to freedom of expression and opinion, non-discrimination and reasonable accommodation.⁷¹ Similarly, in *Vela v Mexico*, the Committee noted that:

States Parties must take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to information and must promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information.⁷²

Accessibility is therefore a prerequisite for persons with disabilities to participate fully and equally in society and enjoy their human rights unhindered.⁷³

Article 21 provides for relevant measures to be taken to enable persons with disabilities to exercise rights including the freedom to seek, receive and impart information and ideas on an equal basis with others. It further provides that this right could be realised by public and private entities providing information in accessible formats, in a timely manner, and without additional cost as well through accessible modes of communication.⁷⁴

67 As above.

68 CRPD (n 3) art 9(2)(a), (b), (d), (f), (g) & (h).

69 CRPD (n 3) art 9(2)(c).

70 CRPD (n 3) art 9(2)(e).

71 *Lockrey v Australia* Communication 013/2013, CRPD Committee 08 Apr 2013), CRPD/C/15/D/13/2013 (2016), para 8.6.

72 *Vela v Mexico* Communication 32/2015, CRPD Committee (19 August 2015), CRPD/C/22/D/32/2015 (2015), para 10.5.

73 Committee on the Rights of Persons with Disabilities, General Comment 2 (2014): Article 9: Accessibility, 22 May 2014, UN Doc CRPD/C/GC/2 (2014) paras 1 & 15.

74 CRPD (n 3) art 21. The modes of communication prescribed in art 2 of the Convention: languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

The provisions on equality and non-discrimination in the CRPD are also vital to the financial inclusion of persons with disabilities. Equality and non-discrimination are both principles and substantive rights in the CRPD. The CRPD recognises that discrimination on the basis of disability violates the inherent dignity and worth of the human person,⁷⁵ while ‘non-discrimination’, ‘equality of opportunity’ and ‘equality between men and women’ are general principles of the CRPD.⁷⁶

Article 5(1) of the CRPD provides that every person is equal before and under the law and entitled to equal protection and benefits of the law without discrimination. The CRPD Committee opines that equality under the law is ‘unique to the Convention’ and ‘refers to the possibility to engage in legal relationships’.⁷⁷ On the other hand, equality before the law is equivalent to the right to equal protection by the law which guarantees substantive equality referring to the ‘right to use the law for personal benefit’ and an acknowledgement that no laws should deny, restrict or limit the rights of persons with disabilities.⁷⁸ Article 5(2) obligates States Parties to prohibit discrimination on the basis of disability and guarantees legal protection against all forms of discrimination against persons with disabilities. Discrimination on the basis of disability is defined as:

Any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms.⁷⁹

Consequently, article 5(2) explicitly prohibits discrimination such that when persons with disabilities are subjected to any distinction, exclusion, or restriction because of their disability, it amounts to discrimination on the basis of disability. Accordingly, States Parties are required to promote equality and eliminate discrimination by taking all appropriate steps to ensure that reasonable accommodation is provided.⁸⁰ The CRPD defines reasonable accommodation as:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁸¹

75 CRPD (n 3) Preamble (h).

76 CRPD (n 3) art 3(b), (e) & (g).

77 Committee on the Rights of Persons with Disabilities, General Comment 6 (2018) on equality and non-discrimination, 26 April 2018, UN Doc CRPD/C/GC/6 (2018) para 15.

78 General Comment 6 (n 77) para 15.

79 CRPD (n 3) art 2.

80 CRPD (n 3) art 5(3).

81 CRPD (n 3) art 2.

Examples of reasonable accommodations in the financial context include making existing FSP facilities structures, products, services and information accessible to persons with disabilities; modifying equipment; or enabling access to support personnel.⁸² The provision of reasonable accommodation is essential to the realisation of the right to non-discrimination.⁸³ It requires a wide range of private and public actors, including States Parties, to appropriately modify policies and programmes that exclude persons with disabilities.⁸⁴ It is noteworthy that reasonable accommodation differs from accessibility as the duty to provide accessibility is 'broad and standardised' while reasonable accommodation is individualised and could fall beyond the 'scope of accessibility standards'.⁸⁵

Despite these provisions, persons with disabilities are excluded from accessing financial services in Nigeria on an equal basis with others which amounts to discrimination. The laws and policies relating to financial inclusion often fail to ensure that required and suitable adjustments are provided for them and that policies, structures, facilities, and services are inclusive to them without any distinction and on an equal basis with others.

3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol), to which Nigeria is a party,⁸⁶ was adopted in January 2018 and entered into force on 5 June 2024.⁸⁷ The primary purpose of the Protocol is to promote, protect, and guarantee the full and equal enjoyment of all human and people's rights by persons with disabilities in Africa and ensure respect

82 General Comment 6 (n 77) para 23.

83 General Comment 6 (n 77) para 23; United Nations Human Rights Council 'Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights' UN Doc A/HRC/34/26 (2016) para 31 <https://digitallibrary.un.org/record/859577?ln=en> (accessed 27 March 2022).

84 JE Lord & R Brown 'The role of reasonable accommodation in securing substantive equality for persons with disabilities: The UN Convention on the Rights of Persons with Disabilities' in MH Rioux and others (eds) *Critical perspectives on human rights and disability law* (2011) 273, 278-279.

85 General Comment 2 (n 73) paras 25 & 26.

86 Nigeria ratified the African Disability Protocol on 22 January 2024.

87 African Commission on Human and Peoples' Rights 'Press release on the entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (9 June 2024) <https://achpr.au.int/en/news/press-releases/2024-06-09/entry-force-protocol-persons-disabilities> (accessed 22 September 2024); African Disability Forum 'Press release: Ratifications of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (26 June 2024) <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/> (accessed 22 September 2024).

for their inherent dignity.⁸⁸ It augments the CRPD by addressing the rights of persons with disabilities from an African perspective, incorporating their lived experiences in keeping with the CRPD's core principles.⁸⁹

The African Disability Protocol contains several provisions pertinent to the financial inclusion of persons with disabilities which are similar to the CRPD. They include the right to control one's financial affairs,⁹⁰ the principle of full and effective participation and inclusion⁹¹ and the right to accessibility.⁹² However, the accessibility provisions in the Protocol are less comprehensive compared to the CRPD. Notably, the Protocol omits several key points that the CRPD addresses. For instance, it fails to require private entities that offer public services and facilities to consider the accessibility needs of persons with disabilities.⁹³ It also fails to obligate States to provide training on accessibility issues affecting persons with disabilities and to promote access to new information and communication technologies, including the internet, for persons with disabilities.⁹⁴

The Protocol also aligns with the CRPD on the right to access information⁹⁵ but fails to require internet providers, including private entities, to make services accessible to persons with disabilities.⁹⁶ This omission is critical, as many financial products from FSPs rely on internet access, potentially excluding persons with disabilities from essential financial services.

Like the CRPD, the African Disability Protocol prohibits discrimination against persons with disabilities.⁹⁷ The Protocol's definition of disability⁹⁸ and its provisions on reasonable accommodation are similar to that of the CRPD.⁹⁹ The Protocol defines 'reasonable accommodation' as

necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and people's rights.¹⁰⁰

88 African Disability Forum (n 87).

89 As above.

90 African Disability protocol (n 16) art 7(h).

91 African Disability protocol (n 16) Preamble and art 3(c).

92 African Disability protocol (n 16) art 15.

93 Kenya National Commission on Human Rights (KNCHR) 'Advisory to the Ministry of Labour, Social Security and Services on Kenya's ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2020) 19 <https://www.knchr.org/Portals/0/InternationalObligationsReports/Disability/Advisory%20on%20the%20African%20Disability%20Protocol.pdf?ver=2020-01-20-081705-857> (accessed 22 September 2024).

94 KNCHR (n 93) 19.

95 See African Disability Protocol (n 16) art 24.

96 KNCHR (n 93) 17.

97 African Disability Protocol (n 16) art 5.

98 African Disability Protocol (n 16) art 1.

99 African Disability Protocol (n 16) arts 1 & 3(g).

100 African Disability Protocol (n 16) art 1.

However, in contrast to the CRPD, the Protocol does not incorporate the threshold of ‘disproportionate or undue burden’ in its definition of reasonable accommodation.¹⁰¹ This omission is significant because it avoids ambiguity and subjectivity in determining accommodations, reducing the risk of inconsistent application. Without the threshold, FSPs cannot easily justify failing to provide necessary accommodations, thereby promoting greater accountability and inclusion for persons with disabilities.

3.3 Discrimination against Persons with Disabilities (Prohibition) Act

The Discrimination against Persons with Disabilities (Prohibition) Act (Discrimination Prohibition Act) 2018¹⁰² is the result of years of advocacy for a law to address the discrimination and exclusion experienced by persons with disabilities.¹⁰³ The purpose of the Act is to accommodate persons with disabilities in society, and to establish the National Commission for Persons with Disabilities, which is vested with the responsibility for their education, healthcare, social, economic, and civil rights.¹⁰⁴ Although the Discrimination Prohibition Act contains no specific provision on financial inclusion, its provisions on discrimination, accessibility and first consideration in queues are pertinent to enhancing financial inclusion for persons with disabilities.

The Discrimination Prohibition Act prohibits discrimination on the basis of disability and imposes sanctions of fines and imprisonment on corporate bodies and individuals who contravene this provision.¹⁰⁵ The Act defines discrimination as ‘differential treatment and its verb and infinite form, discriminate, to discriminate have corresponding signification’.¹⁰⁶ However, this definition is vague and falls short of the definition in the CRPD as it neither conveys the meaning of differential treatment nor what discrimination denotes under the Act.

The Discrimination Prohibition Act also provides that persons with disabilities have the right access the physical environment and buildings in public premises on an equal basis with others.¹⁰⁷ It also mandates that accessibility aids such as lifts and ramps in public buildings for access and

101 KNCHR (n 93) 15.

102 Discrimination against Persons with Disabilities (n 17).

103 A Ewang ‘Nigeria passes disability rights law: Offers hope of inclusion, improved access’ *Human Rights Watch* 25 January 2019 <https://www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law#:~:text=On%20January%2023%2C%20Nigeria's%20President,disability%20rights%20groups%20and%20activists> (accessed 29 September 2024).

104 The Discrimination Prohibition Act 2018 (n 17) explanatory memorandum.

105 Discrimination Prohibition Act (n 17) sec 1(1) & (2).

106 Discrimination Prohibition Act (n 17) sec 57.

107 Discrimination Prohibition Act (n 17) sec 3.

use by persons with disabilities.¹⁰⁸ It also provides for a transitory period of five years from the commencement of the Act within which all existing public buildings and structures that are inaccessible to persons with disabilities are expected to be modified to be accessible to them including those on wheelchairs.¹⁰⁹ The Act also directs that before any building is erected, the relevant authority, that is departments under the ministries of Land, Physical Planning and Urban Development, must ensure that the building's plans conform to the building code.¹¹⁰ Such a building must not be approved if it fails to meet the accessibility standards.¹¹¹ Any officer who approves or directs the approval of a building that does not conform to the building codes commits an offence.¹¹²

The Act also provides that where the environment is inaccessible, persons with disabilities have a right to make a complaint of inaccessibility to the relevant authority in charge of the environment.¹¹³ Failure to act upon receipt of such complaint is an offence.¹¹⁴

The Discrimination Prohibition Act also provides that persons with disabilities be given first consideration in queues.¹¹⁵ This provision is particularly useful as there are usually long queues in banks in Nigeria. However, there is no evidence that this provision is being observed. Lastly, the Act provides that there must be a representative from the finance ministry in the Governing Council of the National Commission for Persons with Disabilities.¹¹⁶

Undoubtedly, the Discrimination Prohibition Act contains some salient provisions but offers less protection than the CRPD. For instance, it does not contain any provisions guaranteeing reasonable accommodation for persons with disabilities. Additionally, its provisions on accessibility fall short of the provisions in the CRPD. This is because it fails to obligate private entities offering public services to ensure accessibility, offer training on accessibility issues affecting persons with disabilities and encourage access to information and communication technologies for persons with disabilities. It also does not contain provisions on the right to legal capacity to control one's financial affairs and the principle of full and effective participation and inclusion in society. It is imperative that the Act is amended to reflect these standards and align with international human rights standards in this regard.

108 Discrimination Prohibition Act (n 17) sec 4.

109 Discrimination Prohibition Act (n 17) sec 6.

110 Discrimination Prohibition Act (n 17) sec 7(1).

111 Discrimination Prohibition Act (n 17) sec 7(2).

112 Discrimination Prohibition Act (n 17) sec 7(3).

113 Discrimination Prohibition Act (n 17) sec 8(1).

114 Discrimination Prohibition Act (n 17) sec 8(2).

115 Discrimination Prohibition Act (n 17) sec 26.

116 Discrimination Prohibition Act (n 17) sec 32(2)(c).

3.4 Central Bank of Nigeria (CBN) Policies

The CBN has several policies which directly or indirectly address financial inclusion for persons with disabilities in Nigeria as highlighted below.

3.4.1 National Financial Inclusion Strategy 2022

Nigeria signed the Maya Declaration which set targets for improving financial inclusion.¹¹⁷ In line with this, the CBN introduced the National Financial Inclusion Strategy 2012¹¹⁸ which was revised in 2018¹¹⁹ and 2022¹²⁰ to set clear targets for improving financial inclusion and removing barriers to accessing finance. The National Financial Inclusion Strategy 2022 (NFIS 2022) notes that ‘financial inclusion is achieved when adult Nigerians have easy access to a broad range of formal financial services that meet their needs at affordable costs’.¹²¹ The NFIS 2022 further contends that services should extend to broad payments, savings, credit, insurance, pension, and capital market products offered simply in consideration of the peculiarities of the users.¹²² These provisions could be applied to persons with disabilities as they are a segment of the Nigerian population and constitute users or potential users of financial services.

Nevertheless, the NFIS 2022 makes very little provision for persons with disabilities. It only refers to the word ‘disabilities’ twice. The first reference acknowledges that ‘while data is not readily available on access to financial services for persons with disabilities, available information suggested that they were also highly excluded’.¹²³ The second reference is merely incidental.

3.4.2 CBN Guidelines on the Operations of Electronic Payment Channels

The CBN Guidelines on the Operations of Electronic Payment Channels in Nigeria contain some provisions relevant to persons with disabilities. The guidelines provide that two per cent of ATMs should be equipped with tactile graphic symbol for visually impaired clients and that the locations

117 Alliance for Financial Inclusion ‘Maya declaration: Commitments you can bank on’ (2018) https://www.afi-global.org/sites/default/files/publications/2018-08/MAYA_FS_18_AW_digital.pdf (accessed 22 February 2024).

118 National Financial Inclusion Strategy (2012) <https://www.cbn.gov.ng/out/2013/ccd/nfis.pdf> (accessed 22 February 2024).

119 National Financial Inclusion Strategy (Revised) (2018) <https://www.cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf> (accessed 22 February 2024).

120 National Financial Inclusion Strategy 2022 (NFIS 2022) <https://www.cbn.gov.ng/Out/2022/CCD/NFIS1.pdf> (accessed 22 February 2024).

121 NFIS 2022 (n 120) para 1.1.2.

122 NFIS 2022 (n 120) vii.

123 Adebajo (n 10).

of the ATMs should be clearly publicised on corporate websites.¹²⁴ The guidelines prohibit discrimination by any card scheme against any ATM owner or acquirer.¹²⁵ The guidelines also provide that ATMs should be accessible and safe, well-lit for safe access and good visibility in the absence of natural light, and designed to ensure privacy.¹²⁶ ATM terminals are required to adequately display helpdesk contacts and have a functional and manned telephone line for fault reporting.¹²⁷ Receipt prints and screen display should also be legible.¹²⁸ The guidelines impose monetary penalties, or suspension of the acquiring or processing service, or both, on erring FSPs that fail to comply with the provisions of the guidelines.¹²⁹ The guidelines further promote the advancement of operational, low risk, low cost and practical financial services to customers and businesses through the internet.¹³⁰ While these are not wholly disability specific, they can also aid persons with disabilities.

3.4.3 *Micro, Small and Medium Enterprises Development Fund (MSMEDF) Guidelines 2015*

The Micro, Small and Medium Enterprises Development Fund (MSMEDF) Guidelines establish a development fund to provide financial services to Micro, Small and Medium Enterprises to increase their productivity and employment, and foster inclusive growth.¹³¹ The only explicit provision on persons with disabilities in the MSMEDF Guidelines is that two per cent of the general component of the Fund be dedicated to 'economically active persons with disabilities (excluding mental disabilities)'.¹³² Even so, two per cent of the general fund is insufficient to guarantee financial inclusion to entrepreneurs with disabilities because they are usually excluded from accessing financial services in Nigeria. Moreover, the exclusion of persons with mental disabilities amounts to discrimination and serves to disempower them. The MSMEDF Guidelines also stipulate that 60 per cent of the Fund should be allocated for providing financial services to women entrepreneurs.¹³³ Whilst this provision could be construed to include women with disabilities, it is

124 CBN Guidelines on the Operations of Electronic Payment Channels 1.1(g) <https://www.cbn.gov.ng/out/2016/bpsd/approved%20guidelines%20on%20operations%20of%20electronic%20payment%20channels%20in%20nigeria.pdf> (accessed 22 February 2024).

125 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 1.1(e).

126 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 1.2(h), (i) & (k).

127 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 1.3(b).

128 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 1.3(e) & (r).

129 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 1.8.

130 CBN Guidelines on the Operations of Electronic Payment Channels (n 124) 4.2.4.

131 Micro, Small and Medium Enterprises Development Fund Guidelines (MSMEDF Guidelines) 2014, secs 1.0 & 1.2 <https://www.cbn.gov.ng/out/2014/dfd/msmedf%20guidelines%20%20.pdf> (accessed 22 February 2024).

132 MSMEDF Guidelines (n 131) sec 1.0.

133 MSMEDF Guidelines (n 131) secs 1.0 and 4.2 (f).

necessary for female entrepreneurs with disabilities to be assigned a proportion of the allocated 60 per cent.

3.4.4 *Consumer Protection Framework 2016*

The Consumer Protection Framework aims to ‘enhance consumer confidence in the financial services industry and promote financial stability, growth and innovation’.¹³⁴ Although the Framework does not explicitly refer to persons with disabilities, it contains some provisions that can be construed as applicable to them. The Framework provides that consumers be treated fairly without prejudice at every stage of their association with financial institutions.¹³⁵ It also provides that all consumers be accorded equal access to basic banking services and that the needs of vulnerable groups are taken into consideration.¹³⁶ It further provides that financial institutions act in the best interest of consumers in the provision of advice and execution of transactions.¹³⁷ In addition, consumers are also to be offered appropriate and clear financial advice as well as information on the features of products and services to enable them to make informed decisions.¹³⁸ To ensure effective delivery of financial education to consumers, they shall be ‘segmented’ by age, geographical location, level of education, and ability (physical and mental).¹³⁹ The Framework provides for the establishment of policies and mechanisms to improve access to financial products/services, particularly amongst vulnerable groups.¹⁴⁰ It prohibits financial institutions from discriminating against consumers on grounds of social standing, physical ability, marital status, gender, age, religion or tribe.¹⁴¹ Likewise, it provides for fair treatment of consumers, regardless of any complaint and dispute already existing between them, their financial knowledge or status, physical ability, age, gender, tribe or religion.¹⁴² Lastly, it provides for the emplacement of multiple toll-free redress channels (including electronic and non-electronic channels) to lodge complaints using simple, efficient and effectual resolution mechanisms.¹⁴³

134 Central Bank of Nigeria ‘Consumer Protection Framework’ sec 1.1 [https://www.cbn.gov.ng/out/2016/cfpd/consumer%20protection%20framework%20\(final\).pdf](https://www.cbn.gov.ng/out/2016/cfpd/consumer%20protection%20framework%20(final).pdf) (accessed 22 February 2024).

135 Consumer Protection Framework (n 134) sec 2.5.

136 As above.

137 Consumer Protection Framework (n 134) sec 2.2.2.

138 Consumer Protection Framework (n 134) sec 2.2.2.

139 Consumer Protection Framework (n 134) sec 2.4.1.

140 Consumer Protection Framework (n 134) sec 2.5.1.

141 Consumer Protection Framework (n 134) sec 2.5.2.

142 Consumer Protection Framework (n 134) sec 3.1(g).

143 Consumer Protection Framework (n 134) sec 2.7.1(1).

3.4.5 The Nigerian Sustainable Banking Principles

The Central Bank of Nigeria's Implementation of Nigerian Sustainable Banking Principles by Banks, Discount Houses and Development Finance Institutions in Nigeria (Nigerian Sustainable Banking Principles) were established to develop standards and guidelines for the Nigerian banking sector.¹⁴⁴ Principle 5 of the Nigerian Sustainable Banking Principles seeks to promote financial inclusion by providing financial services to individuals and communities that traditionally have had limited or no access to the formal financial sector. In line with this, the Nigerian Sustainable Banking Principles provide that banks should promote 'accessible and affordable financial products and services to disadvantaged groups who are either not served or are underserved by the formal financial sector' in accordance with the NFIS.¹⁴⁵ The Principles seek to realise this by ensuring banks develop and implement financial inclusion, provide commercially viable support to small and medium enterprises (SMEs), improve financial literacy and institutional practices, and improve access to bank facilities and services.¹⁴⁶ By accommodating their needs, marginalised persons are integrated into the mainstream economy thereby enhancing their opportunities for robust livelihoods and financial stability.¹⁴⁷ This will ultimately result in poverty reduction, abatement of the barriers to economic participation of disadvantaged groups, and enhancement of financial education and literacy for everyone.¹⁴⁸ Principle 5 of the Nigerian Sustainable Banking Principles is applicable to persons with disabilities as they are disadvantaged, marginalised and have been excluded or underserved by the formal financial sector. It could therefore operate to promote their access to the financial sector.

The Nigerian Sustainable Banking Principles also aim to promote women's economic empowerment through a gender-inclusive workplace culture in business operations and seek to provide products and services designed specifically for women.¹⁴⁹ The Nigerian Sustainable Banking Principles seek to realise this goal by ensuring that banks develop and implement economic empowerment policies and committees directed at women, establish programmes to promote women's empowerment, invest and dedicate resources for female talent and create a sector-wide fund for women's empowerment.¹⁵⁰

144 Central Bank of Nigeria 'Implementation of sustainable banking principles by banks, discount houses and development finance institutions in Nigeria' (2012) 3 <https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> (accessed 22 February 2024).

145 Central Bank of Nigeria (n 144) 21.

146 Central Bank of Nigeria (n 144) 21-22.

147 Central Bank of Nigeria (n 144) 21.

148 Central Bank of Nigeria (n 144) 21.

149 Central Bank of Nigeria (n 144) 19.

150 Central Bank of Nigeria (n 144) 19-20.

If properly implemented, the Nigerian Sustainable Banking Principles could significantly enhance access to financial services for persons with disabilities, particularly women with disabilities, and foster inclusive opportunities that address their unique challenges.

4 Recommendations

The Nigerian banking sector has undergone some significant reforms, yet these reforms have not focused on access to financial services for persons with disabilities.¹⁵¹ The Discrimination Prohibition Act and CBN policies do not contain robust provisions to adequately ameliorate the challenges experienced by persons with disabilities due to poor implementation, enforcement and monitoring mechanisms. Interventions that manifestly reflect the needs of persons with disabilities are therefore required. Accordingly, recommendations in this regard are proffered below.

4.1 Strengthen the extant laws and policies

It is crucial to implement the Discrimination Prohibition Act and CBN policies in all states of Nigeria to enable persons with disabilities to assert financial access rights. The Discrimination Prohibition Act should also be amended to include the right of persons with disabilities to control their financial affairs and access financial services and products.

The CBN should also develop a suitable financial inclusion strategy that addresses the unique challenges faced by persons with disabilities in Nigeria, include them financially and ensure they enjoy the full benefits of banking.¹⁵² The two per cent of funds designated for persons with disabilities under the CBN's MSMEDF Guidelines is insufficient to guarantee access to financial services to entrepreneurs with disabilities because persons with disabilities have typically been excluded from accessing financial services in Nigeria. The percentage should be increased to at least 30 per cent to ensure a fairer distribution of resources and offer equal access to funding for entrepreneurs across Nigeria's diverse regions, ethnic backgrounds, and economic levels. Moreover, the MSMEDF Guidelines should be amended to include persons with intellectual disabilities who meet the criteria for the fund. A portion of the 60 per cent of the Fund allocated to providing financial services to women entrepreneurs should also be assigned to women with disabilities.

Education about relevant laws and policies is also crucial to promoting adherence and curbing stigma against persons with disabilities. Education programmes should also include persons with disabilities and their

151 Adebajo (n 10).

152 Imandojemu and others (n 4) 75.

organisations, heads of communities, religious leaders, teachers, and healthcare professionals. It should also involve the use of Pidgin English, local languages and dialects. Simplified and accessible reporting avenues for non-compliance accompanied by strict penalties should be adopted to deter contravention and drive effectiveness. Institution-level policies could also facilitate access of financial products and services for people with disabilities.

4.2 Tailor financial services to the unique needs of persons with disabilities

FSPs should consider developing products and services that specifically cater to the needs of persons with disabilities, including low-cost assistive channels of communication to aid inclusion, such as braille, audio visual and contactless offerings. Similarly, FSPs should consider developing suitable products and services for the needs of persons with disabilities. These include flexible account options, affordable loan programmes, microfinance initiatives, cards in Braille or insurance products that address specific disability-related risks.¹⁵³ FSPs should therefore strive at understanding the needs of their current and prospective clients with disabilities.¹⁵⁴

FSPs should also engage in financial education programmes for persons with disabilities about their products and services to promote financial literacy and financial inclusion.¹⁵⁵ The financial education programmes could focus on savings, budgeting, debt management, and loan services, and be delivered in suitable accessible formats.¹⁵⁶

4.3 Prioritise accessibility as a minimum benchmark for financial services

It is imperative that FSPs prioritise accessibility to attract the patronage of persons with disabilities. To effectively measure progress in ensuring accessibility for a wide range of persons with disabilities, FSPs should at the initial phases of product deployment, conduct environmental and products accessibility audits. These audits should be carried out in

153 UBA Group 'Financial inclusion for people living with disabilities' (2023) <https://www.ubagroup.com/57-marina/financial-inclusion-for-people-living-with-disabilities/> (accessed 2 March 2024).

154 J Musiitwa 'Why the accessibility gap in financial services needs to be closed' *World Economic Forum* 4 September 2018 <https://www.weforum.org/agenda/2018/09/the-accessibility-gap-in-financial-services-needs-to-be-closed/> (accessed 12 March 2024).

155 AN Jiya and others 'Achieving financial inclusion for persons with disabilities: exploring preparedness and accessibility of financial services for persons with disabilities in Malawi' (2021) *Journal of Disability Policy Studies* 1, 8. doi:10.1177/10442073211027533.

156 UBA Group (n 153).

consultation with the product development team, persons with disabilities and the staff involved in relationship management to ensure diverse, inclusive, suitable and accessible products and services. In line with the CBN 2019 Rule Book, banks should provide avenues for increased access to products and services through platforms such as cash centres, e-branches, and mobile money to increase their efficiency to serve more clients.¹⁵⁷

Other recommendations for improving accessibility include equipping ATMs and bank branches with voice recognition and audio functions for clients with hearing impairments, as well as providing documents in braille and large fonts, sharp colour contrasts, and screen magnifiers for the visually impaired. Anti-slip tiles and ramps should also be provided to aid navigation for clients with crutches and on wheelchairs. Likewise, ATMs, restrooms and counters in banking halls should be built to accommodate the needs of clients with mobility impairments. In-branch banking should be encouraged by installing automatic security door openers to give access to persons on wheelchairs.¹⁵⁸

Banking documentation should also be readily available in alternative formats such as audio, accessible e-text, or DAISY formats and braille. The CBN should endeavour to make notes of different denominations easily distinguishable from each other by size, smell, colours and braille lettering.¹⁵⁹ Digital banking technologies such as online banking should also be made more inclusive.¹⁶⁰

4.4 Improve FSP staff training to cater to the needs of persons with disabilities

Staff training can improve customer experience and engagement as well as drive empathy and sensitivity. Staff should be trained on the national and international legal framework on the rights of persons with disabilities.¹⁶¹ Sensitivity training should also be offered at all organisational levels to foster proactivity amongst FSP staff and sensitise them on the importance

157 Central Bank of Nigeria (CBN) 'Rule Book (A Compendium of Policies and Regulations)' Vol IV <https://www.cbn.gov.ng/Out/2022/FMD/CBN%20Rule%20Book%20Volume%204.pdf> (accessed 27 March 2024).

158 Tade (n 10).

159 Imandojemu et al (n 4) 75.

160 D Montagner 'Financial services failing disabled consumers' *The Banker* (Western Europe) 24 October 2023 <https://www.thebanker.com/Financial-services-failing-disabled-consumers-1698133308> (accessed 10 February 2024).

161 Centre for Financial Inclusion 'A new financial access frontier: People with disabilities' (June 2010) <https://www.miusa.org/wp-content/uploads/2015/07/ACCION-2010-New-Financial-Frontier.pdf> (accessed 10 February 2024).

of non-discrimination.¹⁶² Assistance to persons with disabilities by FSP staff must be done with respect to the principles of non-discrimination, dignity and privacy. Staff must be professional and not embody an ableism mind-set that further serves to exclude and discriminate against persons with disabilities. It is also imperative that FSPs increase the hiring of persons with disabilities.

4.5 Foster stakeholder collaboration

Collaboration fosters financial inclusion. Stakeholders, including government agencies, financial institutions, non-governmental organisations, as well as persons with disabilities and their organisations, must collaborate to create an inclusive financial sector.¹⁶³ Such collaboration should focus on creating awareness, providing training, and advocating for inclusive policy changes.¹⁶⁴ The collaboration could also foster financial education by ensuring the development and delivery of financial literacy programmes to a wider audience.¹⁶⁵ The collaboration further allows the government to leverage expertise, resources and networks to drive financial inclusion for persons with disabilities, enable their active participation in the economy and improve their quality of life.¹⁶⁶

4.6 Promote enforcement and implementation of laws

Nigeria requires a multifaceted approach that integrates the efforts of multiple stakeholders and legal frameworks. Town planning agencies can play a crucial role in enforcing compliance with new building approvals in line with the provisions of the Discrimination Prohibition Act. Although the Act provides for a five-year transition period to ensure public buildings meet accessibility standards, monitoring beyond this period will be key to ensuring ongoing compliance. Also, the Freedom of Information (FOI) Act¹⁶⁷ can be a powerful tool for enabling advocacy groups and citizens to request records from town planning and building approval agencies to confirm that new buildings and facilities meet accessibility requirements.

162 Centre for Financial Inclusion and others 'A case for financial inclusion of persons with disabilities: CBM livelihood technical guideline' (2016) https://aspirecircle.org/wpcontent/uploads/2022/01/Case_for_Financial_Inclusion_final_May_2016-DNI.pdf (accessed 12 March 2024).

163 Infibranches (n 12).

164 Infibranches (n 12); Musiitwa (n 154).

165 'Four challenges of financial inclusion: Diving into solutions for success' *Credolab* 5 September 2023 <https://www.credolab.com/blog/four-challenges-of-financial-inclusion-diving-into-solutions-for-success-score-82> (accessed 22 February 2024).

166 As above.

167 Freedom of Information Act 2011 <https://archive.gazettes.africa/archive/ng/2011/ng-government-gazette-dated-2011-05-30-no-36.pdf> (accessed 22 October 2024).

Public interest litigation can also promote accountability by challenging non-compliant building approvals through the courts. Consequently, timely interventions could result in injunctions that halt projects or mandate retrofitting accessibility features into existing buildings and facilities. This approach would not only reinforce adherence to legal obligations but also establish legal precedents that discourage future violations. The judiciary can adjudicate cases of non-compliance, establishing the necessary legal precedents to protect the rights of persons with disabilities in both physical and digital financial spaces.

The National Commission for Persons with Disabilities, through its powers under the Discrimination Prohibition Act, can audit financial institutions to ensure that accessibility measures such as ramps, accessible ATMs, and customer service that prioritises persons with disabilities, are in place. The Commission can also implement robust accessibility reporting mechanisms in financial spaces. Imposing fines for non-compliance and offering targeted training programmes can improve service delivery to persons with disabilities and promote banks' inclusivity. Strengthening the capacity of the Commission is crucial, particularly by allocating sufficient resources for monitoring and enforcement activities. These resources should go toward hiring and training staff with expertise in accessibility standards and investing in technology capable of tracking compliance in real time.

The CBN, can enforce its existing regulatory framework by incorporating explicit provisions that prioritise accessibility for persons with disabilities from the product design stage and ensure ATMs and bank branches are accessible. A structured monitoring system can track compliance, while dedicated helplines and feedback channels can provide persons with disabilities with the means to report non-compliance. Collaboration between the CBN and disability advocacy groups could promote the development of inclusive products and services, while training for FSPs can foster a more accessible financial system. Furthermore, the introduction of incentives may encourage FSPs to actively pursue accessibility improvements.

By combining legal enforcement with proactive strategies from regulatory bodies and other relevant groups, Nigeria can create a more inclusive financial environment for persons with disabilities to participate fully and access financial services with dignity and respect.

4.7 Adopt monitoring and evaluation mechanisms

Monitoring fosters human rights protection and strengthens a country's responsibility to respect, protect and fulfil the rights of persons with

disabilities.¹⁶⁸ It can achieve legal reform, establishment of relevant protocols or practices, trainings aimed at relevant actors and stakeholders, determination of funding requirements, establishment of required services and a harmonised community response.¹⁶⁹ To achieve greater financial inclusion at the national level, it is essential to adapt to the continuously evolving financial landscape by incorporating a comprehensive approach in monitoring and evaluating financial inclusion initiatives. This will identify effective initiatives and those that require improvement,¹⁷⁰ as well as ensure that safe and affordable financial services are provided to persons with disabilities.¹⁷¹

5 Conclusion

Persons with disabilities are an integral part of society with diverse experience. However, the attention given to them regarding financial access has been inadequate. Financial inclusion underpins economic development in Nigeria and ensuring meaningful financial inclusion for people with disabilities requires a 'nuanced approach'.¹⁷² This article considered the exclusion of persons with disabilities from financial services due to inadequacy of legal protections, undiversified financial offerings and insensitivity to the accessibility needs of persons with disabilities in accessing finance. The article finds that the CBN as the regulator of the financial sector has made little effort to enable their financial access and calls for a change. Financial services are critical to all, including persons with disabilities, and their continued exclusion by FSPs impacts negatively on individual and economic levels, as they lose opportunity to broaden their customer base.

By addressing physical, attitudinal, and technological barriers, implementing inclusive laws and policies, promoting financial literacy, and fostering collaboration, Nigeria can pave the way for a more equitable and inclusive financial landscape.¹⁷³ The Nigerian government and the private sector however need to put in place key digital services, including connectivity, cybersecurity, data privacy, digital ID, and physical infrastructure, to facilitate the safe digital access to finance and inclusion of persons with disabilities. A gender perspective is also imperative as

168 Office of the United Nations High Commissioner for Human Rights *Manual on human rights monitoring* (2011) 4.

169 Credolab (n 165).

170 S Osakwe 'How is Nigeria's national financial inclusion strategy going?' Centre for Financial Inclusion (6 April 2021) <https://www.centerforfinancialinclusion.org/how-is-nigerias-national-financial-inclusion-strategy-going> (accessed 12 March 2024).

171 Akinnibi (n 32).

172 Infibranches Technologies (n 12).

173 Infibranches Technologies (n 12).

women's financial inclusion including those with disabilities, can close the gender gap in access to finance in Nigeria.

SECTION B: COUNTRY REPORTS

RÉPUBLIQUE DE GUINÉE ÉQUATORIALE

Marianne Severin*

Summary

According to the World Bank (WB), the Republic of Equatorial Guinea population was estimated in 2021 to be 1 634 466 inhabitants. According to the 2022 Equatorial Guinea Statistics Yearbook, over the period from 2008 to 2021, there were a total of 8 067 persons with disabilities. No percentage of persons with disabilities was found. There are as yet no databases on the most widespread forms of disability in the Republic of Equatorial Guinea due to the absence of a census. The Republic of Equatorial Guinea signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2015.

The Republic of Equatorial Guinea ratified the CRPD on 25 March 2022; and it entered into force on 24 April 2022. No report submission date, in accordance with article 35 of the CRPD, was imposed on the Republic of Equatorial Guinea; the date of accession to the CRPD was 25 March 2022. The ratification of the CRPD, as well as its entry into force, are too recent to have had an internal effect on the legal system of Equatorial Guinea.

There is a legal framework that directly concerns disability which is related to inclusive education for children with disabilities. The Constitution of Equatorial Guinea contains provisions indirectly concerning disability:

- *Article 5: The foundations of Equatorial Guinea's society are: a) respect for the human person, his dignity and freedom and other fundamental rights ... c) recognition of equality between men and women.*
- *Article 8: The Equatorial State respects the principles of international law and reaffirms its commitment to the rights and obligations of the International Organisations of which it is a member.*

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- *Article 13(1): Every citizen shall enjoy the following rights and freedoms – a) Respect for one’s person, life, personal integrity, dignity and full material and moral development ... d) Equality before the law. Women, whatever their civil status, have the same rights and opportunities as men in all aspects of public, private, and family life, in civil, political, economic, social and cultural life.*
- *Article 23: The State encourages and promotes primary attention to healthcare as a cornerstone for the development of this sector.*
- *Article 24(1): Education is the primary duty of the State. Every citizen has the right to basic education which must be free and guaranteed. (2) The extent of free schooling is established by law.*
- *Article 26(1): Work is a social right and duty. The State recognises its constructive role in improving well-being and developing its national wealth. The State promotes economic and social conditions to eradicate poverty and misery and provides all citizens of the Republic of Equatorial Guinea with equal opportunities for a useful occupation that allows them not to be threatened by necessity.*

We did not find any court decisions on disability. However, the policies that directly address persons with disabilities are:

- *According to the 2019-2023 United Nations Development Assistance Framework (UNDAF), Equatorial Guinea has committed to addressing the needs of vulnerable people by 2023 (children, pregnant women, young people, the elderly and people with disabilities) through a regulatory framework and multi-sectoral programmes and projects.*
- *By 2023, Equatorial Guinea is committed to ensuring that young people, women and people with disabilities have greater and equitable access to decent employment opportunities through policies to promote business development.*
- *According to Table 1 entitled ‘Anchoring the priorities and achievements of the Country Programme for the Promotion of Decent Work (PPTD) for the period 2019-2020’, Equatorial Guinea has expressed the ambition to:*
- *Achieve full and productive employment and guarantee all women and men, including young people and people with disabilities, decent work and pay for equal value.*
- *Finally, in terms of ‘inclusive sustainable economic development that generates decent jobs’, Equatorial Guinea predicted that:*

By 2022, young people, women and people with disabilities have increased and equitable access to decent job opportunities. This requires integrated actions, aimed both at improving the supply and demand of vocational training and for the development of private initiative.

- *National plan to combat poverty and regulatory measures to improve the situation of people with disabilities.*

Equatorial Guinea has policies or programmes that indirectly include disability:

- *The ‘Health for All’ Programme under the National Economic and Social Development Plan 2020.*
- *The ‘A Roof for All’ Programme.*

Apart from ordinary courts or tribunals, the Republic of Equatorial Guinea does not seem for the moment to have a body that specifically addresses the violation of the rights of persons with disabilities. There are numerous organisations that represent and advocate for the rights and welfare of persons with disabilities in Equatorial Guinea. These include the Association Nationale des Personnes Handicapées (ASONAMI), the Eticultura, and the Fédération des Personnes Handicapées. These organisations contribute to the promotion of disability rights through awareness-raising. To improve their efficiency, they need to have much more visibility and come together as a federation of organisations for people with disabilities at national, regional and local level. Legislation on the public financing of these organisations could also enable better coordination and development of these organisations. These organisations should be multi-sectoral. In the Republic of

Equatorial Guinea, the Ministry of Social Affairs and Gender Equality with the Directorate-General for Multisectoral Coordination and Assistance to Persons with Disabilities and Older Persons, ensures the integration and inclusion of people with disabilities. In Equatorial Guinea, hearing impairment results in family abandonment and isolation and according to a belief, the mothers of deaf children are bewitched and the newborn as a result cursed. People with mental disabilities regularly experience violence and various forms of abuse. For children with disabilities, including children with hearing impairments, there is a legal framework for special education and ways to meet special educational needs; this is the General Education Act 2007. In addition, between 2001 and 2008 measures were adopted to improve the situation of persons with disabilities, in particular their integration into the social security system, with the creation of the National Institute of Social Security (INSESO). Although the Convention of Persons with Disabilities has been ratified, Equatorial Guinea needs to urgently accede to the Optional Protocol and accelerate the vote and inclusion in its Constitution of laws in favour of people with disabilities, in the fight against violence, discrimination and abuse. Special attention to women, girls and children with disabilities and the elderly (vulnerable groups) is strongly recommended. The organisations should federate in order to have more visibility and be able to lobby government authorities for funding. Finally, a research centre on the rights of people with disabilities would be an asset for the defence of the rights of people with disabilities.

1 Les indicateurs démographiques

1.1 Quelle est la population totale de la République de Guinée équatoriale ?

Selon la Banque Mondiale, la population totale de la République de Guinée équatoriale a été évaluée en 2021 à 1 634 466 habitants.¹

1.2 Méthodologie employée en vue d'obtenir des données statistiques sur la prévalence du handicap en République de Guinée équatoriale. Quels sont les critères utilisés pour déterminer qui fait partie de la couche des personnes handicapées en République de Guinée équatoriale ?

Selon le Rapport intermédiaire de Guinée équatoriale pour le troisième cycle de l'Examen périodique de mai 2022, la Direction Générale de l'Assistance aux Personnes handicapée, il est prévu de « d) créer une base de données au moyen d'enquêtes et de recensements sur la situation sociale des personnes en situation de handicap et des personnes âgées.²

1 Banque Mondiale « Population, total – Equatorial Guinea » <https://donnees.banquemondiale.org/indicateur/SP.POP.TOTL?locations=GQ> (consulté le 18 novembre 2024).

1.3 Quel est le nombre total et le pourcentage des personnes handicapées en République de Guinée équatoriale ?

Selon l'Annuaire de statistique de la Guinée Equatoriale de 2022, sur la période allant de 2008 à 2021, il y a un total de 8067 de personnes en situation de handicap.³ Aucun pourcentage de personnes en situation de handicap n'a été trouvé.

1.4 Quel est le nombre total et le pourcentage des femmes handicapées en République de Guinée équatoriale ?-

Selon l'Annuaire de statistique de la Guinée Equatoriale de 2022, sur la période allant de 2008 à 2021, il y a 3847 femmes en situation de handicap en République de Guinée équatoriale (soit 47,68% sur l'ensemble de la population).⁴

1.5 Quel est le nombre total et le pourcentage des enfants handicapés en République de Guinée équatoriale ?

Selon les tableaux 59 et 68 de l'Annuaire de statistique de la Guinée Equatoriale de 2022, pour la période 2018-2019, il y aurait un total 1587 élèves en situation de handicap dans l'enseignement primaire et 770 élèves en situation de handicap dans l'enseignement secondaire soit un total de 2357.⁵ Nous n'avons pas de pourcentage pour cette période.

1.6 Quelles sont les formes de handicap les plus répandues en République de Guinée équatoriale ?

Il n'existe pas encore de bases données sur les formes de handicap les plus répandues en République de Guinée équatoriale, dû à l'absence de recensement. Cependant, les tableaux 59 et 68 de l'Annuaire de statistique de la Guinée Equatoriale de 2022 présentant le nombre d'élèves en situation de handicap au primaire et dans le secondaire (période 2018-2019), font références à :

- 2 OHCHR « Informe intermedio de Guinea Ecuatorial para el 3º Ciclo del Examen Periódico Universal », Mayo 2022 |Rapport intermédiaire de la Guinée équatoriale pour le troisième cycle de l'Examen périodique, mai 2022) 12 (consulté le 26 septembre 2024) « d) Crear una base de datos a través de encuestas y censos sobre la situación social de personas con discapacidad y personas de Tercera Edad. » <https://www.ohchr.org/sites/default/files/2022-05/Equatorial-Guinea-3rd-cycle-mid-term-report.pdf> (consulté le 18 novembre 2024).
- 3 Instituto Nacional de Estadística de Guinea Ecuatorial (INEGE), Anuario Estadístico De Guinea Ecuatorial 2022, 151 <https://inege.gq/wp-content/uploads/2022/12/Anuario-2022.pdf> (consulté le 26 septembre 2024). Tabla 113 : Clasificación de las personas por grado y nivel de discapacidad, distribuidos por sexo y provincia (periodo : 2008-2021) (Tableau 113 : Classement des personnes par degré et niveau de handicap, par sexe et par province (période : 2008-2021)).
- 4 Instituto Nacional de Estadística de Guinea Ecuatorial (INEGE) (n 3) 151.
- 5 Instituto Nacional de Estadística de Guinea Ecuatorial (INEGE) (n 3) Tabla 59 : Alumnos de Educación Primaria con necesidades educativas especiales por tipo de discapacidad : 2016-1019, 104 (Tableau 59 : Elèves de l'enseignement primaire ayant des besoins éducatifs spéciaux par type de handicap : 2016-2019) Tabla 68 : Alumnos de la Educación Secundaria con necesidades educativas especiales por área geográfica y tipo de discapacidad, 113 (Elèves de l'enseignement secondaire ayant des besoins éducatifs spéciaux par zone géographique et type de handicap).

- Pour le handicap visuel (596 enfants en situation de handicap au primaire et 464 au secondaire) ;
- Handicap auditif (425 et 194 enfants) ;
- Handicap moteur (391 et 75) ;
- Et Handicap intellectuel (175 et 37).

2 Obligations internationales

2.1 Quel est le statut de la Convention des Nations Unies relative aux Droits des Personnes Handicapées (CDPH) en République de Guinée équatoriale ? La République de Guinée équatoriale a-t-elle signé et ratifié la CDPH ? Fournir le(s) date(s). La République de Guinée équatoriale a-t-elle signé et ratifié le Protocole facultatif ? Fournir le(s) date(s).

La République de Guinée Equatoriale a signé la Convention Relative aux Personnes Handicapées (CDPH) en 2015, puis ratifié le 25 mars 2022. La CDPH est entrée en vigueur le 24 avril 2022.⁶

2.2 Si la République de Guinée équatoriale a signé et ratifié la CDPH, quel est/était le délai de soumission de son rapport ? Quelle branche du gouvernement est responsable de la soumission du rapport ? La République de Guinée équatoriale a-t-elle soumis son rapport ? Sinon quelles sont les raisons du retard telles qu'avancées par la branche gouvernementale en charge ?

Aucune date de soumission de rapport, conformément à l'Art. 35 de la CDPH, n'a été imposée à la République de Guinée équatoriale ; la date d'adhésion à la CDPH ayant été le 25 mars 2022.⁷⁸

2.3 Si la République de Guinée équatoriale a soumis le rapport au 2.2 et si le comité en charge des droits des personnes handicapées avait examiné le rapport, veuillez indiquer si le comité avait émis des observations finales et des recommandations au sujet du rapport de la République. Y'avait-il des effets internes découlant du processus de rapport liés aux questions handicapées de Guinée équatoriale ?

N/A. Aucune information n'est disponible.

2.4 En établissant un rapport sous divers autres instruments des Nations Unies, la Charte Africaine des Droits de l'Homme et des Peuples ou la Charte Africaine relative aux Droits et au bien-être de l'Enfant, la République de Guinée équatoriale a-t-elle également fait mention

6 United Nations Human Rights Treaty Bodies 'UN Body data base' https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_fr (consulté le 26 septembre 2024).

7 United Nations Human Rights Treaty Bodies (n 7).

spécifique du droit des personnes handicapées dans ses rapports les plus récents ? Si oui, les observations finales adoptées par les organes statutaires ont-elles fait mention du handicap ? Si pertinent, ces observations ont-elles été suivies d'effet ? Y est-il fait mention des droits des handicapés dans le rapport de la Revue Périodique Universelle (RPU) des Nations Unies de la République de Guinée équatoriale ? Si oui, quels étaient les effets de ces observations ou recommandations ?

• **Comité contre la torture**

Conformément à l'Art. 19 de la Convention contre la torture et autres peines ou traitements cruels, inhumains et dégradants, la République de Guinée équatoriale n'a pas soumis de rapport initial ; ce dernier était attendu le 6 novembre 2003.⁸

• **Comité des droits de l'homme**

En l'absence de rapport initial, le comité des droits de l'homme a demandé s'il existait une législation complète comportant :

- (a) Une définition et incrimination claire de la discrimination directe et indirecte ;
- (b) Couvrant une liste complète de motifs interdits de discrimination, dont le handicap
- (c) Fournissant des recours efficaces aux victimes.

Le comité appelle également la Guinée Equatoriale à fournir le nombre de plaintes déposées et de poursuites engagées pour discrimination, sur l'ensemble du territoire. Enfin, il est demandé un éclairage sur les mesures prises pour lutter et prévenir les actes de discrimination, de stigmatisation ou de violence à l'encontre des personnes en situation de handicap.⁹

Dans son rapport datant du 22 août 2019, le comité des droits de l'homme prend note du projet de transformer le Centre pour la Promotion des Droits de l'Homme et de la Démocratie en une institution nationale pour la promotion et la protection des droits de l'homme, conformément aux Principes de Paris. Néanmoins la Guinée Equatoriale fournit trop peu d'informations sur les mesures concrètes.¹⁰ Il est exigé de l'Etat partie la création d'une institution nationale des droits de l'homme indépendante, dotée d'un mandat étendu de protection de ces droits et de ressources humaines et financières suffisantes, conformément aux Principes de Paris.¹¹

Lors de la 126^e session du comité des droits de l'homme, le Centre d'études et d'initiatives pour le développement de la Guinée équatoriale (juin 2019) souligne

8 United Nations Human Rights Treaty Bodies (n 7).

9 Comité des droits de l'homme, « Liste des points en l'absence de rapport initial de la Guinée Equatoriale », 5 février 2019, CCPR/C/GNQ/Q/1, 2 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GNQ&Lang=FR (consulté le 26 septembre 2024).

10 Comité des droits de l'homme, « Observations finales concernant la Guinée Equatoriale en l'absence de rapport initial » 22 août 2019, CCPR/C/GNQ/CO/1, 3 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GNQ&Lang=FR (consulté le 26 septembre 2024).

11 Comité des droits de l'homme (n 10) 3.

la réforme constitutionnelle de novembre 2011 qui a créé la figure de Médiateur avec pour rôle de « défendre les droits des citoyens garantis par la Constitution ». ¹²

• **Comité pour l'élimination de la discrimination à l'égard des femmes**
Cadre social et culturel

Le comité pour l'élimination de la discrimination à l'égard des femmes constate que même lorsque les lois existantes contiennent des dispositions claires sur la protection des groupes vulnérables, comme les personnes/femmes en situation de handicap, l'application des dispositions légales n'est pas vraiment pas à la hauteur des défis et les services sociaux insuffisants. ¹³ Notons que la Guinée Equatoriale n'a rendu aucun rapport depuis 2011, la date d'échéance avait été prévue pour le 31 octobre 2016.

• **Comité de droits économiques, sociaux et culturels**

La Guinée Equatoriale n'a rendu aucun rapport. La date d'échéance due était au 30 novembre 2013.

• **Comité des droits de l'enfant**

La Guinée Equatoriale n'a rendu aucun rapport depuis 2004 (la date d'échéance avait été prévue pour le 19 juillet 2009).

• **Commission africaine des Droits de l'Homme et des Peuples**

Dans le 50^{ème} et 51^{ème} rapports d'activité combinés de la Commission africaine des droits de l'homme et des peuples, présenté conformément à l'article 54 de la Charte Africaine des Droits de l'Homme et des Peuples couvrant la période allant du 4 décembre 2020 au 5 décembre 2021, l'état de présentation des rapports montre que la Guinée Equatoriale n'a jamais soumis de rapport. ¹⁴

• **Examen Périodique Universel** ¹⁵

Droits des groupes ou des personnes spécifiques

Les auteurs de la communication n°1 rappellent que la Guinée Equatoriale s'est engagée à accélérer le processus d'adoption d'une loi spécifique et d'un plan d'action nationale visant à lutter contre toutes les formes de violence à l'égard des femmes en situation de handicap. ¹⁶

12 Centro de estudios para el desarrollo de Guinea Ecatatorial (CEIDGE) « 126th Session of the Human Rights Committee – Evaluation of Equatorial Guinea Report », June 2019, 2 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GNQ&Lang=FR (consulté le 26 septembre 2024). 'The Constitutional reform of November 2011 created the figure of the Ombudsman, and charges him/her with defending the constitutionally-guaranteed rights of citizens'.

13 Comité pour l'élimination de la discrimination à l'égard des femmes, « Examen des rapports présentés par les Etats parties en application de l'article 8 de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes », Sixième rapport périodique des Etats parties*, 14 avril 2011, CEDAW/C/GNQ/6 (2011) 8 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GNQ&Lang=FR (consulté le 26 septembre 2024).

14 Commission Africaine des Droits de l'Homme et des Peuple, « 50ème et 51ème Rapports d'activité combinés de la Commission Africaine des Droits de l'Homme et des Peuples », 4 décembre 2020-5 décembre 2021, 9 <https://achpr.au.int/index.php/fr/documents/2022-03-29/50eme-et-51eme-rapports-dactivites-combines> (consulté le 26 septembre 2024).

15 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-12 mai 2019, « Résumé des communications des parties prenantes concernant la Guinée Equatoriale* », Rapport du Haut-Commissariat des Nations Unies aux Droits de l'Homme », 20 février 2019, A/HRC/WG.6/33/GNQ/3 <https://www.ohchr.org/fr/hr-bodies/upr/gq-index> (consulté le 26 septembre 2024).

16 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-12 mai 2019 (n 15) 9.

- **Droits économiques, sociaux et culturels**

- ***Droit à la santé***

Les auteurs de la communication conjointe n°1 signalent que la Guinée Equatoriale n'est dotée d'aucune loi et d'aucun protocole concernant la santé mentale. Ils ont également pointé l'absence de service psychiatrique dans les hôpitaux publics. Les établissements de soin mental sont très peu nombreux.¹⁷ Les personnes ayant des besoins en matière de santé mentale risquent sans cesse d'être victimes de violence et diverses formes de maltraitance. Il est donc recommandé à la Guinée Equatoriale d'adopter sans délai des lois et des règlements sur les soins et les pratiques en matière de santé mentale, qui protègent le droit à la santé et énoncent clairement les procédures à suivre pour garantir le droit de chacun d'être protégé contre la maltraitance, la violence et la discrimination.¹⁸

- **Suites données par la Guinée Equatoriale aux recommandations (134.1 à 134.102)**

- ***Ratification de la Convention relative aux droits des personnes handicapées***

La Guinée Equatoriale a ratifié la Convention relative aux droits des personnes handicapées (25 mars 2022).¹⁹ En revanche, le pays n'a pas encore adhéré au Protocole facultatif se rapportant au Pacte international relatif aux droits économiques, sociaux et culturels. Cependant, entre 2001 et 2018, la Guinée Equatoriale a adopté des mesures visant à améliorer la situation des personnes en situation de handicap, notamment en les intégrant de manière effective au système de sécurité sociale nationale. Il y a eu la création d'un service dédié aux personnes en situation de handicap au sein de l'Institut Nationale de la Sécurité Sociale (solo) et l'adoption du Plan relatif aux soins de santé périodiques à domicile. Le nombre de personnes en situation de handicap inscrites à l'INSESO a considérablement augmenté, passant de 2993 en 2014 à 3668 en 2019, selon le Rapport national soumis conformément au paragraphe 5 de l'annexe à la résolution 16/21 du Conseil des droits de l'homme.²⁰

- **Rapport national soumis conformément au paragraphe 5 de l'annexe à la résolution 16/21 du Conseil des droits de l'homme**

- ***Allocation de crédits aux organismes d'action sociale***

Dès 2014, l'Etat allouait une allocation de crédits aux organismes d'action sociale en faveur des personnes en situation de handicap. A ce titre, l'INSESO avait reçu des subventions publiques d'un montant de 1 370 554 francs CFA en 2017 et 2018. Ce montant a été consacré au versement d'aides économiques aux personnes en situation de handicap, aux ménages à faible revenu et aux ménages comptant des personnes atteintes d'une maladie grave entraînant des dépenses élevées de traitement ou de rééducation. Enfin, les personnes en situation de handicap reçoivent une allocation de garanties de revenu s'élevant à 60% du salaire

17 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019 (n 15) 7-8.

18 As above.

19 UN General Assembly, Convention on the Rights of Persons with Disabilities : Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsdg_no=IV-15&chapter=4&clang=_en (consulté le 26 septembre 2024).

20 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019, « Rapport national soumis conformément au paragraphe 5 de l'annexe à la résolution 16/21 du Conseil des Droits de l'Homme. Guinée Equatoriale », Rapport du Haut-Commissariat des Nations Unies aux Droits de l'Homme », 25 février 2019, A/HRC/WG.6/33/GNQ/1 5 <https://www.ohchr.org/fr/hr-bodies/upr/gq-index> (consulté le 26 septembre 2024).

minimum interprofessionnel, et bénéficient en outre de la gratuité des soins de santé et des prestations médicales et pharmaceutiques.²¹

Recensement des enfants en situation de handicap auprès d'établissements publics de huit (8) villes de Guinée Equatoriale

En 2015, avaient été recensés auprès d'établissements publics de huit (8) villes, 345 enfants présentant un handicap intellectuel (108), 44 handicap moteurs, 92 handicap auditif, 63 visuels, 85 ayant un handicap du langage et enfin 39 dans la catégorie autres.²²

Plan sectoriel relatif aux personnes en situation de handicap

Mise en place d'un plan sectoriel relatif au handicap et à la création de centres d'alphabétisation et de réadaptation pour proposer aux enfants en situation de handicap un suivi spécialisé. La présence d'orthophonistes et de psychologues dans les écoles pour effectuer un suivi est une priorité dans ce plan sur le long terme. La Guinée Equatoriale a donc fait état dans ce rapport de la formation de 40 enseignants à la prise en charge des besoins éducatifs spéciaux.²³

Il existe également des centres éducatifs spécialisés pour les personnes en situation de handicap. Par exemple, l'école Virgen Ma ria de Africa et les écoles de la Croix rouge. La Croix rouge équato-guinéenne a reçu, sur trois ans, une subvention publique de 300 000 000 Francs CFA. Elle y dispose d'une école spécialisée pour les personnes malentendantes et muettes, qui comptaient selon les statistiques des années 2016/2017 et 2017/2018 99 inscrits, dont 48 femmes.²⁴

Rapport du groupe de travail sur l'Examen périodique universel²⁵

Sur le plan du développement économique, social et culturelles, les efforts de la Guinée Equatoriale ont été soulignés par :

- Le Mozambique qui félicite la Guinée Equatoriale de l'adoption du programme « La Santé pour tous ». ²⁶
- La Sierra Leone constate qu'en dépit du retard, la Guinée Equatoriale a ratifié la Convention relative aux droits des personnes handicapées et a pris des mesures pour améliorer les conditions de vie de ce groupe vulnérable. ²⁷
- Le Togo a exprimé sa satisfaction concernant l'amélioration du bien-être des groupes les plus marginalisés, dont les personnes en situation de handicap. ²⁸
- La République bolivienne du Venezuela a accueilli avec satisfaction le renforcement de l'accès aux services de base, les mesures prises en faveur des familles de

21 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019 (n 20) 5.

22 As above.

23 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019 (n 20) 5.

24 As above.

25 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019. Point 6 de l'ordre du jour. Examen Périodique Universel, « Rapport du Groupe de travail sur l'Examen périodique universel*Guinée Equatoriale », 2 juillet 2019 A/HRC/42/13 <https://www.ohchr.org/fr/hr-bodies/upr/gq-index> (consulté le 26 septembre 2024).

26 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019 (n 25) 4.

27 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019 (n 25) 5.

28 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019 (n 25) 6.

personnes en situation de handicap, disposant de ressources limitées, la construction de campus et le programme « Un toit pour tous ».²⁹

- - Le Bénin a accueilli positivement l'adoption d'un plan national de lutte contre la pauvreté et des mesures réglementaires qui visent à améliorer la situation des personnes handicapées.³⁰
- - Le Botswana est satisfait de la politique d'intégration des personnes en situation de handicap au système de sécurité sociale, ainsi que la création d'un service spécialisé pour les personnes en situation de handicap au sein de l'Institut National de la Sécurité Sociale.³¹
- - Le Gabon a applaudi les mesures prises en faveur des personnes handicapées dans le système de sécurité sociale.³²

2.5 Y'avait-il un quelconque effet interne sur le système légal de la République de Guinée Equatoriale après la ratification de l'instrument international ou régional au 2.4 ci-dessus ?

La ratification de la Convention Relative aux Droits des Personnes Handicapées, ainsi que son entrée en vigueur (25 mars et 24 avril 2022) étant très récentes, nous n'avons pas encore connaissance d'effet interne sur le système légal de la Guinée Equatoriale.

2.6 Les traités internationaux ratifiés deviennent-ils automatiquement loi nationale sous votre système légal ? Si oui y'a-t-il des cas où les cours et tribunaux appliquent directement les dispositions du traité international ?

Selon l'Art. 81, de la Constitution de Guinée Equatoriale de 1991 amendée en 2012, la Chambre des Députés est compétente pour :

- (a) Approuver les traités de paix, les traités commerciaux, ces traités qui affectent la Souveraineté Nationale et l'intégrité territoriale et tous ces traités qui renvoient aux questions de réserve juridique, et de les soumettre à la ratification par le Président.³³

2.7 En référence au 2.4 ci-dessus, la Convention des Nations Unies relative aux Droits des Personnes Handicapées CDPH ou tout autre instrument international ratifié, en tout ou en partie, a-t-il été incorporé textuellement dans la législation nationale ? Fournir les détails.

La ratification de la CDPH et son entrée en vigueur datant, respectivement du 25 mars et 24 avril 2022, nous n'avons pas connaissance de son incorporation postérieure dans la législation nationale. Cependant, antérieurement entre 2001 et 2018, il y a eu l'adoption de mesures visant à l'amélioration de la situation des

29 As above.

30 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019 (n 25) 7.

31 As above.

32 Conseil des droits de l'homme – Quarante-deuxième session du 9-27 septembre 2019 (n 25) 10.

33 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 Art. 81 Of Chamber of Deputies is competent: 'a) To approve the peace treaties, commercial treaties, those treaties that affect the National Sovereignty and territorial integrity and all those treaties that refer to matters of legal reserve, and to submit them to ratification by the President of the Republic' 19 <https://www.wipo.int/wipolex/fr/legislation/details/21447> (consulté le 26 septembre 2024).

personnes en situation de handicap, dont leur intégration effective au système de sécurité sociale, avec la création de l'Institut National de la Sécurité Sociale (INSESO) et l'adoption du Plan relatif aux soins de santé périodiques à domicile.³⁴

3 Constitution

3.1 La constitution de la République de Guinée Equatoriale contient-elle des dispositions concernant directement le handicap ? Si oui énumérez les dispositions et expliquez comment chacune d'elles traite du handicap.

La Constitution de la Guinée Equatoriale ne contient pas de dispositions directement relatives aux personnes en situation de handicap.³⁵

3.2 La constitution de la République de Guinée Equatoriale contient-elle des dispositions concernant indirectement le handicap ? Si oui énumérez les dispositions et expliquez comment chacune d'elles traite indirectement du handicap.

La Constitution de la Guinée Equatoriale contient des dispositions concernant indirectement le handicap :

Titre 1 – Principes fondamentaux de l'Etat

Article 5 : Les fondements de la société de Guinée Equatoriale sont « a) le respect de l'être humain, sa dignité et liberté et autres droits fondamentaux » « c) La reconnaissance de l'égalité entre les hommes et les femmes ».³⁶

Article 8 :

« L'Etat équato-guinien respecte les principes du droit international et réaffirme son attachement aux droits et obligations qui découlent des Organisations et Organisations internationales dont il est membre ».³⁷

Article 13 :

1. Tout citoyen jouit des droits et libertés suivants.
« (a) Le respect de sa personne, de sa vie, de son intégrité personnelle, de sa dignité et de son plein développement matériel et moral.

34 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019 (n 20) 5.

35 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 31) 5.

36 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 31) 5. First Title. Fundamental Principles of the State Art 5. The fundamentals of the Equatoguinean society are : 'a) The respect of the human being, his dignity and freedom and other fundamental rights ... c) The recognition of equality between men and women'.

37 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 31) 5. Art 8 : The Equatoguinean State abides to the principles of International Law and reaffirms its attachment to the rights and obligations that arise from the Organizations and International Organizations to which it is a member.

- (d) A l'égalité devant la loi. La femme, quel que soit son statut civil, a les mêmes droits et les mêmes possibilités que les hommes dans tous les aspects de la vie publique, privée et familiale, dans la vie civile, politique, économique, sociale et culturelle ».³⁸

Article 23 :

« L'Etat encourage et promeut l'attention primaire aux soins de santé en tant que pierre angulaire pour le développement de ce secteur ».³⁹

Article 24 :

- « 1. L'Education est le devoir primordial de l'Etat. Tout citoyen a le droit à l'éducation de base qui obligatoirement gratuit et garantie
2. L'étendue de la gratuité scolaire est établie par la loi ».⁴⁰

Article 26 :

- « 1. Le travail est un droit et un devoir social. L'Etat reconnaît son rôle constructif dans l'amélioration du bien-être et le développement de sa richesse nationale. L'Etat promeut les conditions économiques et sociales pour éradiquer la pauvreté, la misère et assure à tous les citoyens de la République de Guinée équatoriale avec égalité possibilités d'une occupation utile qui leur permet de ne pas être menacés par la nécessité ».

4 Législation

4.1 La République de Guinée Equatoriale a-t-elle une législation concernant directement le handicap ? Si oui énumérez la législation et expliquez comment la législation aborde le handicap.

Il existe un cadre juridique qui concerne directement le handicap qui est relatif à l'éducation inclusive en faveur des enfants en situation de handicap. Cependant, il n'y a « nulle trace de mécanismes institutionnels ou de plan d'action par une mise en œuvre ». Il s'agit en fait de la « Loi générale de l'éducation qui comporte une série d'articles régissant les possibilités d'éducation », selon le Secrétaire Générale de la Commission nationale de Guinée équatoriale pour l'UNESCO dans le document *Besoins éducatifs spéciaux en Guinée Équatoriale*.⁴¹

38 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 31) 6. Art 13 : 1. Every citizen enjoys the following rights and freedoms. a. The respect of his person, life, personal integrity, its dignity and his full material and moral development. c. To equality before the law. The woman, irrespective of her civil status, shall have the same rights and opportunities as men in all aspects of public, private and familiar life, in civil, political, economic, social and cultural life.

39 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 33) 8 : 'The State encourages and promotes primary attention to health care the cornerstone for the development of such sector'.

40 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 33) 8 : '1. Education is the primordial duty of the State. Every citizen has the right to primary education, which is obligatory free, and guaranteed. 2. The extend of gratuity of education is established by law'.

41 Diego Menjibar Reynés « La Guinée équatoriale et le défi de garantir le droit à l'éducation des enfants sourds », *EqualTimes* 25 décembre 2022 <https://www.equaltimes.org/la-guinee-equatoriale-et-le-defi> (consulté le 26 septembre 2024).

4.2 La République de Guinée Equatoriale a-t-elle une législation concernant indirectement le handicap ? Si oui énumérez la principale législation et expliquez comment elle réfère au handicap.

Selon l'Article 26 du Code de travail de la Guinée équatoriale, Loi n° 1990-2 du 4 janvier 1990 :

L'employeur aura l'obligation de prendre les mesures nécessaires pour que le travail se réalise dans les conditions citées dans le paragraphe 2 et pour assurer l'assistance due en matière médicale, pharmaceutique et hospitalière en cas d'accident professionnel, ou de sérieuses dégradations de la santé d'un travailleur durant sa présence sur le lieu de travail. Il devra accorder une attention particulière lorsque son personnel comprendra des mineurs, des femmes enceintes ou en période d'allaitement, des travailleurs handicapés, ou lorsqu'il devra réaliser des travaux dangereux et insalubres.⁴²

5 Décisions des cours et tribunaux

5.1 Les cours (ou tribunaux) de la République de Guinée Equatoriale ont-ils jamais statué sur une question(s) relative au handicap ? Si oui énumérez le cas et fournir un résumé pour chacun des cas en indiquant quels étaient les faits ; la (les) décision(s), la démarche et l'impact (le cas échéant) que ces cas avaient entraînés.

Nous n'avons pas trouvé de décisions de justice portant sur le handicap.

6 Politiques et programmes

6.1 La République de Guinée Equatoriale a-t-elle des politiques ou programmes qui englobent directement le handicap ? Si oui énumérez la politique et expliquez comment cette politique aborde le handicap.

Cadres stratégiques de développement

- Selon le Plan-Cadre des Nations Unies pour l'aide au développement durable (UNDAF) pour la période 2019-2023, la Guinée équatoriale s'est engagée d'ici 2023 à répondre aux besoins des personnes vulnérables (enfants, femmes enceintes, jeunes, personnes âgées et **personnes en situation de handicap**) grâce à un cadre réglementaire et des programmes ainsi que des projets multisectoriels.⁴³
- D'ici 2023, la Guinée équatoriale s'engage à ce que les jeunes, les femmes et les **personnes en situation de handicap** aient un meilleur accès accru et équitable à des

42 Guinée Equatoriale, Code du travail (traduction française) Loi n° 1990-2 du 4 janvier 1990, Titre 4- Exercice du travail, Chapitre – Environnement et conditions du travail, art 26, 3) 10 https://www.ilo.org/africa/countries-covered/equatorial-guinea/WCMS_323480/lang--fr/index.htm et https://www.ilo.org/africa/countries-covered/equatorial-guinea/WCMS_323480/lang--fr/index.htm (version espagnole) (consulté le 26 septembre 2024).

43 ILO, Programme par pays pour la Promotion du Travail Dément 2019-2022 – Equatorial Guinea, 13 https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-yaounde/documents/genericdocument/wcms_855059.pdf (consulté le 26 septembre 2024).

opportunités d'emploi décent grâce à des politiques de promotion du développement des entreprises.⁴⁴

- Selon le tableau 1 intitulé « encrage des priorités et des réalisations du Programme Pays pour la Promotion du Travail Décent (PPTD) pour la période 2019-2020, la Guinée équatoriale a exprimé l'ambition de :

Parvenir au plein emploi productif et garantir à toutes les femmes et tous les hommes y compris les jeunes et les **personnes handicapées**, un travail décent et un salaire pour un salaire de valeur égale.⁴⁵

Pour finir, en termes de « Développement économique durable inclusif et générateur d'emplois décents, la Guinée équatoriale avait prévu que :

D'ici 2022, les jeunes, les femmes et les personnes handicapées aient un accès accru et équitable aux opportunités d'emplois décents. Cette réalisation requérant des actions intégrées, orientées à la fois vers l'amélioration de l'offre et de la demande de formation professionnelle et pour le développement de l'initiative privée.

Pour agir sur l'offre de formation, la priorité est accordée à l'amélioration du système de formation professionnelle.

Renforcement et encouragement aux initiatives de formation pour l'entrepreneuriat et pour l'auto-emploi (...) Pour y parvenir il y a nécessité de renforcer les capacités des partenaires sociaux (organisations d'employeurs et de travailleurs) ainsi que les ministres sectoriels clés afin de leur fournir les outils pour jouer leurs rôles et responsabilités avec efficacité.⁴⁶

Plan national de lutte contre la pauvreté et de mesures réglementaires visant à améliorer la situation des personnes en situation de handicap.⁴⁷

6.2 La République de Guinée Equatoriale a-t-elle des politiques ou programmes qui englobent indirectement le handicap ? Si oui énumérez chaque politique et décrivez comment elle aborde indirectement le handicap.

Selon le Rapport du Groupe de travail sur l'Examen périodique universel de juillet 2019, la Guinée équatoriale est félicitée par la Mozambique pour avoir adopté le **programme « La santé pour tous »** dans le cadre du Plan national de développement économique et social à l'horizon 2020.⁴⁸

La république bolivienne du Venezuela a applaudi la Guinée pour le renforcement de l'accès aux services de base, les mesures prises à l'appui des familles de personnes en situation de handicap disposant de ressources limitées, la construction de campus universitaires et le **programme « Un toit pour tous »**, qui a permis de livrer des milliers de logements.⁴⁹

44 ILO (n 44) 13.

45 ILO (n 44) 17.

46 ILO (n 44) 21.

47 Conseil des droits de l'homme (n 25) 6.

48 Conseil des droits de l'homme (n 25) 4.

49 As above.

7 Organismes en charge des personnes handicapées

- 7.1 En dehors des cours ou tribunaux ordinaires, la République de Guinée Equatoriale a-t-elle un organisme officiel qui s'intéresse spécifiquement de la violation des droits des personnes handicapées ? Si oui décrire l'organe, ses fonctions et ses pouvoirs.**

S'il existe une Commission de la Justice et des Droits de l'Homme en Guinée équatoriale, celle-ci semble se concentrée sur la question des Droits de l'Homme et l'Egalité des sexes. Il n'y a pas de mention spécifique de la violation des droits des personnes en situation de handicap.⁵⁰

- 7.2 En dehors des cours ou tribunaux ordinaires, la République de Guinée Equatoriale a-t-elle un organisme officiel qui, bien que n'étant pas spécifiquement en charge de la violation des droits des personnes handicapées s'y attèle tout de même ? Si oui décrire l'organe, ses fonctions et ses pouvoirs.**

La République de Guinée Equatoriale ne dispose pas d'un organisme officiel qui, bien qu'étant pas spécifiquement en charge de la violation des droits des personnes en situation de handicap s'y attèle.

8 Institutions Nationales des Droits de l'Homme (Commission des Droits de l'Homme ou Ombudsman ou Protecteur du Citoyen)

- 8.1 La République de Guinée Equatoriale est-elle dotée d'une Commission de Droits de l'Homme ou d'un Ombudsman ou d'un Protecteur du Citoyen ? Si oui ses missions incluent-elles la promotion et la protection des droits des personnes handicapées ? Si votre réponse est oui, indiquez également si la Commission de Droits de l'Homme ou l'Ombudsman ou le Protecteur du Citoyen de la République de Guinée n'a jamais abordé des questions relatives aux droits des personnes handicapées.**

Lors de la réforme constitutionnelle de novembre 2011, avait été prévue la création d'un Ombudsman en charge de la défense des droits constitutionnels des citoyens en République de Guinée Equatoriale.⁵¹ Conformément aux Principes de Paris, le centre pour la promotion des droits de l'homme et de la démocratie a été transformée en une Institution Nationale pour la Promotion et la Protection des Droits de l'Homme.⁵²

50 Commission de la justice et des droits de l'homme https://data.ipu.org/fr/parliament/GQ/specialized-bodies/?chamber=GQ-LC01&theme=human_rights (consulté le 18 novembre 2024).

51 Centro de estudios para el desarrollo de Guinea Ecatatorial (CEIDGE) (n 12) 2.

Il y a très peu d'informations sur les mesures concrètes concernant la création de cette Institution Nationale pour la Promotion et la Protection des Droits de l'Homme. Pour finir, il a été relevé que cette dernière ne bénéficie pas d'une totale indépendance ; le Médiateur, nommé en novembre 2014 étant un ancien membre du parlement et surtout le vice-secrétaire **général** du parti majoritaire au pouvoir.⁵³ Enfin, les ressources financières, conformément aux Principes de Paris, **étant insuffisantes ne permettent pas un fonctionnement effectif de l'Institution.**

9 Organisation des personnes handicapées (OPH) et autres Organisations de la Société Civile

9.1 Avez-vous en République de Guinée Equatoriale des organisations qui représentent et défendent les droits et le bien-être des personnes handicapées ? Si oui énumérez chaque organisation et décrivez ses activités.

La République fédérale de Guinée Equatoriale de Somalie a des organisations qui représentent et défendent les droits et le bien-être des personnes en situation de handicap :

- **L'Association Nationale des Personnes Handicapées (ASONAMI)** est une association reconnue d'utilité publique. Son travail est accès sur le social et les différentes formes de difficultés rencontrées par les personnes en situation de handicap.⁵⁴
- **Eticultura**, qui est une association de théâtre **équato-guinéenne** basée à Malabo, qui œuvre sur l'ensemble du territoire pour la reconnaissance des personnes en situation de handicap et leur accès aux premières nécessités et à des activités culturelles et sportives.⁵⁵
- **La Fédération des Personnes Handicapées** qui est une association sportive, créée en 2016. Sa mission principale est de permettre et faciliter les personnes en situation de handicap capables de pratiquer des activités sportives.⁵⁶ La Fédération a **également été** très active, lors de la Journée Internationale des personnes handicapées, du 3 décembre 2022, sur la sensibilisation des familles à la question du handicap et sur la manière d'accompagner les personnes vivant avec un handicap à domicile. Enfin, il a été précisé que les personnes en situation de handicap doivent pleinement profiter de leurs droits, ainsi que les enfants en situation de handicap.⁵⁷ En avril 2023, La Fédération a organisé un séminaire sur la gestion familiale des enfants autistes, afin de sensibiliser les parents sur le handicap de leurs enfants et de leurs besoins.⁵⁸ Pour finir, le 24 juillet 2023 a fourni un soutien sanitaire aux enfants

52 Comité des droits de l'homme (n 10) 3.

53 Centro de estudios para el desarrollo de Guinea Ectorial (CEIDGE) (n 12) 2.

54 « Guinée Equatoriale : Constancia Mangué de Obiang vient en aide à l'association nationale des handicapés (ASONAMI) », Laotrazvoz, 10 septembre 2016 https://www.laotrazvoz.info/Guinee-Equatoriale-Constancia-Mangué-de-Obiang-vient-en-aide-a-l-association-nationale-des-Handicapés-ASONAMI_a1829.html (consulté le 18 novembre 2024).

55 NO SOY DIFERENTE (documentaire de l'association Eticultura en Guinée équatoriale) <https://www.youtube.com/watch?v=EL4AutoU9L-E> (consulté le 26 septembre 2024).

56 José Pelayo Obama « La Fédération des Personnes handicapées est la seule à avoir des médailles d'or dans ses vitrines », Mechaap, 28 novembre 2022 <https://mechaap.com/jose-pelayo-obama-la-federacion-de-discapitados-es-la-unica-que-cuenta-con-medallas-de-oro-en-sus-vitrinas/> (consulté le 18 novembre 2024).

57 « La FED commémore aujourd'hui pour la 4e fois la Journée internationale des personnes handicapées », Mechaap, 3 décembre 2022 <https://mechaap.com/la-fed-conmemora-hoy-por-cuarta-vez-el-dia-internacional-de-los-discapitados/> (consulté le 26 septembre 2024).

et aux athlètes ayant une déficience intellectuelle ou mentale. L'idée étant, avec d'autres institutions, entre le 28 et 29 juillet, d'accompagner les personnes en situation de handicap intellectuel ou mental. Ces deux jours permettant l'accès à **des consultations gratuites, réunissant** des spécialistes dans différents domaines de la santé (psychologie, psychiatrie, dentiste, ophtalmologie, entre autres).⁵⁹

9.2 Dans votre région, les OPH sont-elles organisées ou coordonnées au niveau national et/ou régional ?

Dans la République fédérale de Guinée Equatoriale, les OPH ne semblent pas organisées ou être organisées en une fédération.

9.3 Si la République de Guinée Equatoriale a ratifié la CDPH, comment a-t-elle assuré l'implication des Organisations des personnes handicapées dans le processus de mise en œuvre ?

Il n'y a pas d'informations précises sur cette question.

9.4 Quels genres d'actions les OPH ont-elles prise elles-mêmes afin de s'assurer qu'elles soient pleinement intégrées dans le processus de mise en œuvre ?

Nous n'avons pas d'informations précises sur cette question.

9.5 Quels sont, le cas échéant les obstacles rencontrés par les OPH lors de leur engagement dans la mise en œuvre ?

Bien que depuis l'adoption des lois concernant les associations de droit privé, complétées par la loi sur les organisations non gouvernementales (ONG) n° 1/99 du 24 février, les associations apolitiques ont vu leur nombre augmenté. Elles sont diversifiées. Cependant, il semble qu'il y ait un manque de visibilité de l'ensemble des organisations défendant les droits des personnes en situation de handicap.

9.6 Y'a-t-il des exemples pouvant servir de 'modèles' pour la participation des OPH ?

En décembre 2022, lors de la Journée internationale des personnes handicapées, la Fédération des Personnes Handicapées a organisé un séminaire atelier d'orientation pour les familles de personnes handicapées, dans le but de sensibiliser ces familles sur la question du handicap et sur la manière de gérer les personnes en situation de handicap à la maison. La fédération a également insisté sur le fait que les personnes en situation de handicap devaient profiter de tous les droits, ainsi que les enfants.⁶⁰ En avril 2023, la Fédération, à l'occasion de la Journée mondiale de

58 Gouvernement de Guinée équatoriale : « La Fédération equato-guinéenne des personnes handicapées a commémoré la Journée mondiale de l'autisme », 9 avril 2023. https://www.guineaequatorialpress.com/noticias/la_federacion_ecuatoguineana_de_discapitados_ha_conmemorado_el_dia_mundial_del_autismo (consulté le 26 septembre 2024).

59 « La Fédération équato-guinéenne des personnes handicapées offrira des soins médicaux gratuits aux personnes handicapées mentales et intellectuelles à Bata », AhoraEG, 24 juillet 2023 <https://ahoraeg.com/sociedad/2023/07/24/federacion-ecuatoguineana-de-discapitados-ofrecera-atencion-medica-gratuita-para-personas-con-discapacidad-mental-e-intelectual-en-bata/> (consulté le 26 septembre 2024).

l'autisme, a à nouveau organisé un séminaire atelier sur la gestion familiale des enfants autistes, afin de sensibiliser les parents de ces enfants en situation de handicap.⁶¹ Enfin, entre le 28 et le 29 juillet 2023 à Bata, la Fédération équato-guinéenne des Personnes Handicapées a offert sur ces deux jours une assistance sanitaire aux enfants et athlètes en situation de handicap ayant une déficience intellectuelle ou mentale. La fédération a collaboré avec plusieurs institutions et également permis durant ces journées portes ouvertes l'accès aux consultations gratuites avec des spécialistes dans différents domaines de santé (psychiatres, dentistes, ophtalmologues, notamment).⁶²

Le 3 décembre 2022, d'autres initiatives ont été organisées, notamment avec le rassemblement des femmes, d'hommes et de jeunes en situations de handicap pour revendiquer leurs droits à une inclusion durable dans la société **équato-guinéenne**. Ce rassemblement a été l'hospice du thème sur « Des solutions transformatrices pour un **développement** inclusif : le rôle de l'innovation pour promouvoir un monde accessible et équitable ».

Les principaux défis auxquels ces personnes sont confrontées ont été abordés tels que l'inaccessibilité aux possibilités d'éducation et à de meilleures conditions de santé, l'accès aux nouvelles technologies, l'emploi décent, la discrimination et la stigmatisation sociale, entre autres.⁶³

9.7 Y'a-t-il des résultats spécifiques concernant une mise en œuvre prospère et/ou une reconnaissance appropriée des droits des personnes handicapées résultant de l'implication des OPH dans le processus de mise en œuvre ?

Nous n'avons pas d'informations sur cette question.

9.8 Votre recherche (pour ce projet) a-t-elle identifié des aspects qui nécessitent le développement de capacité et soutien pour les OPH afin d'assurer leur engagement dans la mise en œuvre de la Convention ?

Les OPH devraient avoir beaucoup plus de visibilité et se réunir en Fédération des organisations pour les personnes en situation de handicap au niveau national, ainsi que régional et local. Une législation sur le financement public de ces organisations pourrait également permettre une meilleure coordination et un meilleur développement de ces organisations. Ces organisations devraient être multisectorielles.

60 Gabriel Ebang Oyono Nkene La FED conmemora hoy por cuarta vez el día internacional de los discapacitados, 3 décembre 2022 <https://mechaap.com/la-fed-conmemora-hoy-por-cuarta-vez-el-dia-internacional-de-los-discapitados/> (consulté le 26 septembre 2024).

61 La Federación Ecuatoguineana de Discapitados ha conmemorado el Día Mundial del Autismo 9 abril 2023 https://www.guineaecuatorialpress.com/noticias/la_federacion_ecuatoguineana_de_discapitados_ha_conmemorado_el_dia_mundial_del_autismo (consulté le 26 septembre 2024).

62 Federación Ecuatoguineana de Discapitados ofrecerá atención médica gratuita para personas con discapacidad mental e intelectual en Bata, 24 juillet 2023 <https://ahoraeg.com/sociedad/2023/07/24/federacion-ecuatoguineana-de-discapitados-ofrecera-atencion-medica-gratuita-para-personas-con-discapacidad-mental-e-intelectual-en-bata/> (consulté le 26 septembre 2024).

63 PNUD « Les personnes handicapées de Malabo élèvent la voix pour leurs droits », (Las personas con discapacidad de Malabo alzan sus voces por sus derechos) 3 décembre 2022 <https://www.undp.org/es/equatorial-guinea/noticias/las-personas-con-discapacidad-de-malabo-alzan-sus-voces-por-sus-derechos> (consulté le 26 septembre 2024).

9.9 Y'a-t-il des recommandations provenant de votre recherche au sujet de comment les OPH pourraient être plus largement responsabilisées dans les processus de mise en œuvre des instruments internationaux ou régionaux ?

Les OPH devraient se réunir en fédération afin d'exercer une influence coordonnée et d'exercer plus de responsabilités dans le processus de mise en œuvre des instruments internationaux ou régionaux.

9.10 Y'a-t-il des instituts de recherche spécifiques dans votre région qui travaillent sur les droits des personnes handicapées et qui ont facilité l'implication des OPH dans le processus, y compris la recherche ?

Nous n'avons pas trouvé d'instituts de recherches spécifiques en Guinée équatoriale sur les droits des personnes en situation de handicap.

10 Branches gouvernementales

10.1 Avez-vous de(s) branche(s) gouvernementale(s) spécifiquement chargée(s) de promouvoir et protéger les droits et le bien-être des personnes handicapées ? Si oui, décrivez les activités de cette (ces) branche(s).

Il s'agit du ministère des affaires sociales et de l'égalité des sexes qui a été créé en 1992 à la suite de la ratification de la Convention pour l'élimination de la discrimination à l'égard des femmes de l'Organisation des Nations Unies (1984),⁶⁴ Y a été ajoutée la promotion et la protection des droits et du bien-être des personnes en situation de handicap à son portefeuille, à la suite de la participation de la délégation de ce ministère à la :

10^e Session de la conférence sur les droits des personnes en situation de handicap, développée en Assemblée Générale avec l'ordre d'examiner le niveau de conformité avec les actions gouvernementales en faveur des personnes handicapées. Les questions abordées ayant été les mesures prises pour faire face

- - aux effets de la discrimination multiple des personnes handicapées ;
- - à l'inclusion de ce groupe dans le travail humanitaire, en vue d'atteindre les objectifs de développement durable.⁶⁵

64 Gouvernement de Guinée Equatoriale « Jubilé d'Argent du Ministère des Affaires sociales et de l'égalité des sexes », 8 février 2017 (Bodas de Plata del Ministerio de Asuntos Sociales e Igualdad de Género)https://guineaecuatorialpress.com/noticias/bodas_de_plata_del_ministerio_de_asuntos_sociales_e_igualdad_de_genero (consulté le 26 septembre 2024).

65 Gouvernement de Guinée équatoriale « Le Ministère des Affaires sociales et de l'égalité des sexes participe à la Conférence sur les droits des personnes handicapées à l'ONU » (El Ministerio de Asuntos Sociales asiste a la Conferencia sobre los Derechos de las Personas Discapacitadas en la ONU) 14 juin 2017 https://guineaecuatorialpress.com/noticias/el_ministerio_de_asuntos_sociales_asiste_a_la_conferencia_sobre_los_derechos_de_la_s_personas_discapacitadas_en_la_onu (consulté le 26 septembre 2024).

Par la suite, par le décret n°82/2020 du 18 septembre, le Président de la République de Guinée équatoriale nomme un directeur général de la coordination multisectorielle et de l'assistance aux personnes handicapées, aux personnes âgées.⁶⁶

Dans son rapport intermédiaire pour le troisième cycle de l'Examen périodique universel, la Guinée équatoriale précise que pour G) assurer l'intégration et l'inclusion des personnes en situation de handicap, 34. la direction générale de l'assistance aux personnes handicapées et aux personnes âgées a été créée pour :

Promouvoir les droits, gérer et développer des stratégies et des actions visant à promouvoir les services de base de subsistance pour les personnes handicapées et les personnes âgées et à élaborer et mettre en œuvre des actions en faveur de ces personnes handicapées.

La direction des personnes handicapées et aux personnes âgées est également en charge de a) Elaborer des propositions de politiques, de stratégies, et d'actions visant à protéger et soutenir les couches sociales marginalisées en raison du handicap ; b) Promouvoir l'accès aux services sociaux de base pour des personnes handicapées et les personnes âgées ainsi que des campagnes nationales de sensibilisation à leurs droits ; c) Gérer la construction de centres d'accueil et de protection sociale pour des personnes handicapées et les personnes âgées ; Créer une base de données au moyen d'enquêtes et de recensements sur la situation sociale des personnes handicapées et des personnes âgées.⁶⁷

35. L'intégration et l'inclusion de la population en situation de handicap majoritairement sans emploi est assuré par l'INSESO, qui relève du Ministère du travail, de l'emploi et de la sécurité sociale. Le ministère examine périodiquement le degré d'invalidité des bénéficiaires pour le recouvrement de la pension, des soins gratuits de santé et d'autres prestations gratuites que le régime de sécurité sociale accorde à ces populations vulnérables.

Avec l'appui de l'UNICEF, le ministère est en train d'élaborer un Programme National pour les Personnes en situation de handicap.⁶⁸

11 Préoccupations majeures des droits de l'homme relatives aux personnes handicapées

66 « Nomination au Ministère des Affaires sociales et de l'égalité des sexes », Revista Real Equatorial Guinea, 18 septembre 2017 (Nombramiento en el Ministerio de Asuntos Sociales e Igualdad de Género) <https://realequatorialguinea.com/destacado/politica/nombramiento-en-el-ministerio-de-asuntos-sociales-e-igualdad-de-genero/> (consulté le 26 septembre 2024).

67 OHCHR (n 2) G. Asegurar la integración y la inclusión de las personas con discapacidades: 34. En el Ministerio de Asuntos Sociales e Igualdad de Género, se ha creado una Dirección General de Asistencia a Personas con Discapacidad y Personas de Tercera Edad, órgano que se encarga de promover los derechos, gestionar y desarrollar estrategias y acciones orientadas a promover los servicios básicos de subsistencia a personas con discapacidad y personas de Tercera Edad y que elabora y ejecuta las acciones que favorecen a estas personas con discapacidad. También la Dirección General de Asistencia a Personas con Discapacidad y de Tercera Edad, se encarga de: a. Elaborar propuestas de políticas, estrategias y acciones de protección y apoyo a las capas sociales marginadas por motivos de discapacidad. b. Promover el acceso a los servicios sociales básico a favor de las personas con discapacidad y personas de Tercera Edad, así como campañas nacionales de sensibilización sobre sus derechos. c. Gestionar la construcción de Centros de Acogida y Protección Social de personas con discapacidad y personas de Tercera Edad. d. Crear una base de datos a través de encuestas y censos sobre la situación social de personas con discapacidad y personas de Tercera Edad.

11.1 Quels sont les défis contemporains des personnes handicapées en République de Guinée Equatoriale—? (Exemple : Certaines régions d’Afrique pratiquent des tueries rituelles de certaines catégories de personnes handicapées telles que les personnes atteintes d’albinisme. A cet effet La Tanzanie est aux avant-postes. Nous devons remettre en cause les pratiques coutumières qui discriminent, blessent et tuent les personnes handicapées).

En République de la Guinée équatoriale, le handicap auditif a pour conséquences l’abandon familial et l’isolement. A l’intérieur du pays, selon une croyance, les mères d’enfants sourds auraient été envoutées ; le nouveau-né étant par conséquent maudit.⁶⁹

Les personnes souffrant d’un handicap mental, quant à elles sont régulièrement victimes de violence et diverses formes de maltraitance. S’ajoutent à ces violences et maltraitements une violation au droit à la santé. En effet, le pays fait face à une absence de services psychiatriques dans les hôpitaux publics et un nombre très restreint d’établissements de soins mentaux. Il est donc demandé à la Guinée équatoriale d’adopter sans délai une législation et des règles en matière de soins et de pratiques de santé mentale, protégeant le droit à la santé de ces personnes, et énonçant expressément les procédures à suivre pour garantir le droit de chacun d’être protégé contre la maltraitance, la violence et la discrimination.⁷⁰

11.2 Comment la République de Guinée Equatoriale répond-t-elle aux besoins des personnes handicapées au regard des domaines ci-dessous énumérés ?

Concernant les enfants en situation de handicap, dont les enfants vivant avec un handicap auditif, il existe un cadre juridique relatif à l’éducation spéciale et aux moyens de satisfaire les besoins éducatifs particuliers ; il s’agit de la « Loi générale de l’éducation de 2007,⁷¹73 qui compte une série d’articles régissant les possibilités d’éducation à l’intention des personnes/enfants en situation de handicap ».72 En dépit de ce cadre législatif, il y a une absence de mécanismes institutionnels ou de plan pour sa mise en œuvre.

En outre, la plupart des centres pour sourds ont été créés à l’initiative du privé et non de l’Etat. Pour finir, selon un document de l’UNICEF datant de 2015 et intitulé « Analyse de la situation de l’éducation spéciale en Guinée équatoriale »,73

68 OHCHR (n 2) 12 et 30 35. La integración e inclusión de la población discapacitada mayormente pasiva, está asegurada por el Instituto Nacional de la Seguridad Social, (INSESO) dependiente del Ministerio de Trabajo, Fomento de Empleo y Seguridad Social, el cual revisa periódicamente el grado de discapacidad de nuestros ciudadanos para el cobro de la pensión, asistencia sanitaria gratuita y demás prestaciones gratuitas que otorga nuestro régimen de la seguridad social a la población discapacitada. La Convención de Derechos de las personas con discapacidad ratificada por Guinea Ecuatorial en 2015, ya ha sido depositada en la Secretaría General de las Naciones Unidas en marzo 2022. Con el apoyo de UNICEF, el Ministerio está en el proceso de desarrollar una Agenda Nacional para las Discapacidades.

69 Diego Menjibar Reynes (n 42).

70 Conseil des droits de l’homme (n 15) 7-8.

71 UNESCO, Inclusion – Guinée équatoriale, (Inclusió - Guinea Ecuatorial) <https://education-profiles.org/es/africa-sub-sahariana/guinea-ecuatorial/~inclusion> (consulté le 26 septembre 2024).

72 Diego Menjibar Reynes (n 42).

73 UNICEF Análisis de situación de la educación especial en Guinea Ecuatorial, Febrero 2015 <https://www.unicef.org/equatorialguinea/informes/an%C3%A1lisis-de-situaci%C3%B3n-de-la-educaci%C3%B3n-especial-en-guinea-ecuatorial> (consulté le 18 novembre 2024).

seuls 2% des enseignants ont bénéficié d'une formation spécifique en éducation spéciale. 90% des enseignants ont des difficultés à s'occuper d'élèves en situation de handicap.⁷⁴

11.3 La République de Guinée Equatoriale accorde-t-elle des subventions pour handicap ou autre moyen de revenu en vue de soutenir les personnes handicapées ?

Selon le Rapport national soumis conformément au paragraphe 5 de l'annexe à la résolution 16/21 du Conseil des droits de l'homme, entre 2001 et 2008 des mesures ont été adoptées visant à améliorer la situation des personnes en situation de handicap, en particulier leur intégration au système de sécurité sociale, avec la création de l'INSESO. En conséquence, dès 2014 le budget de l'Etat avait prévu une allocation de crédits aux organismes d'action sociale, soit pour l'INSESO un montant de 1 370 554 560 francs CFA en 2017 et 2018. En outre, les personnes en situation de handicap reçoivent désormais une allocation de garanties de revenu s'élevant à 60% du salaire minimum interprofessionnel, et bénéficient de la gratuité des soins de santé et des prestations médicales et pharmaceutiques.⁷⁵

11.4 Les personnes handicapées ont-elles un droit de participation à la vie politique (représentation politique et leadership, vote indépendant etc.) de la République de Guinée Equatoriale-?

Aucune mention spécifique de la personne en situation de handicap n'est mentionnée dans la Constitution 2012.⁷⁶ Cependant, la Guinée équatoriale a signé le 25 septembre 1987 le Pacte International Relatif aux Droits Civils et Politiques.⁷⁷

11.5 Catégories spécifiques expérimentant des questions particulières/vulnérabilité :

Enfants en situation de handicap.

Depuis 2015, à la suite d'un recensement auprès d'établissements publics de huit (8) villes en Guinée équatoriale, 345 enfants ont été identifiés comme étant en situation de handicap, dont 108 avec un handicap intellectuel, 44 avec un handicap moteur, 22 vivant avec un handicap auditif, 63 avec handicap visuel, 85 présentant un handicap de langage et 39 dans la catégorie « autres ».⁷⁸

Un plan sectoriel relatif au handicap et la création de centres d'alphabétisation et de réadaptation ont été mis en place pour proposer aux enfants en situation de handicap un suivi spécialisé. Y sont présents des orthophonistes et psychologues dans les écoles pour faire le suivi de ces enfants en situation de handicap. Cette démarche est considérée comme prioritaire pour un meilleur suivi psychosocial de ces enfants pour les années à venir.⁷⁹

74 Diego Menjibar Reynes (n 42); UNICEF (n 75).

75 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-17 mai 2019 (n 20) 5.

76 Equatorial Guinea's Constitution of 1991 with Amendments through 2012 (n 33).

77 Pacte international relative aux droits civils et politique, New York, 16 décembre 1966 https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_fr&mtdsg_no=iv-4&src=ind (consulté le 26 septembre 2024).

78 Conseil des droits de l'homme – Groupe de travail sur l'Examen périodique universel Trente-troisième session, du 6-12 mai 2019 (n 20) 5.

En parallèle, des centres éducatifs ont été créés pour les personnes en situation de handicap, comme l'école Virgen Maria de Africa, ainsi que les écoles de la Croix Rouge. La Croix-Rouge équato-guinéenne ayant reçu durant trois années consécutives une subvention publique de 300 000 000 francs CFA, dispose d'ailleurs d'une école spécialisée pour les personnes sourdes et muettes. Durant les années 2016/2017 et 2017/2018, il y a eu 99 inscrits, dont 48 femmes.⁸⁰

Femmes en situation de handicap. Selon le « Résumé des communications des parties prenantes concernant la Guinée équatoriale » **présenté lors de la trente-troisième session** (6-12 mai 2019), les auteurs ont rappelé :

La Guinée équatoriale s'est engagée à accélérer le processus d'adoption d'une loi spécifique et d'un plan d'action nationale visant à lutter contre toutes les formes de violence à l'égard des femmes handicapées.⁸¹

12 Perspective future

12.1 Y'a-t-il des mesures spécifiques débattus ou prises en compte présentement en République de Guinée équatoriale au sujet les personnes handicapées ?

La mesure phare, en Guinée équatoriale, est la création au sein de l'Institut Nationale de Sécurité Sociale (INSESO) du service dédié aux personnes en situation de handicap.

12.2 Quelles réformes légales sont proposées ? Quelle réforme légale aimeriez-vous voir en République de Guinée équatoriale ? Pourquoi ?

La République fédérale de Guinée équatoriale a le devoir de procéder à un recensement de sa population en générale et de la population en situation de handicap afin de donner des données précises ventilées par âge, par sexe, par régions, par catégorie de handicap.

Avec la ratification de la Convention relative aux personnes handicapées, il devient urgent que la Guinée équatoriale adhère au protocole facultatif, et accélère le vote et l'inscription dans sa Constitution de lois en faveur des personnes en situation de handicap, en matière de lutte contre la violence, la discrimination et la maltraitance de ces dernières. Une attention toute particulière pour les femmes, les filles et les enfants en situation de handicap ainsi que les personnes âgées (groupes vulnérables) est vivement recommandée.

Les OPH devraient se fédérer afin d'avoir plus de visibilité et pouvoir faire pression auprès des autorités gouvernementales pour des financements.

Enfin, un centre de recherche sur la question des droits des personnes en situation de handicap serait un atout pour la défense des droits des personnes en situation de handicap. Pour finir, l'Etat de Guinée équatoriale pourrait instaurer

79 As above.

80 As above.

81 Conseil des droits de l'homme (n 15) 9.

une journée nationale des personnes en situation de handicap afin de promouvoir leurs droits.

1 Population indicators

1.1 What is the total population of Ghana?

Ghana lies in the centre of the West African coast with a total area of 238 533 square kilometres. According to the 2021 Population and Housing Census (PHC), due to the emergence of COVID-19, the Census that had been planned for 2020 had to be conducted in 2021 and a total population of 30 832 019 was recorded.¹

1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Ghana. What criteria are used to determine who falls within the class of persons with disabilities in Ghana?

The 2021 PHC was publicised through diverse and myriad outlets to inform the public about the exercise, and their civic responsibility of allowing field officers to enter their communities and houses, and to provide the required information.² The 2021 PHC adopted the six main functional domains of difficulty of the Washington Group on Disability Statistics, namely seeing, hearing, walking or climbing stairs, remembering or concentrating, self-care, and communication. These are functional

* BA (Publishing studies) (Kwame Nkrumah University of Science and Technology (KNUST) Ghana); LLB (KNUST), Qualifying Certificate (Ghana School of Law); Enrolment on the Role of Barristers and Solicitors of the Supreme Court of Ghana, General Legal Council (Ghana); Master of Laws (LLM), International and Comparative Disability Law and Policy, University of Galway, Ireland; Member of the Ghana Bar Association; Researcher, Centre for Human Rights (South Africa); Member of the Disability Inclusion Experts in West Africa (ECOWAS).

1 Ghana Statistical Service 'Ghana 2021 Population and Housing Census: General Report Volume 3F – Difficulty in Performing Activities' https://statsghana.gov.gh/gss/main/fileUpload/pressrelease/2021%20PHC%20General%20Report%20Vol%203F_Difficulty%20in%20Performing%20Activities_final_161221.pdf (accessed 16 November 2024).

2 Ghana 2021 PHC (n 1) 7.

abilities that are applicable to people of all societies and cultures, thereby restricting the concept to functional limitation(s). Thus, the 2021 PHC contains relevant data on segments of the population with different kinds of difficulties in performing activities, which are disaggregated by type of difficulty and the varying degrees of severity by sex, age, region of residence, level of education and employment status.³

1.3 What is the total number and percentage of persons with disabilities in Ghana?

According to the 2021 PHC, persons who are five years of age and older with some form of varying degrees of difficulty in performing an activity, represent 8 per cent of the total population and is higher among females (8,8 per cent), than males (6,7 per cent). The proportion of the population with varying degrees of difficulty in performing activities in rural areas (9,5 per cent) is higher than in urban areas (6,5 per cent).⁴

1.4 What is the total number and percentage of women with disabilities in Ghana?

According to the 2021 PHC, the share of females among persons with varying degrees of difficulty in performing various activities is higher than for males in both rural (56,2 per cent vs 43,8 per cent) and urban (59,7 per cent vs 40,3 per cent) areas, but the difference is larger in urban areas.⁵

1.5 What is the total number and percentage of children with disabilities in Ghana?

The 2021 PHC did not collect data on children with disabilities, but persons with disabilities who were five and older.⁶

1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Ghana?

The population having difficulty in seeing (4 per cent) has the highest prevalence among all six domains with communicating having the lowest (1 per cent).⁷ The self-care domain (8,5 per cent) has the highest proportion of persons who cannot perform that activity at all while the lowest is remembering or concentrating (2,8 per cent); with males having higher proportion than females in all domains.⁸

2 Ghana's international obligations

2.1 What is the status of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in Ghana? Has Ghana signed and

3 Ghana 2021 PHC (n 1) 23.

4 Ghana 2021 PHC (n 1) 27.

5 Ghana 2021 PHC (n 2) 28.

6 Ghana 2021 PHC (n 1) 27.

7 Ghana 2021 PHC (n 1) 28.

8 Ghana 2021 PHC (n 1) 29.

ratified the CRPD? Provide the date(s). Has Ghana signed and ratified the Optional Protocol? Provide the date(s).

Ghana's Parliament signed the CRPD on 30 March 2007 and ratified the CRPD and the Optional Protocol on 31 July 2012, being the 119th country to do so.⁹

2.2 If Ghana has signed and ratified the CRPD, when is/was its country report due? Which government department is responsible for submission of the report? Has Ghana submitted its report? If not, what reasons does the relevant government department give for the delay?

Ghana has signed and ratified the CRPD. Ghana's initial report was due in August 2014 but submitted on 5 June 2018.¹⁰ The National Council on Persons with Disability, is the State Agency for disability matters and systemic inclusion¹¹ with the Ministry of Gender, Children and Social Protection. Ghana's initial report was submitted by the National Council on Persons with Disability through the Ministry of Gender, Children and Social Protection.

The Committee considered the initial report of Ghana at its 730th and 731st meetings, held on 19 and 20 August 2024, respectively. It adopted the present Concluding Observations at its 748th meeting, held on 29 August 2024.¹² The Committee made concluding observations and recommendations to Ghana's report.¹³ It is barely five months since the Concluding Observation was adopted. The review process is yet to have domestic effect on Ghana's disability issues due to the reporting process.

2.3 While reporting under various other United Nations instruments, under the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Ghana also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant concluding observations adopted? If relevant, were these observations given effect to? Was mention made of disability rights in Ghana's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?

United Nations instruments

- **Convention on the Rights of the Child**

Ghana ratified the Convention on the Rights of the Child (CRC) on 5 February 1990. Ghana's second periodic report (CRC/C/65/Add.34) was due in 1997 but it was submitted in March 2005 and Concluding Observations adopted on 27 January 2006. Reporting under the general principles, report was made on the

9 UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=67&Lang=EN (accessed 12 November 2024).

10 Committee on the Rights of Persons with Disabilities, Initial report submitted by Ghana under article 35 of the Convention CRPD, due in 2014, 8 March 2019, UN Doc CRPD/C/GHA/1 (2019).

11 Persons with Disability Act, 2006 (Act 715).

12 Adopted by the Committee at its thirty-first session (12 August-5 September 2024). Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Ghana, 2 October 2024, UN Doc CRPD/C/GHA/CO/1 (2024).

13 Concluding Observations (n 12) 2-18.

steps taken to promote the rights of persons with disabilities.¹⁴ Ghana submitted the third, fourth and fifth consolidated periodic report for the period 2005 and 2010 to the UN Committee on the Rights of the Child on 24 May 2012.¹⁵ The Report mentioned that the new domestic legislation adopted in the reporting period to further enhance the minimum standards set down in the Convention provided for children with disabilities. The new domestic legislation includes the Persons with Disability Act, 2006 (Act 715); Domestic Violence Act, 2007 (Act 732); Education Act, 2008 (Act 778); Property Rights and Succession Bill, 2009; Intestate Succession Amendment Bill, 2009; and the National Health Insurance Amendment Bill, 2011 towards the prohibition of discrimination on the grounds of disability. The Committee considered the combined third to fifth periodic reports of Ghana (CRC/C/GHA/3-5) at its 1991st and 1993rd meetings (see CRC/C/SR.1991 and 1993), held on 19 and 20 May 2015, where the Concluding Observations were adopted at its 2024th meeting (see CRC/C/SR.2024) held on 5 June 2015.¹⁶ The Concluding Observations called for a: budgeting process, which includes a child-rights perspective and specifies clear allocations to children in vulnerable situations including children with disabilities; strengthening the data collection mechanism on children with disabilities especially those with mental health disabilities; and adopting a human rights-based approach to disabilities. The effect of the Concluding Observations includes the on-going review of the Childrens' Act, 1998 (Act 560)¹⁷ and the Inclusive Education Policy.

Ghana submitted the 6th and 7th Report on the CRC on 25 June 2021.¹⁸ The Reports mentioned steps taken to promote the rights of children with disabilities. The 6th and 7th Reports are yet to be published, and Ghana is yet to be reviewed.

Regional instruments

- **African Charter on Human and Peoples' Rights (ACHPR)**

Ghana ratified the ACHPR on 24 of January 1989. Ghana's second periodic report was due in 1993. However, the 1993-2000 reports were submitted in 2000. In reporting under article 18 of the Charter, mention was made of persons with disabilities. That, in compliance with article 18 of the ACHPR, article 29 of the 1992 Constitution of Ghana protects persons with disabilities from discrimination, guarantees working and inclusive living conditions and ensures the wellbeing of persons with disabilities in the family context.¹⁹ The concluding observations and recommendations on the second periodic report were done during the 29th ordinary session in 2022.²⁰

14 EA Gyamfi 'Ghana' (2013) 1 *African Disability Rights Yearbook* 221-243 <https://www.pulp.up.ac.za/journals/african-disability-rights-yearbook-volume-1-2013> (accessed 12 November 2024).

15 Committee on the Rights of the Child, Consideration of consolidated third to fifth periodic Reports submitted by Ghana under article 44 of the Convention, 6 August 2014, UN Doc CRC/C/GHA/3-5 (2014).

16 Committee on the Rights of the Child, Concluding Observations on the combined third to fifth periodic reports of Ghana, 13 July 2015, UN Doc CRC/C/GHA/CO/3-5 (2015).

17 'Ghana government to review Children's Act' *Ghana Business News* 11 August 2009 <https://www.ghanabusinessnews.com/2009/08/11/ghana-government-to-review-childrens-act/> (accessed 11 November 2024).

18 Consideration of consolidated third to fifth periodic reports submitted by Ghana under article 44 of the Convention (n 15).

19 ACHPR 'Republic of Ghana: State Reports' <https://achpr.au.int/en/taxonomy/term/207> (accessed 11 November 2024).

20 As above.

- **United Nations Universal Periodic Review (UPR)**

Ghana's UPR first cycle took place from 5 to 16 May 2008. The UPR indicated that the 1992 Constitution of Ghana provides in articles 5 and 29 for the protection of fundamental human rights and freedoms of persons with disabilities.²¹ Ghana's UPR second cycle took place from 22 October 2012 to 5 November 2012.²² The review acknowledged the Ghanaian Parliament having ratified the CRPD.²³ Ghana's third cycle report dedicated a section on legislation and policies that have been strengthened to ensure the non-discrimination of persons with disabilities. The report was considered on 7 November 2017.²⁴ The outcome of the recommendation includes the necessary measures to ensure that the Persons with Disability Act, 2006 (Act 715) is in line with the CRPD and that Ghana adopts the Employment Policy for Persons with Disabilities.²⁵

Ghana submitted its fourth cycle report²⁶ in January 2022. The report among other thematic areas mentioned progress made to protect and promote the rights of persons with disabilities. The progress report stated that Ghana continues to ensure that the death penalty is not applied against any person in Ghana. In particular, no person with mental or intellectual disabilities, persons below 18 years of age at the time of the commission of the crime, and pregnant women have been executed. The report also mentioned the inaccessibility of facilities and structures for persons with disabilities in most public schools including inadequate recreational facilities. However, the report indicated the accessibility of the state-of-the-art disability-friendly facility of DOVVSU One Stop Centre staffed with, among others, clinical psychologists and lawyers to provide well-coordinated, effective, and efficient services for the protection and rehabilitation to victims of any form of violence, including those resulting from harmful traditional practices. The report dedicated a section on persons with disabilities and the work of the National Council on Persons with Disability;²⁷ including Ghana's ratification of the Marrakesh Treaty

- 21 Human Rights Council Working Group on the Universal Periodic Review, Second session, Geneva, 5-16 May 2008, First cycle UPR on Ghana, UN Doc A/HRC/WG.6/2/GHA/1 (2008) 29 <https://www.upr-info.org/sites/default/files/documents/2013-08/ahrcwg62gha1e.pdf> (accessed 15 November 2024).
- 22 Human Rights Council Working Group on the Universal Periodic Review, 14th session, 22 October-5 November 2012, Second cycle UPR on Ghana, 13 August 2012, UN Doc A/HRC/WG.6/14/GHA/1 (2012) 15 <https://www.upr-info.org/sites/default/files/documents/2013-08/ahrcwg.614gha1e.pdf> (accessed 15 November 2024).
- 23 Human Rights Council, 22nd session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Resolution adopted by the Human Rights Council 22/6: Protecting human rights defenders, 12 April 2013, UN Doc A/HRC/22/6 (2013) <https://www.upr-info.org/sites/default/files/documents/2013-08/ahrc226ghanae.pdf> (accessed 11 November 2024).
- 24 Human Rights Council Working Group on the Universal Periodic Review, 28th session 6-17 November 2017: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ghana, 25 August 2017, UN Doc A/HRC/WG.6/28/GHA/1 (2017) <http://www.ohchr.org/en/hrbodies/upr/pages/GHsession14.aspx> (accessed 10 September 2023).
- 25 Human Rights Council, 37th session, 26 February-23 March 2018: Agenda item 6 – Universal periodic review: Report of the Working Group on the Universal Periodic Review: Ghana, 26 December 2017, UN Doc A/HRC/37/7 (2017) <https://www.ohchr.org/en/hr-bodies/upr/gh-index> (accessed 10 September 2023).
- 26 Human Rights Council Working Group on the Universal Periodic Review, 42nd session 23 January-3 February 2022: National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21: Ghana, 1 November 2022, UN Doc A/HRC/WG.6/42/GHA/1 (2022) https://www.upr-info.org/sites/default/files/country-document/2023-02/A_HRC_WG.6_UPR42_GH_1_E.pdf (accessed 10 September 2023).
- 27 National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21 (n 26) 20-21.

on 11 May 2018 to facilitate access to published works for the blind and those with visual impairments; and the launch of the Framework and Strategies for Disability Mainstreaming in the MMDAs by the National Council on Persons with Disability in 2017. The report was considered on 24 January 2023²⁸ with recommendations to strengthen the effective inclusion of persons with disabilities in Ghana.

2.4 Was there any domestic effect on Ghana's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Ghana's legislature to incorporate it into the legal system before the instrument can have force in Ghana's domestic law? Have Ghana's courts ever considered this question? If so, cite the case(s).

The ratification of the CRC and ACHPR led to the adoption of laws aimed at protecting and promoting human rights of persons with disabilities.²⁹ Recent reporting and reviews have made the following domestic effect on disability rights:

- The Persons with Disability Act, 2006 (Act 715) is being reviewed to conform with the CRPD.
- The adoption of the following Guidelines and Frameworks to guide the mainstreaming of disability in national development:
 - The Framework and Strategies for Mainstreaming Disability in the Metropolitan Municipal and District Assemblies (MMDAs) in Ghana;
 - National Disability Inclusive Disaster Risk Management Guidelines for Persons with Disabilities; and
 - DVLA Guidelines for Training and Testing Drivers with Disabilities.
- The representation of disability in the National-Medium Term Development Policy Framework³⁰ 2022-2025 in all policy objectives and focus areas.
- The establishment of the National Mechanism for Reporting and Follow-ups (NMRF) to follow up reports, collates information from the relevant ministries departments and agencies and reports on the status of implementation of Ghana's obligations to international treaties.³¹
- Ghana's commitment under the Global Disability Summit 2018.³²
- The Government's commitment to pass the Persons with Disability Bill to law so as to establish channels for citizen with disabilities participation in government

28 Human Rights Council, 53rd session 19 June-14 July 2023: Agenda item 3 – Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Resolution adopted by the Human Rights Council on 12 July 2023 53/7: The right to education, 19 July 2023, UN Doc A/HRC/53/7 (2023) <https://www.ohchr.org/en/hr-bodies/upr/gh-index> (accessed 10 September 2023).

29 Gyamfi (n 14).

30 National Development Planning Commission 'Social development' focuses on these broad range of issues: Education and training; Health and health services; Food and nutrition security; Population management and migration for development; Reducing poverty and inequality; Water and environmental sanitation; Child protection and development; Support for the aged; Gender equality; Sports and recreation; Leisure and cultural life; Youth development; Social protection; Disability-inclusive development; and Employment and decent work https://ndpc.gov.gh/developments/social_development# (accessed 10 September 2023).

31 Office of the Attorney-General & Ministry of Justice 'National human rights mechanism for reporting and follow-up meeting' (27 November 2021) <https://mojagd.gov.gh/?p=3697> (accessed 10 September 2023).

32 Global Disability Summit 2025 <https://www.globaldisabilitysummit.org/commitments/ghana-ministry-of-gender-children-and-social-protection> (accessed 10 September 2023).

decision making and the decentralisation of the National Council for Persons with Disability to increase persons with disabilities' participation in government decision making under Ghana's Fourth Action Plan (NAP4).³³

- The on-going review of the Inclusive Education Policy.
- The Children's Act, 1998 (Act 560), is being reviewed to conform with the CRC and provide for children with disabilities.³⁴

Ghana operates under a dualistic legal system; hence international treaties must be ratified in parliament with a majority vote and assented to by the President.³⁵ Then, that international treaty is legally enforceable. Internal domestic laws must be amended to conform to the instruments.³⁶ Where there is conflict between domestic law and ratified international instruments, the international instrument takes precedence over domestic law. The first prominent case came in 1993 when the court held in *National Patriotic Party v Inspector General of Police (NPP v IGP)*³⁷ that the Protocol to the ACHPR could be invoked without formal incorporation into local law, where the same rights were also protected in the Ghanaian Constitution.

2.5 With reference to 2.4 above, has the United Nation's CRPD or any other ratified international instrument been domesticated? Provide details

With reference to 2.4 above, through the ratification and signing of the CRPD, Ghana is currently reviewing the Persons with Disability Act 2006 (Act 715) to conform to the CRPD.³⁸

3 Constitution

3.1 Does the Constitution of Ghana contain provisions that directly address disability? If so, list the provisions and explain how each provision addresses disability.

Article 29 contains the rights of the persons with disabilities. Article 29(8)³⁹ mandates the Parliament of Ghana to enact such laws as are necessary to ensure the enforcement of the provisions. Hence the Parliament of Ghana enacted the Persons with Disability Act, 2006 (Act 715).

Article 29 of the 1992 Constitution guarantees persons with disabilities, the right to:

33 Open Government Partnership 'Ghana Action Plan Review 2021-2023' (28 April 2022) <https://www.opengovpartnership.org/documents/ghana-action-plan-review-2021-2023/#:~:text=Ghana's%20fourth%20action%20plan%20contains,transparency%20in%20the%20extractive%20sector> (accessed 10 September 2023).

34 *Ghana Business News* (n 17).

35 Art 75(1)-(2) of the 1992 Constitution.

36 Sec 2 of the Ghana Law Reform Commission Act 1975 (NRCD 325).

37 [1993-94] 2 GLR 467.

38 EA Gyamfi 'Persons with Disability Act, 2006 (Act 715) 14 years old and review' *Graphic Online* 10 August 2020 <https://www.graphic.com.gh/features/features/persons-with-disability-act-2006-act-715-14-years-old-and-review.html> (accessed 10 August 2023).

39 Art 29(8): 'Parliament shall enact such laws as are necessary to ensure the enforcement of the provisions of this article.'

- family life;
- social activities;
- recreational activities;
- community integration;
- well-resourced indispensable specialised establishment;
- protection against all forms of exploitation, discrimination, abusive or degrading nature;
- easy access to justice;
- availability of public places;
- convenient and accessible business and working environment; and
- adoption of requisite laws, regulations, policies and measures to enforce disability rights.⁴⁰

Article 37(2)(b): In order to secure and protect social order Ghana has the mandate as a state to direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law.⁴¹ Ghana is constitutionally guided in the protection and promotion of all other basic human rights and freedoms of persons with disabilities.

Article 37(3): That in promoting disability rights, the state shall be constitutionally guided by international human rights instrument.

3.2 Does the Constitution of Ghana contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.

Notable among the constitutional provisions are:

Article 17(1): The 'all persons' denotes all Ghanaians including persons with disabilities shall be able to access the justice system.

Article 17(2)(3): This provision guarantees non-discrimination against all Ghanaians including persons with disabilities.

4 Legislation

4.1 Does Ghana have legislation that directly addresses disability? If so, list the legislation and explain how the legislation addresses disability.

The Persons with Disability Act, 2006 (Act 715)

This Act provides for persons with disability, to establish the National Council on Persons with Disability. The Council is mandated to propose and evolve policies and strategies to enable persons with disability to enter and participate in the mainstream of the national development process.

⁴⁰ Art 17(4)(a) of the 1992 Constitution.

⁴¹ Art 37(1) of the 1992 Constitution.

4.2 Does Ghana have legislation that indirectly addresses disability? If so, list the main legislation and explain how the legislation relates to disability.

Notably among the legislation is the following:

Children’s Act, 1998 (Act 560) is an Act to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption; to regulate child labour and apprenticeship; for ancillary matters concerning children generally; and to provide for related matters. Section 3 of the Act deals with non-discrimination against a child on grounds of disability. Section 10(1) of the Act provides for the treatment of a child with a disability. Section 10(2) of the Act addresses the right of the child to special care, education and training for maximum potential and to be self-reliant.

Labour Act, 2003 (Act 651) is an Act to amend and consolidate the laws relating to labour, employers, trade unions and industrial relations; and to establish a National Labour Commission and to provide for related matters. Section 3(e) of the Act caters for the economic right of persons with disabilities. Section 14(e) of the Act prohibits an employer from discriminating against an employee on grounds of disability. Part IV⁴² regulates the employment of persons with disabilities.

National Health Insurance Act, 2003 (Act 650) is an Act to secure the provision of basic healthcare services to persons resident in the country through mutual and private health insurance schemes. Section 81(2)(d) of the Act guarantees the mandatory enrolment of persons with disabilities in the scheme.

Mental Health Act, 2012 (Act 846): The overall aim of this Act is to ensure the rights and quality treatment of persons with mental disabilities and to stipulate changes to the organisation, provision and funding of mental health services.

5 Decisions of courts and tribunals

5.1 Have the courts (or tribunals) in Ghana ever decided on an issue relating to disability? If so, list the cases and provide a summary for each of the cases indicating what the facts, the decision(s), the reasoning and impact (if any) the cases have had.

Ghanaian courts are known for the high rates of insurance claims arising out of disability. Though, the courts (or tribunals) have not decided many cases relating to disability rights, the Persons with Disability Act, 2006 (Act 715) is a repository for some persons with disabilities in addressing violations of their rights. In one incident in Kumasi, a young man with physical disability was arrested. Before he was remanded in the police cells, the police made him undress, his calipers and his walking stick were taken. The Regional Chairman of the Ghana Society of the Physically Disabled was there to grant him bail. On realising the man was crawling on the dirty cell floor on his hands and knees, the Chairman pointed out section

42 Labour Act 2003 (Act 651).

40(1) of Act 715 to the policemen.⁴³ The DSP apologised and ordered that the man's disability's cloths, calipers and walking sticks be returned to him.

In another incident in the Eastern Region of Ghana, a deaf trader was issued with a writ for non-payment of merchandise. The addressee of the writ was 'mame muumu' translated as 'dumb woman'. Besides, in our local dialect 'muumu' connotes a stupid person. The defendant did not turn up in court on the day in question and so the judge issued a bench warrant in that name for the defendant's arrest. Relying on section 37(1)⁴⁴ and (2)⁴⁵ of Act 715, the deaf trader was granted bail.

The landmark case relating to disability rights is *Ghana Federation of the Disabled (GFD) v Attorney General, Ghana Highway Authority and Millennium Development Authority (MiDA)*.⁴⁶

On 8 February 2013, GFD sued three public institutions for neglecting persons with disabilities in the construction of the George Walker Bush Highway (N1) in Accra. In this case, the GFD asked the Human Rights Court in Accra, to compel the Ghana Highway Authority, MiDA and the Attorney General to modify the highway to conform to specifications outlined in Act 715⁴⁷ since the highway was built without the persons with disabilities in mind. There are no access paths for persons with disabilities, hindering their movement from one point of the highway to the other. Eventually, an accessible foot bridge was constructed rendering the ease of crossing by persons with disabilities.

6 Policies and programmes

6.1 Does Ghana have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.

National Disability Inclusive Disaster Risk Management Guidelines for Persons with Disabilities. These Guidelines aim to augment laws, policies, programmes and practices that manage risk disasters and provide for guidelines for the inclusion of all categories of persons with disabilities in disaster preparedness and mitigation, response, recovery and other related matters.⁴⁸

DVLA Guidelines for Training and Testing Drivers with Disabilities. These Guidelines are guided by the following principles: non-discrimination, diversity

43 Sec 40(1): 'Law enforcement agencies shall take into consideration the disability of a person on arrest, detention, trial or confinement of the person and provide for that person accordingly.'

44 Sec 37(1): 'A person shall not call a person with disability derogatory names because of the disability of the person.'

45 Sec 37(2): 'A person who contravenes Subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty penalty units or to a term of imprisonment not exceeding three months or to both.'

46 Suit number HRC/12/12.

47 Sec 6 of Act 715: access to public places.

48 'National Disability Inclusive Disaster Risk Management Guidelines: To augment the existing humanitarian framework and climate change responses' <https://gna.org.gh/web/wp-content/uploads/2023/05/National-Disability-Inclusive-Disaster-Risk-Management-Guidelines.pdf> (accessed 16 August 2023).

and inclusiveness, disability mainstreaming, participation and privilege as against right.⁴⁹

Inclusive Education Policy 2015. This Policy recognises the varied learning needs of learners and requires all stakeholders in the education sector to address the diverse needs of different groups of citizens in Ghanaian education system under the universal design for learning and within a learner friendly environment for all.⁵⁰

Framework and Strategies for Disability Mainstreaming in the MMDAs. The Framework and Strategies provide guidelines on how MMDAs and other institutions should mainstream disability as an integral part of their day-to-day planning, budgeting and implementation of programmes.⁵¹

Disability Policy 2000.⁵² The guiding principle is that for Ghana to achieve any meaningful and sustainable development, it needs to harness all its human resources. This policy considers the fact that all people irrespective of sex or disability can contribute to the national development process if given the opportunity. The full participation of every citizen is a right.

6.2 Does Ghana have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

National Youth Policy 2022-2032.⁵³ This serves as a guideline for the government to engage the youth and other stakeholders in meaningful partnership to develop appropriate interventions and services for youth empowerment and development. Accordingly, the policy ensures the active participation of young people with disability.

National Gender Policy 2015. The overarching goal of this Policy is to mainstream gender equality concerns into the national development processes by improving the social, legal, civic, political, economic and socio-cultural conditions of the people of Ghana particularly women, girls, children, the vulnerable and people with special needs, persons with disability and the marginalised.

Education Strategic Plan 2018-2030 (ESP).⁵⁴ The ESP spells out the strategies of the government for the education sector over the next decade. ESP has a policy objective to improve access to quality education for persons with disabilities. Inclusive Education (IE) and Special Educational Needs (SpED) of education to young persons with disabilities is informed by five guiding principles:

49 A Annoh 'DVLA launches policy for PWDs in Accra' *Ghanaian Times* 24 February 2023 <https://www.ghanaiantimes.com.gh/dvla-launches-drivers-license-for-pwds-in-accra/#:~:text=Mr%20Busia%20explained%20that%20the,%2Ddiscrimination%2C%20diversity%20and%20inclusiveness> (accessed 16 August 2023).

50 'Ghana to implement inclusive education policy in 2015' *Ghana Business News* 16 December 2014 <https://www.ghanabusinessnews.com/2014/12/16/ghana-to-implement-inclusive-education-policy-in-2015/> (accessed 16 August 2023).

51 E Acheampong 'Framework and strategies for disability mainstreaming in the metropolitan, municipal and district assemblies (MMDAs) in Ghana' (2017) https://www.researchgate.net/publication/340038594_Framework_and_strategies_for_disability_mainstreaming_in_the_metropolitan_municipal_and_district_assemblies_MM_DAs_in_Ghana_Accra_NCPD (accessed 16 August 2023).

52 The Disability Act 2006 (Act 715) was enacted based on the Disability Policy April 2000.

53 Ministry of Youth and Sports 'National Youth Policy of Ghana 2022-2032' (2021).

54 Ministry of Education 'Education Strategic Plan 2018-2030'.

- Access and equity: Equal opportunity to obtain access to education and to learn, and the provision of an environment that is conducive to learning and achievement of learning outcomes and that demonstrates fair and just assessment.
- Quality: Achievement of high-level standards and system responsiveness at all levels of education.
- Relevance: Learning, including skills development, which is responsive to individual, community, and national development needs.
- Efficiency and effectiveness: Management of all resources that ensure value for money to achieve desired goals.
- Sustainability: Judicious utilisation of human, financial, and material resources to ensure balanced and continual development of the education system.

7 Disability bodies

7.1 Other than the ordinary courts or tribunals, does Ghana have any official body that specifically addresses violation of the rights of persons with disabilities? If so, describe the body, its functions and powers.

In accordance with section 42(1) of the Persons with Disability Act, 2006 (Act 715), the National Council on Persons with Disability has a Legal and Case Management Unit. This Unit serves as a referral point directing complainants with disabilities and other stakeholders with complaints on disability matters to the right agencies for their complaints and inquiries to be addressed. Most of the referrals are sent to the Commission on Human Rights and Administrative Justice (CHRAJ), Legal Aid Commission, Labour Department, Alternatives dispute Resolution Centres, National Labour Commission, Domestic Violence and Victim Support Unit (DOVVSU), Ghana Police Service, National Investigation Bureau (NIB), Economic and Organised Crime Office (EOCO), and the Attorney General's Department. In most instances, the Council provides the agencies with disability technical support including sign language interpretation and strong follow ups to ensure that the complaints come to a logical conclusion.

7.2 Other than the ordinary courts or tribunals, does Ghana have any official body that, though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and powers.

Commission on Human Rights and Administrative Justice (CHRAJ).⁵⁵ CHRAJ has the constitutional function to investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his public duties. CHRAJ also has the duty to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental human rights and freedoms under the Constitution. CHRAJ has the mandate to educate the public as to human rights and freedoms by publications, lectures and symposia. CHRAJ has the constitutional power to seek remedy in respect of such acts or omissions and to provide for other related purposes.

55 Commission on Human Rights and Administrative Justice Act 1993 (Act 456) established CHRAJ.

Department of Social Welfare (DSW).⁵⁶ DSW is a statutory agency mandated to promote and protect the rights of children, justice and administration of child related issues, community care for disabled and needy adults. Thus, DSW investigates cases of contravention of children's rights. DSW operates health assessment to provide early diagnostic medical attention to mothers and infants to determine the existence or onset of disability.⁵⁷

Domestic Violence and Victim Support Unit (DOVVSU). DOVVSUs of the Police provide focal points for complaints and counselling.⁵⁸ DOVVSU is mandated to provide protection from domestic violence, particularly for women and children and for connected purposes.

The Ghana Police Service.⁵⁹ The Police Service aims at ensuring that all officers fulfil their obligations and discharge their duties whilst promoting, protecting and respecting the human rights of individuals.⁶⁰ As a result, complaints about domestic violence could be lodged with the police. The police are mandated to respond promptly to a request for assistance from domestic violence even when the person reporting is not victim of the domestic violence.

8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

8.1 Does your country have a Human Rights Commission, an Ombudsman or a Public Protector in Ghana? If so, does its remit include the promotion and protection of the rights of persons with disabilities? If your answer is yes, also indicate whether the Human Rights Commission, Ombudsman or Public Protector of Ghana has ever addressed issues relating to the rights of persons with disabilities.

The Constitution provides for the establishment of an independent Commission on Human Rights and Administrative Justice (CHRAJ).⁶¹ The functions of CHRAJ⁶² as set out in the Constitution includes the duty to investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his public duties. CHRAJ also has the duty to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental human rights and freedoms under the Constitution. The Commission also has the duty to educate the public on human rights and freedoms. By an Act of Parliament, the CHRAJ was established in 1993. CHRAJ has offices located in all 16 regional capitals and in the administrative districts of Ghana. The CHRAJ was established by the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). Though the mandate of CHRAJ does not specifically and explicitly include 'addressing disability rights' the structure of CHRAJ ensures that human rights and freedoms

56 Secs 16(2) & 19 of Act 560; secs 20 & 35 of Act 715.

57 Sec 34 of Act 715.

58 Sec 6 of the Domestic Violence Act 2000 (Act 732).

59 Secs (1) & (2) of The Police Force Act 1970 (Act 350).

60 Secs 6 & 7 of Act 732.

61 Sec 6 of Act 456.

62 Sec 7 of Act 456.

are promoted and protected throughout Ghana. CHRAJ has addressed a few cases relating to the rights of persons with disabilities.

9 Disabled peoples organisations (DPOs) and other civil society organisations

9.1 Do you have organisations that represent and advocate for the rights and welfare of persons with disabilities in Ghana? If so, list each organisation and describe its activities.

There are a number of organisations that represent and advocate for the rights and welfare of persons with disabilities in Ghana. There are the 97 DPOs, one Federation of Disability Organisation and over 38 parasports organisations; their line of activities is similar. The activities of DPOs are mostly to sensitise the public of their existence, advocate for equal opportunities in society, and promote the rights of persons with disabilities through building their capacity and ensuring the full inclusion of their needs, aspirations, active participation in national and local policies and programme. The DPOs include the Ghana Federation of the Disabled (GFD), Ghana Society of the Physically Disabled (GSPD), Ghana Blind Union (GBU), Ghana National Association of the Deaf (GNAD), Ghana Association of Persons with Albinism (GAPA), Parent Association of Children with Intellectual Disability (PACID), Mental Health Society of Ghana (MEHSOG).⁶³ In addition, there are:

Little People of Ghana. Their membership is comprised of little people. They operate at the national level.

Ghana Stammering Association. This organisation is made up of people who are stammers. They operate at the national level.

Inclusion Ghana. This organisation is for people with intellectual disabilities with executives who are not persons with disabilities. It operates at the national and regional levels.

Burns Survivor. This is an organization is made up of people who are survivors of various degrees of burns. It operates at the national level.

Deaf Blind Association. This is an organisation which is made up of people who are deafblind. It operates at the national level.

Then, there are Non-Governmental Organisations (NGOs) whose activity, among others, is to advocate for the rights and welfare of persons with disabilities. Most of these NGOs undertake projects to enhance the welfare of persons with disabilities as well as sponsor disability programmes to promote the welfare of persons with disabilities. There are the Centre for Democracy and Development Ghana (CDD), SEND-Ghana, the Sightsavers Ghana, Basic-Needs Ghana, Right to Dream-Ghana, and Right to Play-Ghana.⁶⁴ In addition to these there are:

63 Gyamfi (n 14).

64 As above.

SWEB Foundation. The Samuel Wellington Botwey (SWEB) Foundation is a disability-focused network organisation advancing disability rights and community-based inclusive development in Ghana. It operates at the national level.

Klicks Africa Foundation. Klicks Africa runs an intensive Vocational Training and Resource Centre for youths with special needs, to equip them with self-help skills, guidance in building up their social skills as well as emotional support to them and their families. It operates at the national level.

Kekeli Foundation is an organisation dedicated to advocating for the rights of persons with disabilities. They dedicate their efforts to supporting children and adults with disabilities and their families with the goal of improving their social inclusion in all sectors of society. Kekeli works in several areas, emphasising education and lifelong learning for persons with disabilities and community education regarding the dignity and societal inclusion of people with disabilities. It operates at the national level.

Cerebral Palsy Awareness Gh is an organisation which creates awareness through sensitisation to prevent, reduce or limit stigmatisation of people living with cerebral palsy. It operates at the national level.

Simon Agbotso Foundation for the Young Disabled is a charity which aims to end disability discrimination in Ghana and support young people with disabilities. It operates at the national level.

Here for Perfection (H4p) Organisation creates an avenue of media to help alleviate the social inequity that confronts persons with disability and create an enabling environment for inclusion. It operates at the national level.

Autism Awareness Care and Training Centre is committed to supporting individuals and families with autism spectrum disorder. They believe that each child can use their God-given talent to reach their maximum potential, regardless of the disability. They are dedicated to fostering meaningful education and independence for each child. It operates at the national level.

With God Cerebral Palsy Ghana is an organisation which creates awareness through sensitization to prevent, reduce or limit stigmatisation of people living with cerebral palsy. It operates at the national level.

EmpoweredMind Ghana exists to empower individuals, communities, societies and nations to take control of their mental health. Equality, mutual respect, confidentiality, trustworthiness, punctuality, attitude, shared love, belongingness and self-discipline are the core values. It operates at the national level.

Savanna Signatures has a vision of a society where all have access to tools that improve their livelihoods and quality of life and a mission to initiate positive change among youth, women and vulnerable populations of Ghana using innovative solutions to facilitate access to Reproductive Health and Rights (Including Maternal and Child Health), Quality Education and Skills Development. It operates at the national level.

9.2 In the countries in your region, are DPOs organised or coordinated at a national and/or regional level?

The National Council on Persons with Disability maintains a register on Organisations of Persons with Disabilities (OPDs/DPOs).⁶⁵ Currently, the Council has a register of 97 DPOs made up of those organised at the national level, the regional levels and at the district levels.

9.3 If your country has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

The National Council on Persons with Disability actively involves and consults the DPOs in the development, review, and amendment of legislation, policies, guidelines and strategies geared towards the implementation of the CRPD.⁶⁶

9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?

Some of the DPOs led by GFD submitted an alternative report to the CRPD Committee on Ghana's initial report.⁶⁷

9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?

Some of the common barriers include an absence of framework to detail a clear distinction between duty bearers' tasks and complementary roles, as well as holding duty bearers to an accountability role.

9.6 Are there specific instances that provide 'best-practice models' for ensuring proper involvement of DPOs?

The specific instances of 'best-practice models'⁶⁸ are that the Council in the development and implementation of legislation and policies to implement the CRPD, 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, through their representative organisations.

9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities

65 Sec 42(2)(9) of the Persons with Disability Act, 2006 (Act 715).

66 Persons with Disability Act, 2006; Ministry of Gender, Children and Social Protection 'NCPD holds 2nd Disability Summit' (23 February 2023) <https://www.mogcsp.gov.gh/ncpd-holds-2nd-disability-inclusion-summit/> (accessed 11 November 2024); Ghana National Association of the Deaf (GNAD) 'Press statement launch of policy for training and testing of drivers with disabilities' (2022) <https://gnadgh.org/press-statement-launch-of-policy-for-training-and-testing-of-drivers-with-disabilities/> (accessed 11 November 2024).

67 UN Treaty database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=En&CountryID=67 (accessed 11 November 2024).

68 Art 4(1)(3) of the CRPD.

that resulted from the engagement of DPOs in the implementation process?

There have been a lot of changes resulting from the engagement of DPO's such as the Review of the Persons with Disability Act, 2006 (Act 715), the Inclusive Education Policy and others.

9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?

This research reiterates the urgent need for the Council to develop 'Guidelines on OPDs role in the Implementation of the CRPD for Inclusion'.

9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?

The collaborative role of DPOs needs to be strengthened.

9.10 Are there specific research institutes in your region that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?

My research has revealed that almost all the organisations that promote the rights of persons with disabilities undertake research at a point in time. DPOs have been involved in most of this research because without them it would be difficult to get accurate report. However, CDD-GHANA, Centre for Disability and Rehabilitation Studies-KNUST⁶⁹ (CEDRES); and Department of Special Education (University of Education-Winneba) including the academia in the private sector are known for DPOs involvement in their frequent research.

10 Government departments

10.1 Do you have a government department(s) that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

The National Council on Persons with Disability is the State Agency for disability matters and systemic inclusion.⁷⁰ The Council collaborates with ministries, departments, agencies, the private sector, the academia and representatives of OPDs for the promotion and protection of the rights and welfare of person with disabilities. The functions of the Council include:

⁶⁹ Kwame Nkrumah University of Science and Technology, Kumasi.

⁷⁰ Persons with Disability Act.

- monitor and evaluate disability policies and programmes;
- interdisciplinary involvement and participation in the implementation of national disability policy;
- produce an organisational manual on the operations of the Council and its secretariat;
- coordinate disability activities;
- advise the Ministry on Disability and submit to the Minister proposals for appropriate legislation on disability;
- mobilise resources for the attainment of its object;
- coordinate activities of organisations of persons with disability, and international organisations and NGOs that deal with disability;
- promote studies and research on issues of disability and provide education and information to the public on issues of disability; and
- maintain a register of:
 - persons with disability, and
 - institutions, organisations and associations which provide rehabilitation, services or support for persons with disabilities.

11 Main human rights concerns of people with disabilities in Ghana

11.1 Contemporary challenges of persons with disabilities in Ghana (eg in some parts of Africa ritual killing of certain classes of PWDs such as persons with albinism occurs).

The challenges of the Ghanaian persons with disabilities are for the ministries, departments, agencies, institutions, the private sector, the academia and representatives of OPDs to appreciate the fact that disability is a cross-cutting matter, hence collaborative efforts will create the inclusive nation. Ghana has therefore translated its policies into sustainable development goals⁷¹ to ensure that the collaborative efforts are harnessed.

11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:

Access to public buildings: Section 6 of the Act 715 directs owners or occupiers of a place to which the public has access to, to ensure that the place is accessible to persons with disabilities. The Ghana Accessibility Standard on the Built Environment, and the Framework and Strategies for Mainstreaming Disability into the MMDAs guides the implementation of access to public buildings.

Access to public transport: Section 23 of the Act 715 requires that the needs of persons with disabilities are taken into account in the design, construction and operation of the transportation network.

Access to education: Sections 16-22 of the Persons with Disability Act 2006 and the Inclusive Policy regulate the enrolment of children with disabilities in schools.

71 National Development Planning Commission (n 30).

Access to vocational training: Section 13 of Act 715 guarantees persons with disabilities being given appropriate training, the necessary working tools and materials, and access to startup capital⁷² for entrepreneurship.

Access to employment: Section 9 of Act 715, and sections 3(e) and 14(e) of the Labour Act oblige the use of employment centres to assist in getting jobs for persons with disabilities.

Access to recreation and sport: Sections 38 and 39 of Act 715 guarantee the provision of adequate facilities, programmes and incentives, to ensure that persons with disabilities have access to sports and cultural events.

Access to justice: Section 5 of Act 715 obliges the provision of appropriate facilities to enable persons with disabilities to participate effectively in judicial proceedings.

11.3 Do persons with disabilities have a right to participation in political life (political representation and leadership) in Ghana?

In Ghana, it is required under section 39 of Act 715 that a person or institution which organises a national, regional or district activity, shall ensure that facilities are made available for the participation by people with disabilities.⁷³ The Electoral Commission provides tactile ballot jackets for secret voting by the blind.

11.4 Are persons with disabilities' socio-economic rights, including the right to health, education and other social services protected and realised in Ghana?

The Persons with Disability Act, 2006 (Act 715) working together with other laws and policies, including, the Inclusive Education Policy; the Mental Health Act, 2012 (Act 846); and National Health Insurance Act, 2003 (Act 650), seeks to ensure that the rights to health and education are protected and realised progressively in Ghana.

Other social services initiatives to support people with disabilities' socio-economic rights:

PWD Enterprise Support Programme: In addition to the Common Fund for Persons with Disabilities and the Livelihood Empowerment Against Poverty Programme (LEAP),⁷⁴ there is the PWD Enterprise Support Programme under the Ghana Economic Transformation Project, which provides liquidity support for micro, small and medium entrepreneurs with disabilities.⁷⁵

72 Eg PWD Enterprise Support Programme; Common Fund for Persons with Disabilities.

73 Sec 39 of Act 715; 'Decentralise registration process to ensure equity – PWDs to EC' *Graphic Online* 6 September 2023 <https://www.graphic.com.gh/news/politics/decentralise-registration-process-to-ensure-equity-pwds-to-ec.html> (accessed 11 November 2024).

74 Ministry of Gender, Children and Social Protection 'Livelihood Empowerment Against Poverty (LEAP)' <https://www.mogcsp.gov.gh/projects/livelihood-empowerment-against-poverty-leap/#:~:text=The%20main%20objective%20of%20the,the%20extremely%20poor%20and%20vulnerable.> (accessed 11 November 2024).

75 Ghana Economic Transformative Project <https://gea.gov.gh/grants/pwd-apply/> (accessed 11 November 2024).

11.5 Specific categories experiencing particular issues/vulnerabilities:

Women with disabilities: To address the double discrimination experienced by women with disabilities as women and also persons with disabilities, the Affirmative Action Bill has interpreted women to include women with disabilities.

Children with disabilities: To address the exclusion of children with disabilities, the Children Act, 1998 (Act 560) is being reviewed to adequately provide for children with disabilities in line with the CRPD.

Other (eg indigenous peoples): The deafblind graduates experience limited employment opportunities.

12 Future perspective

12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in Ghana at the moment?

Currently, there is a draft Persons with Disabilities Bill 2024,⁷⁶ which aligns with the CRPD. Another law to support persons with disabilities is the Social Protection Bill, 2023,⁷⁷ which is currently before Cabinet and to be considered by Parliament of Ghana.

12.2 What legal reforms are being proposed? Which legal reforms would you like to see in Ghana? Why?

The passage of the Persons with Disability Bill 2022 into a law and Ghana's ratification of the African disability Protocol.

I would like to see the following legal reforms in Ghana:

- Ghana's ratification of the African Disability Protocol; to substantiate the domestication of the African Disability Protocol in the new Persons with Disability Bill, 2022.
- The passage of the new Person with Disability Bill, 2022 into law to effectively ensure the implementation of the National-Medium Term Development Policy Framework 2022-2023.
- The development of the 'Guidelines on OPDs role in the Implementation of the CRPD for Inclusion'.

76 'National Council on Disability holds stakeholder consultation on Persons with Disabilities Bill, 2024' *Ghana Web* 26 April 2024 <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/National-Council-on-Disability-holds-stakeholder-consultation-on-Persons-with-Disabilities-Bill-2024-1928064> (accessed 16 November 2024).

77 8th Parliament, Bills 2021-2023 Social Protection Bill, 2023 (accessed 17 December 2024).

SIERRA LEONE

*Ngozi Chuma Umeh**

1 Population indicators

1.1 What is the total population of Sierra Leone?

Sierra Leone has a population of about 7 092 113 million people based on data from the 2015 Population and Housing Census and the UNPRPD Situational Analysis of the Rights of Persons with Disabilities Country Brief.¹

1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Sierra Leone. What criteria are used to determine who falls within the class of persons with disabilities in Sierra Leone?

The methodology used in obtaining statistical data on the prevalence of disability in Sierra Leone is the 2015 Population Census figures. The 2015 Population and Housing Census used various domains like: hearing impairment, physical

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1 Statistics Sierra Leone '2015 Population and Housing Census: Summary of final results' (2016) https://www.statistics.sl/images/StatisticsSL/Documents/final-results_-2015_population_and_housing_census.pdf (accessed 15 September 2024); Stats SL '2021 Mid-Term Population and Housing Census – December 10, 2021' <https://www.statistics.sl/index.php/census/mid-term-population-census.html> (accessed 15 September 2024) F Kabia & U Tarawally 'Sierra Leone 2015 Population and Housing Census Report: Thematic report on disability' <https://sierraleone.unfpa.org/sites/default/files/pub-pdf/Disability%20Report.pdf> (accessed 15 September 2024); UNPRPD 'Situational analysis of the rights of persons with disabilities country brief' (2022) https://unprpd.org/new/wp-content/uploads/2023/12/Situation_Analysis_CountryBrief_SierraLeone-ac7.pdf (accessed 11 November, 2024). It is necessary to note that the Government of Sierra Leone has started preparations for the next Population and Housing Census (PHC) which is expected to begin on 2 December 2025 https://www.switsalone.com/50030_government-of-sierra-leone-prepares-for-2025-population-and-housing-census/ (accessed 11 November 2024).

impairment, visual impairment, and intellectual impairment to collect data on disability.²

1.3 What is the total number and percentage of persons with disabilities in Sierra Leone?

Out of the total population of 7 092 113 million people in Sierra Leone as indicated,³ 93 129 have a disability.⁴ This represents 1,3 per cent of the Sierra Leone's total population as indicated.⁵

1.4 What is the total number and percentage of women with disabilities in Sierra Leone?

According to the 2015 Population and Housing Census, the total number of women with disabilities in Sierra Leone is 42 810 and the percentage is 46 per cent.⁶

1.5 What is the total number and percentage of children with disabilities in Sierra Leone?

The 2015 Population and Housing Census reflects that 40,9 per cent of the young population are less than 15 years of age while children aged 0-4 years and 5-9 years, account for 13,3 per cent and 15,7 per cent of the total population respectively.⁷

1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Sierra Leone?

According to the Thematic Report on Disability, the most prevalent forms of disabilities include: physical disability, mostly as a result of Polio and conflict. About 21,8 per cent of persons with disabilities have a physical disability. Persons who have partial sight impairment account for 15,2 per cent of the total population of persons with disabilities, while those who are blind or visually impaired account for 12,5 per cent. Albinism (0,5 per cent) is the least common type of disability in the country and it represents 0,5 per cent of the total population.

Disease or illness is the major cause of disability in Sierra Leone as it accounts for 40,5 per cent of cases. This is followed by congenital disability at 16,2 per cent, accidents at 8,8 per cent and natural ageing at 8,1 per cent. Other causes of disability include traffic accidents, occupational injuries, and injury sustained as a result of war. Other non-specified causes stand at 10,5 per cent.⁸

2 Kabia & Tarawally (n 1) 4.

3 UNPRPD (n 1).

4 Kabia & Tarawally (n 1) 1.

5 As above.

6 2015 Population and Housing Census (n 1).

7 2015 Population and Housing Census (n 1) 14.

8 Kabia & Tarawally (n 1) 2.

2 Sierra Leone's international obligations

2.1 What is the status of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in Sierra Leone? Did Sierra Leone sign and ratify the CRPD? Provide the date(s).

Sierra Leone signed and ratified the CRPD on 30 March /3/2007 and 4 October 2010, respectively.⁹ However, the country is yet to ratify the Optional Protocol to the CRPD.

2.2 If Sierra Leone has signed and ratified the CRPD, when is/was its country report due? Which government department is responsible for submission of the report? Did Sierra Leone submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?

Disability issues fall under the mandate of the Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) and specifically under the Deputy Minister of Social Welfare.¹⁰ Sierra Leone made submissions to the CRPD Committee of Experts on Disability in 2019 titled 'Sierra Leone's First Status Report in compliance with Article (35) of the United Nations Convention on the Rights of Persons with Disabilities 2013-2018'.¹¹ The report provides insight regarding the significant progress the country has made as well as the challenges faced in improving the lives of persons with disabilities. Even though government extends free healthcare to persons with disabilities, professional rehabilitation services are not included. Professional rehabilitation services exist only at a few locations and assistive devices are in extremely short supply. The difficulty of obtaining them prevents persons with disabilities from participating in social, economic and political life on an equal basis with others.¹²

2.3 While reporting under various other United Nations instruments, under the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Sierra Leone also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant concluding observations adopted? If relevant, were these observations given effect to? Was mention made of disability rights in Sierra Leone's UN Universal Periodic Review

9 'UNCRPD treaty depositions' https://treaties.un.org/Pages/showDetails.aspx?objid=080000028017bf87&clang=_en (accessed 19 September 2024).

10 UNIPSIL 'Moving forward together: From national commitment to concrete action – Report on the rights of persons with disabilities in Sierra Leone' (accessed 19 September 2024) https://unipsil.unmissions.org/sites/default/files/movng_forwrd_rghts_person_disabilities.pdf (accessed 19 September 2024).

11 UNPRPD (n 1) 11.

12 As above.

(UPR)? If so, what was the effect of these observations/recommendations?

While reporting under the UN Convention on the Rights of the Child (CRC),¹³ Sierra Leone made reference regarding the rights of persons with disabilities. On 8 September 2006, Sierra Leone made its second periodic report on the CRC to the UN Committee on the Rights of the Child (CRC Committee).¹⁴ As found in the report, Sierra Leone stated that a National Policy for the Protection of Persons with Disabilities was being considered.¹⁵ While acknowledging the development of the National Policy for the Protection of Persons with Disabilities, the CRC Committee in its Concluding Observation on Sierra Leone's second periodic report expressed concern about the absence of a legislative framework 'to cover the needs and protection of persons with disabilities'.¹⁶ The CRC Committee further made mention of the absence of information in respect of the inclusion of children with disabilities within the society.¹⁷

When Sierra Leone submitted its third to fifth periodic report on the CRC on 2 September 2013, it presented some of the progress it had made in light of the CRC Committee's Concluding Observation.¹⁸ Sierra Leone's report reflected the fact that the country had passed disability legislation¹⁹ and other related legal frameworks that protect the rights of children with disabilities.²⁰ The report also indicated that the Special Needs Education Unit with the support of Leonard Cheshire Home prepared a six-module curriculum for building the capacity of teachers that will teach learners with disabilities, establish a computer and braille training centre, and provide funding to 12 Special Schools.²¹

13 UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol 1577, p 3, 20 November 1989 (CRC).

14 Committee on the Rights of the Child, Consideration of reports submitted by state parties under article 44 of the Convention: Second periodic report of states parties due in 1997: Sierra Leone, 8 September 2006, UN Doc CRC/C/SLE/2 (2006) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRC%2FC%2FSLE%2F2&Lang=en (accessed 16 September 2024).

15 Second periodic report (n 14) para 231.

16 Committee on the Rights of the Child, Consideration of reports submitted by state parties under article 44 of the Convention: Concluding Observations: Sierra Leone, 20 June 2008, UN Doc CRC/C/SLE/CO/2 (2008) para 49 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSLE%2FCO%2F2&Lang=en (accessed 16 September 2024).

17 As above.

18 Committee on the Rights of the Child, Consideration of reports submitted by states parties under article 44 of the Convention: Combined third, fourth and fifth periodic reports of states parties due in 2012: Sierra Leone, 27 January 2015, UN Doc CRC/C/SLE/3-5 (2015) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FSLE%2F3-5&Lang=en (accessed 16 September 2024).

19 The Persons with Disability Act 22 of 2011 (Disability Act).

20 For example, The Child Right Act 43 of 2007 and The National Youth Commission Act 11 of 2009; See Combined third, fourth and fifth periodic report (n 18) para 104(i).

21 Combined third, fourth and fifth periodic report (n 18) para 104(ii); 'Ratification, reporting & documentation for Sierra Leone' https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx (accessed 17 September 2024).

In the sixth periodic report of Sierra Leone, the Concluding Observation of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)²² identified the absence of details relative to the 'situation of elderly women and women with disabilities who suffer multiple forms of discrimination and are less likely to have access to basic services, including education, employment and health care'.²³ The CEDAW Committee further suggested that specific policy measures be adopted in addressing this concern.²⁴ In November 2013, the Ministry of Social Welfare, Gender and Children's Affairs developed a strategic plan for 2014-2018 with the following vision statement:

a Sierra Leone where vulnerable groups and people with disability live a life of dignity, their human rights are fully respected, not discriminated against, and are active agents in their own protection.²⁵

Sierra Leone commits to submitting its 7th Periodic report to the Committee on the Elimination of Discrimination against Women; integrating the Women Peace and Security agenda in the Cluster Five of the Medium-Term Development Plan focusing on Empowering Women, Children and Persons with Disability; launching its National Gender Strategic Plan 2019-2023; and overseeing the establishment of Peace and National Cohesion Commission.²⁶

In its Universal Periodic Review process in 2011, Sierra Leone reported that it was developing a 'Draft Disability Policy and Bill' which made provision for the creation of a Disability Commission.²⁷ Sierra Leone emphasised that it was committed to the protection of the rights of vulnerable groups.²⁸ The United Kingdom of Great Britain and Northern Ireland acknowledged the progress made by Sierra Leone through the creation of a Human Rights Commission, the 2007 'Gender Acts' and the 2011 Disability Act. Challenges remained to improve access to justice; to address poverty; to bring the Human Rights Commission in line with the Paris Principles; to roll back discriminatory laws, practices and customs which entrench gender equality; and to prevent reoccurrence of conflict through promotion of national reconciliation. Spain recommended that Sierra Leone should ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and strengthen efforts for the protection of children with

- 22 Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by state parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Sixth periodic reports of states parties due in 2009: Sierra Leone, 1 November 2012, UN Doc CEDAW/C/SLE/6 (2012) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSLE%2f6&Lang=en (accessed 17 September 2024).
- 23 Committee on the Elimination of Discrimination against Women, Concluding Observations on the sixth periodic report of Sierra Leone, 10 March 2014, UN Doc CEDAW/C/SLE/CO/6 (2014) para 38 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSLE%2fCO%2f6&Lang=en (accessed 17 September 2024).
- 24 Concluding Observations on the sixth periodic report of Sierra Leone (n 23) para 39.
- 25 Ministry of Social Welfare, Gender and Children's Affairs 'Strategic Plan 2014-2018' (2013) para 2.2 <http://mswgca.gov.sl/attachments/Documents/MSWGCA%202014-2018%20Strategic%20Plan.pdf> (accessed 17 September 2024).
- 26 As above.
- 27 UN Human Rights Council, National report submitted in accordance with para 15(a) of the annex to Human Rights Council resolution 5/1 : [Universal Periodic Review]: Sierra Leone, 14 February 2011, UN Doc A/HRC/WG.6/11/SLE/1 (2011) para 36.
- 28 National report submitted in accordance with para 15(a) (n 27); see also Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sierra Leone, 11 July 2011, UN Doc A/HRC/18/10 (2011) para 54 <https://citizenshiprightsafrika.org/wp-content/uploads/2016/01/Report-Working-Group-UPR-Sierra-Leone.pdf> (accessed 17 September 2024).

disabilities.²⁹ Spain further recommended that Sierra Leone should continue with efforts to ensure the protection of persons with disabilities. These recommendations were examined and adopted by Sierra Leone.³⁰

In its initial report to the African Commission on Human and Peoples' Rights (African Commission) with respect to the African Charter on Human and Peoples' Rights (African Charter).³¹ Sierra Leone articulated that it has a disability law. However, the report was silent with respect to specific measures provided in order to protect persons with disabilities in terms of the legislation.³² The report further acknowledged the fact that although there are laws protecting all persons against discrimination, acts of discrimination against persons with disabilities and women still occur. However, the report specified that with the enactment of the Disability Act and the creation of an Industrial Court to handle such matters, it is anticipated that the situation will improve.³³

Sierra Leone became a state party to the African Charter on the Rights and Welfare of the Child (African Children's Charter) in 2002.³⁴ The African Children's Charter obliges State Parties to submit reports on the measures undertaken to actualise the rights stipulated therein. Article 43 of the Charter recognises that State Parties are expected to submit their initial report two years after ratification and their periodic reports every three years thereafter. In line with this obligation, Sierra Leone in 2017, submitted its initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter). The ACERWC considered the Republic of Sierra Leone's initial report during its 30th Ordinary Session, which was held from 6-16 December 2017.³⁵ Sierra Leone also reported specifically on the rights of persons with disabilities.³⁶

2.4 Was there any domestic effect on Sierra Leone's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Sierra Leone's legislature to incorporate it into the legal system before the instrument can have force in Sierra Leone's domestic law? Have

29 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sierra Leone, 11 July 2011, UN Doc A/HRC/18/10 (2011) paras 80(1), 80(23).

30 Report of the Working Group on the Universal Periodic Review: Sierra Leone A/HRC/18/10 (n 29) para 81(17).

31 Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), 27 June 1981 (African Charter).

32 African Charter on Human and Peoples' Rights: Initial to date following article of the Charter report submitted by Sierra Leone (2013) http://www.achpr.org/files/sessions/53rd/state-reports/1st-1983-2013/statrep_1983_2013_eng.pdf (accessed 16 September 2024).

33 African Commission on Human and Peoples' Rights 'Sierra Leone' <http://www.achpr.org/states/sierra-leone/> (accessed 19 September 2024).

34 Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990), 11 July 1990 (African Children's Charter).

35 African Union 'Follow-up Mission in Sierra Leone (8-11 August, 2023)' <https://www.acerwc.africa/en/article/news/follow-mission-sierra-leone-8-11-august-2023> (accessed 19 September 2024).

36 Government of the Republic of Sierra Leone 'Initial Report on the African Charter and Welfare of the Child 2002-2014' <https://www.acerwc.africa/sites/default/files/2022-06/Sierra-Leone-GSL-State-Party-Report-on-the-ACRWC-Final-for-Web-Email.pdf> (accessed 19 September 2024).

Sierra Leone's courts ever considered this question? If so, cite the case(s).

Sierra Leone operates a dualist system, hence international law instruments have to be domesticated by its legislature as provided under section 40 of the Constitution of Sierra Leone, 1991. Sierra Leone enacted a Child Rights Act in 2007, which aims at protecting the rights of the child.³⁷ Sierra Leone has also passed disability legislation in 2011.³⁸ The government also set up a Human Rights Commission which has in turn established a Different Ability and Non-Discrimination Office (DANDO) to champion as well as foster human liberties of people living with disabilities.³⁹

Regarding court cases, as at the time of conducting this research, September-October 2024, no court case directly relating to disability issue/rights in Sierra Leone can be anecdotally confirmed.

2.5 With reference to 2.4 above, has the CRPD or any other ratified international instrument been domesticated? Provide details.

The CRPD has been domesticated through the 2011 Disability Act and is currently being reviewed.⁴⁰ As stated in 2.4, the 2007 Child Rights Act of Sierra Leone domesticates the African Children's Charter and the CRC.

3 Constitution

3.1 Does the Constitution of Sierra Leone contain provisions that directly address disability? If so, list the provisions, and explain how each provision addresses disability.

The Sierra Leonean Constitution does not particularly recognise discrimination on account of disability.⁴¹ Although article 27(3) of the Constitution mentions 'disabilities' the word is used in a different perspective and not in the context of preventing of discrimination against persons with disabilities.

3.2 Does the Constitution of Sierra Leone contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.

Chapter II of the Sierra Leone Constitution recognises that in order to realise the social order of the state, the government is expected to ensure 'that opportunities for securing justice are not denied any citizen by reason of economic or other disability'.⁴²

37 The Child Right Act 43 of 2007.

38 The Persons with Disability Act 22 of 2011 (Disability Act).

39 Statistics Sierra Leone 'Population and Housing Census. Thematic Report on Disability' (2017) Freetown: Government of Sierra Leone.

40 UNPRPD (n 1) 11.

41 Constitution of Sierra Leone, 1991.

42 Art 8(2)(a) of the Constitution.

4 Legislation

4.1 Does Sierra Leone have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.

Indeed, there is a national legislation that specifically addresses the issue of disability.⁴³ It is currently being reviewed, apparently to strengthen it.⁴⁴ Considerably, the Disability Act⁴⁵ establishes a National Commission which is tasked⁴⁶ with ensuring the preservation and protection of the well-being of persons with disabilities.⁴⁷ The Disability Act further provides for the human rights of persons with disabilities, including promoting inclusive education of persons with disabilities.

4.2 Does Sierra Leone have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.

Sierra Leone has legislation that indirectly addresses the issues of disability. Some legislation includes: the Education Act, 2004; the Public Election Act 2012; the Sexual Offences Act 126; and the Right to Access Information Act, 2013. Article 4(2) of the Education Act recognises disability as a prohibited ground of discrimination. Article 74(1)(i) of the Public Election Act makes provision for the process which a person with visual disabilities or physical disabilities may adopt in order to vote. Accordingly, in line with this provision, a voter with visual disabilities or physical disabilities is required to make an application to the Presiding Officer who will provide assistance or information that the voter can append his 'fingerprint mark in the square corresponding to the name of the candidate'⁴⁸ he/she seeks to vote for. Article 8(1) of the Sexual Offences Act makes it an offence for any person to intentionally cause, incite, threaten or deceive another person with intellectual disability to engage in a sexual activity.⁴⁹ Such an offender is also liable to imprisonment.⁵⁰ Article 11(3) of the Access to Information Act provides that information and materials should be disseminated in consideration of the different needs of persons with disabilities.

43 Disability Act.

44 UNPRPD (n 1) 11.

45 As above.

46 Disability Act, art 2(1).

47 Disability Act, art 6(1).

48 Public Election Act 26 of 2012, art 74(1)(i).

49 The Sexual Offences Act, art 8(1).

50 As above.

5 Decisions of courts and tribunals

- 5.1 Have the courts (or tribunals) in Sierra Leone ever decided on an issue relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.**

As at the time of writing this report, there was no identifiable court case relating to the rights of persons with disabilities in Sierra Leone.

6 Policies and programmes

- 6.1 Does Sierra Leone have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.**

Sierra Leone also has policies that directly reference persons with disabilities. Some of these policies are The Sierra Leone's Medium-Term National Development Plan 2019-2023 (MTNDP). It is a more recent policy and programme document. It lays down the blueprint for the country's systemic development policy, addressing a wide range of sectors. One of eight policy clusters under the MTNDP has plans for empowering women, children, and persons with disabilities.⁵¹

- 6.2 Does Sierra Leone have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.**

The Strategic Plan (2014-2018) developed by the Ministry of Social Welfare, Gender and Children's Affairs also addresses disability issues. Significantly, the vision statement of the Strategic Plan is an inclusive Sierra Leonean society where women, men, children, the elderly and people with disabilities live a life of dignity and their human rights fully recognised and protected.⁵² One of the fundamental ideals of the Strategic Plan is 'equity and equality'. In this context, 'equal opportunities' for all persons including persons with disabilities is underscored.⁵³

In 2013, the President of Sierra Leone launched the Agenda for Prosperity,⁵⁴ which is Sierra Leone's Third Generation Poverty Reduction Strategy Document

51 UNPRPD (n 1) 11.

52 Ministry of Social Welfare, Gender and Children's Affairs 'Strategic Plan 2014-2018' (2013) para 2.2 <http://mswgca.gov.sl/attachments/Documents/MSWGCA%202014-2018%20Strategic%20Plan.pdf> (accessed 23 September 2024).

53 Strategic Plan (n 52) para 2.3.

54 The Republic of Sierra Leone 'National draft policy framework for social protection in Sierra Leone' (2009) http://www.fao.org/docs/up/easypol/forum/31/31_National_Draft_Policy_for_Social_Protection_in_Sierra_Leone.pdf (accessed 23 September 2024); The Government of Sierra Leone 'The Agenda for prosperity: Road to middle income status' (2013) 107 http://www.undp.org/content/dam/sierraleone/docs/projectdocuments/povreduction/undp_sle_The%20Agenda%20for%20Prosperity%20.pdf (accessed 23 September 2024).

(2013-2018).⁵⁵ Part of the health sector objectives is to make available free healthcare at the point of delivery for people with disabilities and support services aimed at making available rehabilitation equipment for people with disabilities.⁵⁶ In 2012, the First Lady of Sierra Leone launched the Mental Health Policy.⁵⁷ One of the objectives of this policy is to 'promote the quality of life (eg good health status, social inclusion) of all people with mental disability and their families in Sierra Leone'.⁵⁸ In 2011, Sierra Leone adopted a National Social Protection Policy, which aims at providing social protection for vulnerable groups within the Sierra Leonean society.⁵⁹

7 Disability bodies

7.1 Other than the ordinary courts and tribunals, does Sierra Leone have any official body that specifically addresses violations of the rights of people with disabilities? If so, describe the body, its functions and its powers.

There is National Commission for Persons with Disability (NCPD) which was established by the Disability Act, 2011 to ensure the well-being of persons with disabilities (PWDs) and is mandated to:

- Engage in policy formulation for the protection of PWDs.
- Collaborate with government during national census to ensure that accurate figures of PWDs are documented.
- Proffer means of ensuring that discrimination against PWDs is prevented.
- Investigate allegations of discrimination against PWDs.
- Produce a report on the investigation and implementation of programmes aimed at employment or income generation for PWDs.
- Liaise with all stakeholders that implement programmes relating to PWDs.⁶⁰

The Ministry of Social Welfare (MOSW) is another national coordinating body for all disability issues and has the statutory mandate to protect persons with disabilities.⁶¹

55 This policy builds on Sierra Leone's Second Poverty Reduction Strategy titled 'Agenda for Change'. See The Republic of Sierra Leone 'Agenda for change: Second poverty reduction strategy (PRSP II): 2009-2012' (Agenda for Change) http://unipsil.unmissions.org/portals/unipsil/media/publications/agenda_for_change.pdf (accessed 23 September 2024); 'Agenda for prosperity road to middle income status' *Mysierrialeoneonline.com* 12 April 2013 http://mysierrialeoneonline.com/sl_portal/site/news/detail/1553 (accessed 23 September 2024); the REDD Desk 'The agenda for prosperity: Third generation poverty reduction strategy paper (2013-2018)' <http://theredddesk.org/countries/plans/agenda-prosperity-sierra-leones-third-generation-poverty-reduction-strategy-paper> (accessed 23 September 2024).

56 Agenda for Prosperity (n 55) 67.

57 Mental Health Coalition in Sierra Leone 'Sierra Leone Mental Health Policy launched by first lady' 15 October 2012.

58 Ministry of Health and Sanitation, Republic of Sierra Leone 'Mental Health Policy' 9 http://www.whosierraleone.org/1_docs/mohspartnersdocs/mental_health_policy.pdf (accessed 23 September 2024).

59 Agenda for Prosperity (n 55) 101.

60 'Sierra Leone Development Encyclopedia 2023' https://www.sldevelopmentencyclopaedia.org/2_gov/2_4ncpd.html (accessed 22 September 2024).

61 UNPRPD (n 1) 8.

7.2 Other than the ordinary courts or tribunals, does Sierra Leone have any official body that though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.

The Human Rights Commission of Sierra Leone (HRCSL) was established in 2004 by an Act 9 of Parliament. The primary objective of the Commission is to protect and promote human rights for everyone throughout the country, including persons with disabilities. This the Human Rights Commission of Sierra Leone does through investigations, public education, monitoring, advising government, reviewing draft & existing legislation and producing an annual state of human rights report to President, Parliament and the public.⁶²

8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

8.1 Does Sierra Leone have a Human Rights Commission, an Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of persons with disabilities? If your answer is yes, also indicate whether the Human Rights Commission, the Ombudsman or Public Protector of Sierra Leone has ever addressed issues relating to the rights of persons with disabilities.

In 2017, the Human Rights Commission of Sierra Leone worked in close collaboration with the National Commission for Persons with Disability to implement activities geared towards awareness raising and advocacy for the realisation of the human rights of persons with disabilities. The Human Rights Commission of Sierra Leone (HRCSL) and National Commission of Persons with Disabilities (NCPD) also constructed a ramp at the Central Police Station to remind government and other stakeholders of their obligation under the CRPD to ensure the rights of persons with disabilities are respected with regards to accessibility.

On the 24 July 2024, the HRCSL and NCPD signed a Memorandum of Understanding with particular focus on collaboration in the area of Complaints Handling Mechanism and Production of Joint Thematic Report on disability issues. The HRCSL considered that in order to build the confidence and trust of persons with disabilities, on the operations of the NCPD, its complaints handling procedure should be able to provide remedies after an investigation for a violation of human rights. The remedies available as described by its legal framework range from reporting and referring the matter to a higher authority such as Parliament, the Attorney General or other government MDAs for appropriate action to be taken by that body, awarding compensation or damages to the complainant or making an order for a reversal of the action complained.

62 Human Rights Commission of Sierra Leone 'Business and human rights in Sierra Leone' <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ForumSession2/HRCSierraLeone.pdf> (accessed 22 September 2024).

9 Disabled peoples organisations (DPOs) and other civil society organisations

9.1 Does Sierra Leone have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

Yes, Sierra Leone has organisations that represent and advocate for the rights and welfare of persons with disabilities. One of such organisations is Sierra Leone Union of Disability Issues (SLUDI).⁶³ SLUDI is one of the oldest and most influential DPOs in the country and it operates as a broad federation, and individual DPOs register with SLUDI to become members. It has been highlighted that in principle, all DPOs are members of SLUDI, but in practice, not all of them feel equally well-represented.⁶⁴

Sierra Leone Association for the Blind (SLAB) is another DPO that advocates for equal rights and opportunities for blind and low vision people. The organisation also facilitates the empowerment of persons with visual disabilities to achieve independence and social inclusion.⁶⁵

Sierra Leone Union of Polio Persons (SLUPP) was developed under the guidance and support of Mercy Ships/New Steps. SLUPP plays an advocacy role in promoting the rights of persons with disabilities.⁶⁶

The Sierra Leone Red Cross Society (SLRCS) promotes rights of persons with disabilities through radio programmes, television slots, and promotion of their main programmes (job aid for war amputees).⁶⁷

Sierra Leone Association of the Deaf (SLAD) has as its vision and mission to promote, advocate, and serve children and adults with hearing disabilities in Sierra Leone. The main purpose is to help support and satisfy needs regarding the communication access, human rights, disability rights, and social justice rights.⁶⁸

9.2 In the countries in Sierra Leone's region (West Africa) are DPOs organised/coordinated at national and/or regional level?

Within the African region, DPOs are usually organised at the national level.⁶⁹ For example in Sierra Leone, SLUDI and SLUPP as earlier highlighted⁷⁰ are national bodies for persons with disabilities in Sierra Leone. Accordingly in Nigeria, the Joint National Association of Persons with Disabilities (JONAPWD) is the umbrella body for persons with disabilities in Nigeria. In Liberia, the National

63 UNPRPD (n 1) 9.

64 As above.

65 'Organisations of Persons with Disabilities in Sierra Leone' https://rodra.co.za/images/countries/sierra_leone/LIST_OF_ORGANIZATIONS_WORKING_ON_DISABILITIES_IN_SIERRA_LEONE.pdf (accessed 22 September 2024).

66 As above.

67 As above.

68 As above.

69 Anecdotal evidence.

70 See sec 9.1 of this report.

Union of the Disabled (NUOD), an umbrella DPO, protects the rights of persons with disabilities in Liberia. In Senegal, there is the Senegalese Federation of Associations of Persons with Disabilities (FESAPH). In Togo, there is a Togolese Federation of Associations of Persons with Disabilities (FETAPH). In Benin, there is the Benin Federation of Associations of Persons with Disabilities (FAPHB). In Niger, there is the Niger Federation of Persons with Disabilities and also in Mali there is a Malian Federation of Associations of Persons with Disabilities (FEMAPH). Ghana has a Ghana Federation of the Disabled (GFD), which is a national umbrella organisation for persons with disabilities in Ghana.⁷¹

9.3 If Sierra Leone has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

As part of their obligation to support the Government of Sierra Leone, in the area of protecting and promoting the rights of persons with disabilities, the Human Rights Commission of Sierra Leone (HRCSL) and National Commission of Persons with Disabilities (NCPD) have increased attention to the rights of persons with disabilities through DPOs on several activities ranging from awareness raising, complaints handling and redress mechanisms for persons with disabilities.⁷²

The Human Rights Commission of Sierra Leone (HRCSL) and National Commission of Persons with Disabilities (NCPD) has rolled out a series of training and capacity building with the NCPD, DPOs and communities of persons with disabilities. All these engagements are geared towards protecting and promoting the rights of persons with disabilities.⁷³

The NCPD and DPOs usually play a vital role in the treaty body process which involves, verification of information that has been collected on the status of disability in Sierra Leone, participating in the national consultations and lobbying members of the Working Group. The HRCSL realising the unique role of the NCPD and DPOs in the United Nations Treaty Body System and its impact thereon, particularly in reporting on the CRPD, often organise capacity training workshops.⁷⁴

9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?

Several DPOs in Sierra Leone focus on advocacy. Recently, efforts have been extended towards collaborations and partnerships to reach the persons with disabilities community across Sierra Leone. For instance, the World Federation of Deaf (WFD) supported the Sierra Leone Union of Disability Issues (SLUDI) to develop the PWDs National Agenda which was used to advocate for the inclusion and voice of persons with disabilities in the electoral and political process of the 2018 elections and beyond. The PWD Agenda was the first document that articulated the priorities of persons with disabilities to be used to engage political parties, parliament, electoral bodies, and Civil Society Organisations in making

71 R Adeola 'Country report: Sierra Leone' (2015) 3 *African Disability Rights Yearbook* 225.

72 HRCSL & NCPD 'Opening minds to disability rights in Sierra Leone: Thematic Report' (2017) 1 https://rodra.co.za/images/countries/sierra_leone/Annexe%205.5%20-%20Opening%20Minds%20To%20Disability%20Rights%20in%20Sierra%20Leone%20-Human%20Rights%20Commission%20SL%20Thematic%20Reports%20on%20Persons%20with%20Disability.pdf (accessed 22 September 2024).

73 HRCSL & NCPD (n 72) 9-10.

74 As above.

sure that inclusion became a priority issue in shaping the debate around the 2018 elections.⁷⁵

WFD also helped to link up SLUDI with the Human Rights and Social Services Committee in Sierra Leone's Parliament. SLUDI then made presentations to the Committee, and this has enhanced immediate support for Parliament to push the Ministry of Social Welfare, Gender and Children's Affairs to release funds to support the NCPD.⁷⁶

9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?

One major challenge faced by DPOs in engaging with implementation relates to funding.⁷⁷ Most time DPOs are not given the opportunity to make their views and priorities known before the articulation of laws and policies. DPOs always struggle to access, lobby, influence and engage members of the parliament on key public policy issues affecting persons with disabilities.⁷⁸ There is also limited support and coordination within the disability umbrella body and other DPOs which compete to effectively mobilise its membership to articulate their voices on critical issues affecting persons with disabilities.⁷⁹

9.6 Are there specific instances that provide 'best-practice models' for ensuring proper involvement of DPOs?

The establishment of the NCPD and the National Development Fund for persons with disabilities is considered essential. This is an indication that Sierra Leone is committed to the SDGs and the CRPD. Relying on the 2021 Common Country Analysis report produced by the UN Country Team, the UNCT carries out programme activities to support disability inclusion under the UN Sustainable Development Cooperation Framework (2020-2023).⁸⁰ Disability inclusion as observed, continues to be a strong priority for the government and development partners.⁸¹

9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities that resulted from the engagement of DPOs in the implementation process?

The enactment of the Persons with Disability Act in 2011 and establishment of the NCPD is a specific outcome of DPOs engagement in the disability rights advocacy

75 WFD 'Advancing disability rights in Sierra Leone' (2020) <https://www.wfd.org/story/advancing-disability-rights-sierra-leone> (accessed 22 September 2024).

76 As above.

77 A van den Brink, W Elbers & A Ibrahim 'Breaking down barriers: The disability movement in Sierra Leone – Fragmented yet together' (2022) <https://www.barriersfree.org/uploaded/2022/02/disability-movement-sierra-leone.pdf> (accessed 22 September 2024)

78 WFD (n 75).

79 As above.

80 UN Sierra Leone 'United Nations Sustainable Development Cooperation Framework Sierra Leone 2020-2023' <https://sierraleone.un.org/en/100608-united-nations-sustainable-development-cooperation-framework-sierra-leone-2020-2023> (accessed 22 September 2024).

81 UNPRPD (n 1) 21.

and struggle. The NCPD does raise awareness within DPOs and communities and is considered the first point of contact for any claims and grievances on the ground of disability.

9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?

Yes, notwithstanding that DPO members know that discrimination is prohibited by law, they do not necessarily know how to recognise and prove it and how to seek protection or justice. Persons with disabilities who are not part of any disability organisation most times know less about their rights and usually have only a vague understanding of the concept of discrimination.

9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?

Coordination among DPOs in Sierra Leone does not seem to be fully effective and some of the groups lack the material, human and technical capacity to fulfil disability-related tasks. The NCPD could play a coordination role among DPOs, but resources must be made available given the significant expertise and many responsibilities it is expected to provide and carry out. In turn, the DPOs could offer constructive criticism of NCPD operations and the government in general on disability-related issues, suggesting appropriate alternative approaches to improve the general well-being of persons with disabilities.

9.10 Are there specific research institutes in the region where Sierra Leone is situated (West Africa) that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?

The Independent School of Disability Studies is a research centre in West Africa that offers courses, research, and consultancy in intellectual and developmental disabilities, learning disabilities, mental health and more. There is also Foundation for Environmental Rights, Advocacy and Development (FENRAD) and International School of Disability Studies (ISDS), Sierra Leone Urban Research Centre (SLURC). These institutes promote research and training of all kinds on disability and its environment, and to take all action in favour of inclusive development, with a view to the social involvement of individuals with disabilities.

10 Government departments

10.1 Does Sierra Leone have a government department or departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

The key government departments responsible for implementing and monitoring the CRPD are highlighted below:

NCPD is expected to ensure the well-being of persons with disabilities and is mandated to accelerate the participation and inclusion of persons with disabilities in decision making and governance. Its affairs are managed by a chairperson appointed by government and the Commission's membership includes four representatives of DPOs.⁸²

The Ministry of Social Welfare is the national coordinating body for all disability issues and has the statutory mandate to protect persons with disabilities.⁸³

Other key line ministries that operate programmes essential to persons with disabilities include the Ministry of Health and Sanitation (MOHS) and relates to both primary and secondary health care. The Ministry of Basic and Senior Secondary Education is responsible for special needs schools and inclusive education in mainstream schools, including implementation of the 'Radical Inclusion Policy'. The Ministry of Works is in charge of implementing the provisions of the law concerning building accessibility. The Ministry of Finance creates the budget that enables disability-related public expenditures. The Ministry of Labour oversees social protection programmes and the Ministry of Communication ensures that persons with disabilities can access public information.⁸⁴

11 Main human rights concerns of people with disabilities in Sierra Leone

11.1 Contemporary challenges of persons with disabilities in Sierra Leone (eg in some parts of Africa is ritual killing of certain classes of PWDs such as persons with albinism occurs)

In Sierra Leone, persons with disabilities face higher rates of discrimination at all levels of society. Some examples include the higher degree of unemployment, restricted social integration, limited access to health care and higher degrees of violence and abuse. Most times families do not prioritise education for children with disabilities. Women with disabilities also face higher rates of homelessness

82 Sierra Leone Development Encyclopedia 2023 (n 60).

83 UNPRPD (n 1) 8.

84 As above.

and discrimination. In terms of political participation, the visibility of persons with disabilities, their voices and priorities remain low.

11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:

In principle, several laws prohibit discrimination against persons with disabilities in Sierra Leone, such as the Constitution, the Persons with Disability Act 2011, Education Act 2004, the 2007 Prevention and Control of HIV and AIDS Act, the Domestic Violence Act and more. In reality, however, monitoring mechanisms to oversee violations and continued discrimination are fragmented. This is basically connected to the fact that various government departments specifically responsible for promoting and protecting the rights and welfare of persons with disabilities are directly subordinate to the government. Sierra Leone's Medium-Term National Development Plan 2019-2023 (MTNDP) is a more recent framework document. It lays down the blueprint for the Sierra Leone's overall development policy which addresses a wide range of sectors. The MTNDP includes language that specifically addresses challenges affecting persons with disabilities in the following areas: education; health and hygiene; livelihood; and participation.

11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Sierra Leone?

Voting rights of persons with disabilities are assured by accessible polling stations equipped with tactile ballots, but not all persons with disabilities know how to use them.⁸⁵ Moreover, the Disability Act mandates the National Election Commission to make sure that during elections, polling stations are made accessible to persons with disability and such persons ought to be provided with the necessary assistive devices and services.⁸⁶ By virtue of the Constitution of Sierra Leone, persons with disabilities, can participate in political life in Sierra Leone.

11.4 Are persons with disabilities' socio-economic rights, including the right to health, education and other social services protected and realised in Sierra Leone?

Persons with disabilities right to health, education and social protection are included and protected in Sierra Leone. However, the conditions for effective implementation are still lacking. While there are laws and policies in existence to protect the right to health for persons with disabilities in Sierra Leone, there are still considerable challenges to be addressed. Many healthcare workers in Sierra Leone often lack the necessary training and capacity to provide needed services to persons with disabilities. There is also limited accessibility of healthcare facilities as well as limited assistive devices which can prevent persons with disabilities from accessing healthcare services.

Regarding education, the right to education for persons with disabilities in Sierra Leone is not fully protected and realised. Although there have been progressive developments in promoting education in Sierra Leone, a lot of work is still required to ensure it is fully protected. Many schools lack the necessary accommodations. Regular education teachers also need special education training

85 UNPRPD (n 1) 18.

86 The Persons with Disability Act 22 of 2011, art 29.

to support students with disabilities. Parents too require orientation on the benefits of education for children with disabilities. Labelling and exclusion remain notable challenges.

Similarly, other social services for persons with disabilities, including social protection, accommodation, assistance with living expenses, transportation and employment are recognised by law, but their actualisation is yet to be seen. The persons with Disability of 2011 specifically made provisions on social protection for persons with disabilities but accessing these services is still a significant challenge for persons with disabilities in Sierra Leone. Anecdotal evidence shows that social services for persons with disabilities are usually not funded or underfunded.

11.5 Specific categories experiencing particular issues/vulnerability.

Persons with intellectual disabilities are often excluded from social protection measures available to persons with disabilities. For example, rehabilitation services for persons with intellectual disabilities are essentially non-existent.⁸⁷

Many persons with disabilities are often homeless and homeless women with disabilities are more vulnerable than their male counterparts, exposing them to risk of sexual abuse and violence. Sexual and reproductive services are also underdeveloped. Many women with disabilities have children they raise in undignified conditions due to poverty, with no material support from the father. Single parenthood places an additional burden on women with disabilities, especially for the most vulnerable among them. There is also no specific commission charged with protecting women against gender-based discrimination. There is a conspicuous lack of protection for the LGBTQ community of persons with disabilities as well.⁸⁸

Disability groups whose members consist of physical disabilities and persons with visual impairment tend to be strongest in Sierra Leone.⁸⁹ Persons with hearing disabilities and groups that are still fighting to be recognised as a disability group, such as the albinos, people with intellectual disabilities or cognitive impairments, tend to be weaker capacity-wise.⁹⁰ These groups often have more problems organising themselves, managing their organisations effectively and mobilising assistance.⁹¹

87 UNPRPD (n 1) 19.

88 UNPRPD (n 1) 18.

89 A van den Brink 'Together yet fragmented: A comparative case study of the women and disability movements' collective identity formation and maintenance in Sierra Leone' RESMA-thesis, Leiden: Leiden University, 2018.

90 Persons with physical disabilities, who are in the majority group in Sierra Leone due to the civil war, often do not consider themselves to be disabled. They are generally seen as being more educated than other groups and have had more financial aid to access education.

91 Van den Brink (n 89).

12 Future perspective

12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in Sierra Leone at the moment?

Yes, the Persons with Disability Act is currently being revised and this is probably based on the need to strengthen the contents of the Act towards ensuring holistic protection for persons with disabilities in Sierra Leone.⁹² Sierra Leone's Medium-Term National Development Plan 2019-2023 (MTNDP) is a more recent framework document that lays down the blueprint for the country's overall development policy and it included in its eight policy clusters is the policy on 'Empowering women, children, and persons with disability'.⁹³

12.2 What legal reforms would you like to see in Sierra Leone? Why?

Revise the Persons with Disability Act to comply with CRPD provisions regarding gender equality and provisions that would also extend protection towards marginalised and under-represented groups of persons with disabilities.

I would like to see a legal revision of other priority laws, policies, and systems that are undergoing review for compliance with CPRD and Persons with Disability Act.

92 UNPRPD (n 1) 11.

93 As above.

SECTION C: REGIONAL DEVELOPMENTS

Disability rights in the African regional human rights system

Section C contains 2 commentaries related to disability, the first gives an overview of the implications of the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, and the second on petty policing practices and the enforcement of minor offences against persons with psychosocial disabilities in three East African countries.

REGIONAL DEVELOPMENTS

RATIFICATION OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA: AN OVERVIEW OF THE IMPLICATIONS

*Paul Ochieng Juma**

1 Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) was adopted on 28 January 2018 and entered into force on 5 July 2024.¹ It is a substantive supplementary document drafted under article 66 of the African Charter on Human and Peoples' Rights (African Charter).² It is designed to promote and protect the rights of persons with disabilities in Africa.³ Its overall purpose is to ensure the full and effective participation and inclusion of persons with disabilities in society.⁴

To date, 17 African countries have ratified the African Disability Protocol.⁵ In most states, ratification is a process that involves the executive and the legislative organs of the government. In others, the judiciary may also have a role to play. Depending on the nature of the

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1 African Union, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted by the 30th ordinary session of the Assembly, held in Addis Ababa, Ethiopia, on 29 January 2018.

2 Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), 27 June 1981 (adopted 1 June 1981, entered into force 21 October 1986).

3 Preamble, African Disability Protocol.

4 As above.

5 Angola, Burundi, Cameroon, Republic of the Congo, Kenya, Mali, Malawi, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, South Africa, Uganda, and Zimbabwe. See https://au.int/sites/default/files/treaties/36440-si-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_PERSONS_WITH_DISABILITIES_IN_AFRICA_0.pdf (accessed 14 December 2024).

treaty, the relevant ministerial department initiates a draft request for ratification, which is then discussed in cabinet to determine whether it conforms with the nation's respective constitutional laws and practices. After it has been endorsed by cabinet, it is sent to parliament for adoption. A formal instrument to that effect is then deposited with the African Union (AU) Commission on Human and Peoples' Rights (the African Commission) by the state's ministry in charge of foreign affairs.⁶

The aim of this commentary is to highlight the implications of the ratification of the Protocol. The article has six main sections. Following the introduction, section two provides a brief overview of the history of the African Disability Protocol. Section three examines selected provisions of the Protocol with a view of demonstrating how they compare with the Convention on the Rights of Persons with Disabilities (CRPD),⁷ in terms of enhancing the rights of persons with disabilities in Africa. Section four illustrates some of the main implications of domesticating the African Disability Protocol. Section five examines the challenges and constraints which may underlie the implementation of the Protocol. The last section is the conclusion.

2 Historical background

Efforts to make provision for the human rights of persons with disabilities' rights in Africa can be traced back to the United Nations (UN) Decade on Disabled People, which ended in 1992.⁸ Reflections on the success of this initiative suggested that Africans with disabilities had not benefited from the work done during the ten years.⁹ After much advocacy by disability rights activists, the Labour and Social Affairs Commission of the Organisation of African Unity (OAU) recommended that a decade on disability be declared by the OAU. The recommendation was adopted by the OAU Assembly of Heads of State and Governments in July 1999, and the period between 1999-2009 was declared to be the African Decade for Disabled Persons.¹⁰

The OAU urged all countries to formulate policies and programmes to ensure the full participation and empowerment of persons with disabilities,

6 T Maluwa 'Ratification of African Union treaties by member states: Law, policy and practice' (2012) 13 *Melbourne Journal of International Law* 8.

7 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) (CRPD) adopted on 13 December 2006 (entered into force on 3 May 2008).

8 United Nations Decade of Disabled Persons (1983-1992).

9 D Msipa & P Juma 'The African Disability Protocol: Toward a social and human rights approach to disability in the African human rights system' in MH Rioux et al (eds) *Handbook of disability* (2023) 12.

10 African Decade on the Rights of Disabled Persons, AU Executive Council Resolution EX.CL/477 (XIV), adopted during the 14th ordinary session of the African Heads of State and Government, 26-30 January 2009, Addis Ababa, Ethiopia.

including developing legislation to promote equality and to prohibit discrimination. In May 2003, the AU Ministerial Conference on Human Rights in Africa was held in Kigali, Rwanda, and it encouraged African states to develop a Protocol on the protection of the rights of persons with disabilities and the elderly.¹¹

3 Comparison between the provisions of the African Disability Protocol and the CRPD

When the African Disability Protocol was drafted and adopted in 2018, the CRPD had already entered into force and garnered a substantial number of ratifications in Africa.¹² The CRPD is the principal global legal instrument for the protection of persons with disabilities. However, in spite of its progressive and comprehensive approach, the CRPD does not fully capture unmet needs of African's with disabilities.

The African Disability Protocol speaks more fully to the circumstances of the African people.¹³ An important example is its attempt to resolve conflicts between traditional and customary laws and practices and how they affect persons with disabilities.¹⁴ The Protocol requires states to modify, outlaw, criminalise or campaign against any harmful practices applied to persons with disabilities.¹⁵ Such cultural practices include those attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities.¹⁶ Matters of HIV/AIDS as well as poverty that have a significant impact on the enjoyment of human rights and fundamental freedoms by persons with disabilities have also been addressed by the Protocol.¹⁷

The African Disability Protocol has addressed the contextual gap in the CRPD by extending and reformulating rights under the CRPD so as to suit the African context. It addresses issues such as: ritual killings (article 1); youth with disabilities (article 29); older persons with disabilities (article 30); persons with disabilities as duty bearers (article 31); definition of deaf culture (article 1); the role of the family, caregivers, and community (article 25); and also includes marginalised groups such as persons with

11 Para 20, Kigali declaration, MIN/CONF/HRA/Decl.1(I), adopted by the First AU Ministerial Conference on Human Rights in Africa on 8 May 2003.

12 Entered into force on 3 May 2008.

13 SAD Kamga 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law* 219.

14 Art 11(1), African Disability Protocol.

15 Art 4(d), African Disability Protocol.

16 Art 1, African Disability Protocol.

17 Preamble, African Disability Protocol.

albinism. Certain rights such as the right of access to justice have been extended to include customary law forms of justice (article 13(2)).

4 Implications of ratification of the African Disability Protocol for the African region

Domestic enforcement is one of the most effective means of implementing treaty obligations.¹⁸ The African Disability Protocol can play multiple roles, including ensuring legislative reform as well as policy formulation. The Protocol has an important role in overriding any inconsistent provisions in laws.

The principles and standards under the African Disability Protocol are supposed to supplement domestic law and enhance good governance.¹⁹ Where domestic law is poor or where a country is incapable of adequately protecting human rights of persons with disabilities, the Protocol's norms may be used to replace deficient domestic laws or complement them. Several pieces of legislation may have to be amended or adopted after ratification in order to take into account the rights of persons with disabilities. Some of the existing rights may have to be consolidated while others reinforced so as to eliminate disability inequality, institutionalise political equality, and enhance greater involvement of persons with disabilities in decision-making processes.²⁰

Another implication of the ratification of the African Disability Protocol is that it may lead to a rise in the number of cases that make use of the provisions of the Protocol. The entry into force of the African Disability Protocol has provided African judges with a greater panoply of texts that can serve as a basis for jurisdictional decisions. It will provide them with precise insights into the understanding of disability rights and ensure better protection of the rights of Africans with disabilities. Moreover, in the application of these provisions, the national judge will have the possibility of proceeding by comparative approach since the provisions of the African Disability Protocol will also be applied by the national courts of the other member states who are parties to the treaty.

Presently, the African human rights system is being underused by both domestic and regional judicial and quasi-judicial institutions when it comes to the advancement of disability rights in Africa. This is evident when one considers the fact that there is only one communication

18 OA Hathaway 'Between power and principle: An integrated theory of international law' (2005) 72 *University of Chicago Law Review* 497.

19 Preamble, African Disability Protocol.

20 Arts 7 & 22, African Disability Protocol.

involving disability that has been brought before the African Commission – *Purohit and Moore v The Gambia*.²¹ Since the African Disability Protocol covers both civil and political as well as economic, social and cultural rights, there is potential of it giving rise to a diversity of thematic issues for which its provisions are invoked in courts in Africa. The African Disability Protocol has the potential of enhancing the ability of magistrates and judges to recognise and protect the human rights and improve the living standard of citizens with disabilities who have historically faced marginalisation on the continent.

The African Disability Protocol also has the potential of influencing the two critical African Union institutions in Africa. These are the African Commission and the African Court on Human and Peoples' Rights (the African Court). These organs are of critical importance to the promotion and the protection of the rights of persons with disabilities. The instrument has the potential of spurring collaborations within the organs, including the African Committee of Experts on the Rights and Welfare of the Child (African Committee). The treaty serves as a point of reference for the African Commission, both within its promotion and protection mandates, which may be done through concluding observations, general comments and resolutions.

The adoption of general comments will provide interpretive guidance on the obligations of state parties towards promoting the domestication and implementation of some of the provisions of the African Disability Protocol. General comments may address both general and specific obligations. For example, they may require states parties to adopt laws, policies and programmes guaranteeing the fulfilment of the sexual and reproductive rights of women with disabilities, including the allocation of sufficient and available financial resources for the full realisation of those rights.

The role of the African Disability Protocol may also extend to the United Nations (UN) human rights system, especially within the CRPD Committee, whose role is to monitor the implementation of the CRPD. The provisions of the African Disability Protocol are predicated on the functional and normative complementarity of institutional mechanisms.²² Thus, for example, article 33(a) of the Protocol enjoins the state parties to cooperate at the international, continental, sub-regional, and bilateral levels on capacity-building on issues of persons with disabilities. African states who have ratified the instrument are obliged to take measures to the maximum of their available resources and, where needed, within the framework of international cooperation, with a view to achieving

21 *Purohit and Moore v The Gambia* (2003) AHRLR 96.

22 Pan African Lawyers Union (PALU) *Guide to complementarity within the African human rights system* (2014).

progressively the full realisation of all rights including the socio-economic rights of persons with disabilities in the region.

Overall, the African Disability Protocol's norms guarantee changes in the public opinion towards the rights of persons with disabilities.²³ It has the potential of making a significant contribution to redressing the profound socio-economic disadvantages of persons with disabilities in Africa and promoting their participation, not only in the socio-economic sphere, but also in civil and political life, with equal opportunities for everyone. Citizens of ratifying states expect government officials to respect what they have signed.²⁴ This shift in attitude of the population regarding human rights norms of persons with disabilities is bound to encourage Organisations of Persons with Disabilities (OPDs) to advocate for compliance and courts to ensure compliance with the codified norm.²⁵

5 Challenges in implementation of the African Disability Protocol at the domestic level

Despite the comprehensive scope of the African Disability Protocol, there are some challenges that may impede effective implementation and enforcement of its norms. I highlight only four: non-compliance with state party reporting obligations; non-compliance by states parties with the recommendations of the African Commission; reservations; and lack of political will.

According to article 34(1) of the African Disability Protocol, states parties are required to allow inspection of their observance of the Protocol through the regular submission of state reports to be examined by the African Commission. However, and in spite of this provision, both non-reporting and the late submission of reports remain a significant problem in Africa.²⁶ This makes failure to report and minimal compliance with the recommendations of the African Commission a foreseeable challenge when it comes to the implementation of the African Disability Protocol. Under international law, a treaty generally binds only those states that have consented to be bound by its terms. Such consent is commonly expressed through ratification or accession.²⁷ Once the ratification process is complete states parties will have an obligation to submit periodic reports

23 BA Simmons *Mobilizing for human rights: International law in domestic politics* (2009) 80-81.

24 Simmons (n 23) 135.

25 Simmons (n 23) 129-130.

26 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington & Lee Journal of Civil Rights & Social Justice* 35.

27 According to art 2(1)(b) of the United Nations, Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol 1155, p 331, 23 May 1969, '[r]atification' is when 'a State establishes on the international plane its consent to be bound by a treaty'.

on measures taken, progress made and challenges encountered in the implementation of the rights and obligations enshrined in the African Disability Protocol.²⁸ At the time of writing this article, none of the state parties reports under the Protocol were overdue. However, in the past many states parties have been tardy in their compliance with reporting obligations. Apart from that, many countries have failed to implement concluding observations and recommendations of, for example, the African Children's Committee and the African Commission.²⁹

Some states may argue that the provisions of the African Disability Protocol are at odds with their domestic laws. For this reason, they may be against not only the ratification but also implementation of the Protocol. The situation may lead to entry of reservations by some of the member states. This has happened in the past especially with regards to provisions concerning women, family and social relations which were contrary to the then existing customs and practices of certain African nations.³⁰ Article 39 of the African Disability Protocol expressly provides for reservations. The latter limit the application of the treaty in relation to the state concerned.³¹ They are recognised in treaty-making processes and are often used so as to enable as many state parties as possible to ratify the treaties in question.³² According to article 19 of the Vienna Convention, any reservations made to any treaty must be compatible with the object and purpose of that treaty.³³ However, the experience in Africa is that when reservations are made to a treaty, they tend to weaken the objective(s) of the particular treaty.³⁴ In this case, reservations that for example, preclude the application of provisions concerning women with disabilities and social relations on account that they are contrary to existing customs and practices may undermine efforts of advancing the promotion and protection of disability rights in Africa.

Other factors that may inhibit the implementation process of the African Disability Protocol include financial incapacity and corruption. Poverty, ignorance and lack of awareness of the Protocol and its mechanisms, as well as insufficient political commitment may also impede negatively on the positive impact of the African Disability Protocol and activities of the African Commission in states parties. The persistence of these obstacles may as a result, lead to the non-harmonisation of the provisions of the treaty with domestic law in the countries which have

28 Art 34, African Disability Protocol.

29 A Olaborede & C Lumina 'The normative complementarity of the African Children's Charter and the African Women's Protocol in the context of efforts to combat child marriage' (2017) 31 *Speculum Juris* 58.

30 Viljoen (n 26) 48-49.

31 JD Mujuzi 'The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: South Africa's reservation and interpretative declarations' (2008) *Law, Democracy and Development* 46.

32 Mujuzi (n 31) 46-47.

33 Vienna Convention on the Laws of Treaties.

34 Mujuzi (n 31) 47-49.

ratified the Protocol. Many political and civil society actors will be required to solve these challenges by conducting sensitisation campaigns that are geared towards ensuring the respect for disability rights in particular. Such actions are bound to enhance the impact of the African Disability Protocol among the states parties.

6 Conclusion

The African Disability Protocol should certainly be commended for its role in furthering the protection of the human rights of persons with disabilities in Africa. Through its adoption and enforcement, Africa is on the verge of witnessing the enactment and implementation of innovative laws, policies and other institutional mechanisms at a national level geared towards advancing the human rights of persons with disabilities. While these prospects are commendable, a number of countries will confront several challenges in ensuring its application. The slow pace of implementation of African human rights instruments in the past underscores the need for more effective domestication mechanisms that go beyond mere general exhortations. The AU should be more involved in encouraging the implementation of the African Disabilities Protocol. State parties are also encouraged to collaborate with civil society organisations, such as OPDs, in the implementation process.

REGIONAL DEVELOPMENTS

PETTY POLICING PRACTICES: ENFORCEMENT OF MINOR OFFENCES AGAINST PERSONS WITH PSYCHOSOCIAL DISABILITIES IN THREE EAST AFRICAN COUNTRIES

*Anneke Meerkotter**

1 Introduction

Persons with psychosocial disabilities¹ often experience discrimination, harassment and even violence at the hands of law enforcement officials due to the latter's misinterpretation of their actions or circumstances. Especially when using public spaces, persons with psychosocial disabilities are disproportionately at risk of arrest for so-called 'petty'² offences such as loitering, indecent exposure, causing a public nuisance, urinating or defecating in public, as well as drunk and disorderly conduct.

Research conducted by the Southern African Litigation Centre in Malawi and Kenya has noted 'rampant abuse' of such minor offences by law enforcement officials in order to remove persons with psychosocial disabilities from their families or the community, especially where the

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1 Experiences of persons with intellectual disabilities in these contexts – and applicable legal principles – are in many respects similar to those of persons with psychosocial disabilities, however, in the interest of length this commentary is limited to the latter.

2 Section 1 of the Principles on the Decriminalisation of Petty Offences in Africa (adopted by the African Commission on Human and Peoples' Rights in 2018) defines petty offences as 'minor offences for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine ... Petty offences are entrenched in national legislation and, in most countries, fall within the broader category of minor offences, misdemeanours, summary offences or regulatory offences'. See sec 3.1 below for further examples from the three jurisdictions under review.

A Meerkotter 'Petty policing practices: Enforcement of minor offences against persons with psychosocial disabilities in three east African countries' (2024) 12 *African Disability Rights Yearbook* 219-231
<https://doi.org/10.29053/adry.v12i1.5536>

‘troublesome’ acts occur in public.³ Arrests for these minor offences often occur without any evidence or police attempts to obtain evidence.⁴ Petty offences therefore serve as a form of crime prevention or punishment which offers shortcuts to avoid due process requirements. Since the colonial era, these measures have been a helpful tool for law enforcement officials in many African countries in dealing with persons deemed a disturbance or annoyance.

While the pretext of arrests for ‘public nuisance’ offences is not utilised solely in respect of persons with psychosocial disabilities – or even persons with disabilities more broadly – it can be said that it disproportionately affects the former group. To understand this asymmetric effect, the following should be considered. First, criminal justice systems are typically skewed against the poor. For example, poor people are more likely to be detained for longer periods because of their lack of access to legal representation, and fines exacerbate their poverty.⁵ Given the mutually reinforcing linkages between poverty and disability,⁶ it is unsurprising that persons with disabilities are generally over-represented among persons experiencing discrimination based on their (low) economic status.

Second, although some progress has been made in recent years, psychosocial disabilities still carry severe social stigma – especially on the African continent. When it comes to persons with psychosocial disabilities, the same stigma and discrimination found in the general population also prevail among law enforcement officials.⁷ In addition, there are common concerns about police behaviour concerning persons with psychosocial disabilities.⁸ Laws which facilitate the criminalisation of poverty and status and place unfettered discretion on arrest and detention in the hands of law enforcement officials are particularly problematic when

3 Southern Africa Litigation Centre ‘Prosecuting sexual violence against women and girls with disabilities in Malawi’ (2017); Southern Africa Litigation Centre, Arthurs’ Dream Autism Trust and Article 48 Initiative ‘An exploratory study of the interaction between the criminal justice system and persons with intellectual and psychosocial disabilities in Nairobi, Kenya’ (2021).

4 See eg the 1948 judgment of the Malawi High Court in *R v Willie* 1923-60 ALR Mal 152, 154, regarding the offence of being a ‘suspect person or reputed thief who has no visible means of subsistence and cannot give good account of himself’.

5 UN General Assembly, Report by Special Rapporteur on Extreme Poverty and Human Rights, 66th session, 4 August 2011, UN Doc A/66/265 (2011).

6 LM Banks, H Kuper & S Polack ‘Poverty and disability in low- and middle-income countries: A systematic review’ (2017) 12 *PLoS One*.

7 See inter alia the findings of Afrobarometer surveys in Malawi and Kenya indicating the extent of discrimination experienced by persons with disabilities – B Howard “‘All in this together’: Africans tolerant on ethnic, religious, national, but not sexual differences’ (2020) Dispatch 362 *Afrobarometer Dispatch* 1 19. See also G Barbareschi and others “‘When they see a wheelchair, they’ve not even seen me’ – Factors shaping the experience of disability stigma and discrimination in Kenya’ (2021) 18 *International Journal on Environmental Research and Public Health* 4272, 4277.

8 G Gulati and others ‘Experiences of people with intellectual disabilities in encountering law enforcement officials as suspects of crime – A narrative systematic review’ (2020) 71 *International Journal of Law and Psychiatry* 3.

the latter are known for abusive, brutal, corrupt and sexually harassing conduct.⁹

Given the potential for rights violations, it is hardly surprising that there has been an increasing call, not only in Africa but also globally, for the decriminalisation of petty offences as well as a reconsideration of law enforcement practices relating to persons with psychosocial disabilities.¹⁰

Against this background, this commentary explores whether law enforcement practices in respect of minor offences allegedly committed by persons with psychosocial disabilities are aligned with regional human rights standards. Building on the findings of previous research,¹¹ the position in three East African countries, namely, Kenya, Malawi and Tanzania, is examined. The commentary, in turn, provides an overview of standards emerging in the African human rights system; a critical analysis of the domestic legal frameworks in the three countries; and concluding observations as well as recommendations for reform.

2 A brief glance at regional developments

2.1 The African Commission on Human and Peoples' Rights

The period from 2003 to date has seen a few significant milestones in the development and consolidation of regional norms on the rights of persons with psychosocial disabilities who encounter criminal justice systems.

In 2003, the African Commission on Human and Peoples' Rights (ACHPR) published its 'Principles and guidelines on the right to a fair trial and legal assistance in Africa'.¹² Although this document prohibits disability-based discrimination within the criminal justice system, its detailed provisions relating to arrest, detention and trial make no mention

9 Southern Africa Litigation Centre (n 3) 14.

10 UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights - Breaking the cycle: ending the criminalization of homelessness and poverty, 26 June 2024, UN Doc A/HRC/56/61/Add.3 (2024) 11.

11 Southern Africa Litigation Centre (n 3); Southern Africa Litigation Centre, Arthurs' Dream Autism Trust and Article 48 Initiative (n 3); Southern Africa Litigation Centre & Centre for Human Rights, Education, Advice and Assistance 'No justice for the poor: A preliminary study of enforcement of nuisance-related offences in Blantyre, Malawi' (2013).

12 ACHPR 'Principles and guidelines on the right to a fair trial and legal assistance in Africa' (2003). These principles generally follow the content of the United Nations' Body of principles for the protection of all persons under any form of detention or imprisonment, General Assembly, Body of principles for the protection of all persons under any form of detention or imprisonment, 9 December 1988, General Assembly Resolution 43/173 (1988).

of the accommodations which persons with disabilities may require in this context.¹³

That same year, in its landmark decision on the communication of *Purohit and Moore v The Gambia*, the ACHPR found that The Gambia had violated the rights of persons with psychosocial disabilities detained in 'mental institutions' in several respects. Significantly, the Commission highlighted the principle of inherent dignity as it relates to persons with psychosocial disabilities.

In 2011, the ACHPR's 'Guidelines and principles on economic, social and cultural rights in the African Charter on Human and Peoples' Rights' finally recognised the intersectionality of discrimination¹⁴ and emphasised that persons with psychosocial disabilities ought not to be imprisoned with the general population.¹⁵ In addition, they should be provided with appropriate support, social security and treatment instead.

The Commission's 2015 'Guidelines on the conditions of arrest, police custody and pre-trial detention in Africa' included persons with disabilities under the vulnerable groups requiring specific attention.¹⁶ Notably, the Guidelines emphasised that persons with disabilities have full legal capacity¹⁷ and that they should be provided with

appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authority and who are appropriately qualified.¹⁸

In a major development, the African Union in 2018 adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol).¹⁹ Article 13 of the Protocol provides for the right to access justice, requiring state parties to ensure that all parties in legal proceedings are provided with

13 These accommodations may include using easily understood terms when explaining the arrest process; repeating or rephrasing questions; allowing additional time for the person to process information; and suspending question when s/he becomes stressed or unable to concentrate. Gulati and others (n 8).

14 ACHPR, 'Guidelines and principles on economic, social and cultural rights in the African Charter on Human and Peoples' Rights' (2011) para 38.

15 ACHPR's Guidelines and principles (n 14) para hh, 27.

16 Sec 33(a)(i), ACHPR 'Guidelines on the conditions of arrest, police custody and pre-trial detention in Africa' (Luanda Guidelines) (2017).

17 As confirmed in art 12 of the UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) (CRPD); and art 7 of the African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted by the 30th ordinary session of the Assembly, held in Addis Ababa, Ethiopia, on 29 January 2018 (African Disability Protocol).

18 Luanda Guidelines (n 16) sec 33(c).

19 The Protocol entered into force in June 2024 after ratification by the required 15 AU member states.

‘procedural, age and gender-appropriate accommodations’ to enable their participation. In addition, state parties are required to provide legal aid to persons with disabilities and ensure the training of law enforcement and judicial personnel to ensure recognition of the rights of persons with disabilities.

The year 2018 also saw the ACHPR’s adoption of the ‘Principles on the decriminalisation of petty offences in Africa’. These Principles are aimed at reducing prison overcrowding arising from arrests for minor offences and the arbitrary enforcement of penal laws against persons based on their vulnerability,²⁰ including persons engaging in life-sustaining activities. The document emphasises that offences ought not to be so broad as to allow for unfettered discretion in their enforcement and should meet the criteria of proportionality. Member states are called on to address marginalisation’s root causes, including poverty.²¹ The Principles urge alternatives to detention for petty offences, which ‘[recognise] the need for reasonable accommodation for persons with disabilities’.²²

In 2020, the Commission published a study on the use of force by police, emphasising the prohibition of disability-based discrimination.²³ The study highlighted the need for states to comply with the African Disability Protocol, including training law enforcement officials on disability.²⁴ The study noted that training would alleviate instances, for example, where police believe that persons with physical, intellectual or psychosocial disabilities are deliberately unruly or non-compliant.²⁵

2.2 The Advisory Opinion of the African Court

Most recently, in 2020, the African Court on Human and Peoples’ Rights (African Court) issued a ground-breaking Advisory Opinion²⁶ to the effect that so-called ‘vagrancy laws’ are incompatible with African human rights instruments. The Court concluded that expressions such as ‘loitering’, ‘having no visible means of support’ and ‘failing to give a good account of oneself’ do not provide sufficient indication to citizens on what the law

20 Section 1 of the Principles defines vulnerable persons as ‘persons who are marginalised in society and the criminal justice system because of their status, or an intersection of one or more statuses’. This group includes, amongst others, the economically or socially marginalised, persons living in poverty, or who experience homelessness, and persons with disabilities.

21 Secs 13 and 14(3) of the Principles.

22 Sec 14(2)(3) of the Principles.

23 ACHPR ‘Study on the use of force by law enforcement officials in Africa’ (2020) para 27.

24 ACHPR (n 23) para 28.

25 ACHPR (n 23) paras 29, 60.

26 The African Court may provide an advisory opinion on any legal matter relating to the African Charter provided that the subject matter of the opinion is not related to any matter under examination by the ACHPR - art 4 of the Organisation of African Unity (OAU), Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, 10 June 1998.

prohibits while at the same time conferring broad discretion on law enforcement agencies in terms of how to enforce the offences.

The African Court's Advisory Opinion also dealt with those criminal procedure provisions which allow police to arrest someone without a warrant where the person has no apparent means of subsistence and cannot give a satisfactory account of themselves, and any other provisions related to the enforcement of these offences. The Court concluded that arresting individuals under these offences and soliciting statements from them about their possible criminal culpability, is at variance with the presumption of innocence.

Significantly, the Court expressed the view that the overly broad petty offence of 'vagrancy' disproportionately punishes the poor and underprivileged, including individuals with disabilities.²⁷ The Court found that vagrancy laws are incompatible with the provisions in the African Charter on Human and Peoples' Rights (African Charter) on non-discrimination, equality, dignity, liberty and protection of the family under article 18.²⁸ Such laws are prone to abuse due to their vague and imprecise language. The Court ordered state parties to amend or repeal all their vagrancy laws, related by-laws and other laws and regulations to bring them in conformity with the provisions of the Charter.²⁹

The Advisory Opinion accordingly states that the enforcement of vagrancy laws is contrary to states' obligation to protect the rights of women, children and persons with disabilities.³⁰ The Court condemned any offences which have a disproportionate effect on women and children and which

effectively punish the poor and underprivileged, including but not limited to the homeless, the disabled, the gender-nonconforming, sex workers, hawkers, street vendors, and individuals who otherwise use public spaces to earn a living,

noting that there is simply no reasonably justifiable basis for such offences and arrest practices.

27 African Union 'Advisory opinion on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa' No 001/2018 (4 December 2020) paras 3, 4, 70 (Advisory Opinion).

28 Advisory Opinion, paras 70, 79, 83-87, 104-105.

29 Advisory Opinion, paras 153-54.

30 Advisory Opinion, para 139.

3 Gaps in domestic legal frameworks

3.1 General overview: ‘Petty offences’

Despite the 2020 Advisory Opinion of the African Court, it is notable that legislation in all three jurisdictions under examination still makes provision for a range of minor ‘nuisance-related’ offences.

In Malawi and Tanzania, the offences of being a rogue and vagabond remain in force³¹ and include being a ‘suspected person or reputed thief who has no visible means of subsistence and cannot give a good account’ of themselves. In these two countries, criminal procedure legislation also allows police officers to arrest someone without a warrant where the person has no apparent means of subsistence and cannot give a satisfactory account of themselves, providing broad-based discretion to police.

Law enforcement officials in Malawi,³² Kenya³³ and Tanzania³⁴ also use the catch-all category of ‘common nuisance’ or ‘criminal nuisance’ in their Penal Codes to arrest persons who live on the streets or who carry out life-sustaining economic activities in public spaces. This offence originates from the English common law offence of being a ‘public nuisance’. In practice, this offence is used as a blanket justification to arrest and detain poor and marginalised persons.

Begging is prohibited in Malawi, Tanzania, and Kenya under the offence of being an idle and disorderly person.³⁵ In Tanzania, the by-laws of the Municipal Council of Ilala of 2019 specifically deal with controlling persons who beg, making it an offence to beg and to give to someone who begs for food or money.³⁶ The by-law goes further to require mandatory reporting of persons who beg. The offence of a breach of peace is sometimes also used against persons with disabilities in Malawi,³⁷ Kenya³⁸ and Tanzania.³⁹

31 Secs 184 and 177 respectively in Malawi and Tanzania’s Penal Codes.

32 Penal Code, sec 168.

33 Penal Code, sec 175.

34 Penal Code, sec 170.

35 The offence of being an idle and disorderly person encapsulates a range of prohibited forms of conduct and is included in the Penal Codes of Kenya (sec 182), Malawi (sec 180) and Tanzania (sec 176) respectively.

36 Government Announcement 529, 19 July 2019, Law of Local Governments (Town Authorities) (Chap 288), By-Laws of Ilala Municipal Council (Controlling Requests).

37 Penal Code, sec 181.

38 Penal Code, sec 182(d).

39 Penal Code, sec 176(e).

3.2 The position in Kenya

It is noteworthy that the Kenya Judiciary as well as the Director of Public Prosecutions have adopted progressive policies focusing on ‘people-centred justice’.⁴⁰ For example, the Director of Public Prosecutions has urged prosecutors to prioritise alternatives to trial, including charging with restraint, using diversion for misdemeanours and encouraging treatment and non-criminalisation of mental illness.⁴¹

In 2019, the Office of the Director of Public Prosecutions published Guidelines on prosecutorial decisions regarding institution of criminal charges. The Guidelines state that prosecutors should have regard (amongst other factors) to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical disability, since this may in some circumstances indicate that a criminal prosecution is not required. However, prosecutors should also weigh the seriousness of the offence, the likelihood of re-offending and the (perceived) need to safeguard the public.⁴²

The Director of Public Prosecutions’ Diversion Policy Guidelines of 2019 instruct prosecutors to consider diversion for so-called ‘vulnerable persons’ irrespective of the nature of the offence.⁴³ This term is defined as ‘a person who, due to age, gender, disability or other special characteristics, may require the provision of special justice and support’. However, because these Guidelines also encourage the use of the Criminal Procedure Code when dealing with persons perceived to be of ‘unsound mind’, incarceration of persons with psychosocial disabilities continues to happen – often for lengthy periods – for minor nuisance-related offences.⁴⁴

In another positive development, the Kenya Sentencing Policy Guidelines (2017) – formulated by the Kenya Judiciary – recommend the avoidance of imprisonment for petty offenders. At the same time, however, these sentencing guidelines also allow for the detention of persons with psychosocial disabilities ‘at the President’s pleasure’.⁴⁵ The High Court has emphasised that being detained for an indefinite period at the President’s pleasure is unconstitutional because it disregarded the rights of

40 Judiciary of Kenya ‘A blueprint for social transformation through access to justice 2023-2033: A people-centred justice approach’ (2023).

41 RM Ingonga ‘The Director of Public Prosecutions (DPP) Strategic Agenda 6’ (2023) 5.

42 Office of the Director of Public Prosecutions ‘Guidelines on the decision to charge’ (2019) 30.

43 Office of the Director of Public Prosecutions ‘Diversion policy guidelines’ (2019) Guideline 2.8.

44 Southern Africa Litigation Centre, Arthurs’ Dream Autism Trust and Article 48 Initiative (n 3) 25.

45 Judiciary of Kenya ‘Sentencing policy guidelines’ (2017). Sec 167(1) of the Kenyan Criminal Procedure Code allows for detention ‘at the pleasure of the President’ as a sentencing option, which effectively amounts to an indeterminate period of incarceration without any length of time or date of release being indicated.

an accused person as a person with a disability.⁴⁶ Despite this observation, courts continue to sentence persons to be detained at the President's pleasure.⁴⁷

In terms of the provision of legal advice or legal representation, it should be noted that section 38 of the Persons with Disabilities Act of 2003 (Cap 133)⁴⁸ allows the Attorney-General and Law Society to make regulations for free legal services for persons with disabilities in capital cases or cases where their rights were adversely affected. The Legal Aid Act of 2016 recognises the need to protect marginalised groups. Still, it does not provide the opportunity for legal support for persons psychosocial disabilities at the police station level.

3.3 The position in Malawi

Malawi's National Disability Mainstreaming Strategy optimistically proclaims that the country has the 'ideal legal framework adequate for ensuring access to justice for persons with disabilities'.⁴⁹ The Strategy does admittedly show some understanding of the challenges faced by persons with psychosocial disabilities when in conflict with the law, noting that 'prejudice overrides rational consideration of situations by law enforcers'.⁵⁰ The Strategy recommends improving support services and facilities for persons with psychosocial disabilities to exercise their legal capacity.⁵¹

In practice, however, such support services for persons with psychosocial disabilities are lacking. The new Persons with Disabilities Act of 2024, in section 32, has broad provisions on access to justice but no specific requirements for law enforcement agencies. Section 32(2)(b) of the Act requires that courts ensure reasonable accommodation to facilitate the participation of that person in the proceedings. This may include the use of sign language and augmentative or alternative modes of communication accessible to the person with a disability.

Section 17 of the Legal Aid Act of 2013 (Chapter 4:01) makes provision for access to legal aid when the interests of justice require, including for individuals who are arrested and held in police custody. When considering whether to provide legal assistance in criminal matters,

46 *Charles Kipkoech Chirchir v Republic* [2021] KEHC 7637 (KLR) (22 April 2021); *Republic v SOM* [2018] eKLR; *Joseph Melikino Katuta v Republic* [2016] eKLR.

47 *Republic v NEW* [2019] eKLR.

48 At the time of writing, a new Persons with Disabilities Bill, 2023 is pending in Kenya's parliament.

49 Ministry of Gender, Children, Disability and Social Welfare 'Malawi National Disability Mainstreaming Strategy and Implementation Plan (NDMS&IP) 2018-2023' (2018) 25.

50 Ministry of Gender, Children, Disability and Social Welfare (n 49) 26.

51 Ministry of Gender, Children, Disability and Social Welfare (n 49) 27.

section 18 of the Act lists factors such as whether the accused may be unable to understand the proceedings ‘due to mental illness or physical disability’.

The Malawi Directorate of Public Prosecutions in 2017 published Guidelines for Prosecutors on Nuisance-Related Offences in the Penal Code, which emphasise that prosecutors should consider several factors, including whether it is in the public interest to prosecute.⁵²

Both the Legal Aid Act and the Persons with Disabilities Act indicate missed opportunities to include provisions that could assist persons with disabilities at the police station level, even though such examples already exist in Malawi. For example, the Child Care, Protection and Justice Act of 2010 (Chapter 26:03) provides for an ‘appropriate adult’ to assist a child in conflict with the law.⁵³ It is also disconcerting that the Malawi Police Service Strategic Development Plan 2019-2024 does not address the needs of persons with disabilities.

Further, the attitudes of law enforcement agencies towards persons with psychosocial disabilities is reinforced by outdated legislation such as the Mental Treatment Act of 1948 (Chapter 34:02).⁵⁴ These laws, which favour the institutionalisation of persons with intellectual and psychosocial disabilities, create a bias in favour of arrest when alternatives may exist.

3.4 The position in Tanzania

Tanzania’s Persons with Disabilities Act 9 of 2010 makes it an offence to discriminate against a person with a disability. The Act focuses on access to public buildings and access to information for persons with visual and hearing impairments. The Act does not deal with law enforcement agencies or access to justice.

Section 33 of the Legal Aid Act of 2017 (Chapter 21) allows representation in criminal court proceedings where the interests of justice require it. This provision is quite limited, but the Act’s inclusion of paralegals, if adequately trained, could assist persons with psychosocial disabilities at the police station level.⁵⁵

52 Para 5 of the Guidelines. These factors are broadly like those listed in the guidelines issued by the Kenya Director of Public Prosecutions – see sec 3.2 above.

53 The role of an appropriate adult is to support, advise and assist the child.

54 For example, sec 17 of the Act empowers officers in charge to ‘take into safe-keeping’ persons who are believed to ‘suffer from a mental disorder’ and are found wandering or behaving indecently or causing a nuisance.

55 Sec 20 of the Legal Aid Act of 2017 (Chap 21) provides for paralegal services, including to assist persons to access justice and approach justice institutions.

3.5 Judicial interpretation

Following the views of the African Court regarding vagrancy laws, one expects that domestic courts in the region will look at existing legislation through a new lens. It is however notable that courts in Malawi and Kenya became critical of vagrancy laws and other petty offences long before the 2020 advisory opinion. For example, in *Mayeso Gwanda v State*, the High Court of Malawi observed that ‘most of the colonies and protectorates have new constitutional orders, and thus it is argued that these vagrancy laws are now dated’.⁵⁶ The Court accordingly held that the offence was unconstitutional and violated human rights.⁵⁷

The Kenya High Court has held that the language of the offence of ‘creating a disturbance in a manner likely to cause a breach of the peace’⁵⁸ implies also that people have the right to peacefully go about their daily activities without interference.⁵⁹ Other Kenyan courts have similarly sought to limit the application of the offence to disturbances likely to lead to physical violence.⁶⁰

These types of judgments are essential to start challenging the inadequacies within the legal frameworks that enable the extended incarceration of persons with psychosocial disabilities and related rights violations.

4 Conclusion and recommendations

In his judgment in the significant Malawi case of *Mayeso Gwanda v the State*, Kalembera J made the following remark:

What evidence was there that the applicant intended to commit an offence? ... there was no investigation, there was no evidence that the applicant intended to commit an offence or an illegality... His dignity was violated. He was presumed guilty until proven otherwise. All because he possibly appeared to be of no means. He was not treated as a human being. And where a person’s dignity is violated or compromised, it likely creates a chain reaction, that is, several of the individual’s human rights end up being violated.⁶¹

This statement aptly describes the position of persons with psychosocial disabilities who are arrested, prosecuted and imprisoned based on ‘petty offences’. As found in the above analysis, some degree of progress has been made in the three countries surveyed; however, much remains to be done.

56 *Mayeso Gwanda v State* [2017] MWHC 23, Mtambo J, 6.

57 *Mayeso Gwanda* (n 56).

58 In contravention of sec 95(1) of the Penal Code of Kenya.

59 *Jacob Nthiga Ngari v Republic* Criminal Appeal 48 of 2014.

60 *Mule v Republic* (1983) KLR 246. See also *Fransisca Kiborus v Republic* [2017] eKLR.

61 See sec 3.3 above.

First and foremost, following the recommendation of the African Court in its Advisory Opinion, Penal Codes should be reviewed and amended to repeal petty offences which are typically overbroad and open to abuse. This review should include local by-laws, since these often fly in the face of international and regional human rights standards and easily go under the radar because they are regulated by municipalities and not identified during broader law reform processes.

In addition to the legislation outlined above, there is also a need to reconsider colonial-era mental health laws, which continue to frame persons with psychosocial disabilities as lacking legal capacity and dignity.⁶²

Pending such law reform, guidelines for prosecutors and law enforcement officials on the interpretation of the respective Penal Codes will be helpful to avoid an overly broad application. An example here would be the Guidelines for Prosecutors issued in Malawi and Kenya respectively. Sentencing guidelines for the judiciary (like the Kenya example) may further be considered.

Another key aspect to be considered is the extent to which legal aid legislation or policies may require amendment to address the risks inherent in the absence of legal representation for persons with psychosocial disabilities.⁶³ Current gaps may be filled by paralegals providing support at police station levels. The notion of an ‘appropriate adult’ to provide support and advice may be adapted by analogy to fulfil the primary needs of persons with psychosocial (and other) disabilities in conflict with law enforcement officials, such as information on why they are in custody and what their rights are as well as emotional support.⁶⁴ In resource-constrained settings, the role of an appropriate adult could be fulfilled by trained volunteers or paralegals on standby.

The collection of comprehensive data on all persons with disabilities who find themselves in contact with the criminal justice system is essential to prevent rights violations.⁶⁵ A lack of documentation not only impacts on the course of the criminal trial and sentence upon conviction, but may, especially in the case of persons with psychosocial disabilities, result in people literally becoming lost in the penal system without any follow-up or review of their detention.⁶⁶

62 See eg judgment by the Zambian High Court in *Mwewa v Attorney General* [2017] ZMHC 77 (9 October 2017) at J20.

63 Gulati (n 8) 3.

64 Gulati (n 8) 4.

65 Both the CRPD (art 31) and the African Disability Protocol (art 32) require states parties to collect comprehensive disaggregated information on disability.

66 MC van Hout and others ‘Judicialisation of the mentally ill and/or mentally incapacitated in the Malawi criminal justice system: Gaps and flaws of human rights protection’ (2023) 4 *Forensic Science International: Mind and Law* 5. Southern Africa Litigation Centre, Arthurs’ Dream Autism Trust and Article 48 Initiative (n 3) 25.

None of these initiatives will have any prospect of success in the absence of training of law enforcement officials. Principle 10 of the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities of 2020 provides a detailed guide on various topics to be covered by such training, including communication skills, the duty to respect the legal capacity of all persons, overcoming prejudice against persons with disabilities, reasonable accommodation and importantly, the de-escalation of crisis situations.⁶⁷

The increasing recognition in the three selected jurisdictions that petty offences may be arbitrarily enforced against marginalised groups such as persons with psychosocial disabilities – which may in turn result in further serious rights violations – is encouraging. However, against the background of vast levels of poverty in Africa and the lack of social and other support for persons with psychosocial disabilities, it must be noted that law enforcement practices still require constant and critical review.⁶⁸

67 Principle 10, para 10.2(i)-(j).

68 See eg *The State v The Officer In-Charge | Ex Parte: Banda* (Judicial Review 28 of 2018) [2022] MWHC 139 (22 July 2022) para 1.28.

BOOK REVIEW

B CLOUGH (ED) *THE SPACES OF MENTAL CAPACITY LAW: MOVING BEYOND BINARIES* (2022)

*Piers Gooding**

(Routledge 2023) 208 pages, ISBN: 9781032115771

1 Introduction

Beverly Clough's 2022 monograph, *The spaces of mental capacity law: Moving beyond binaries*,¹ critically examines legal frameworks that authorise a third-party individual or judicial body to act and make decisions on behalf of adults deemed to lack decision-making ability in certain areas. Legislative examples include the Mental Health Care Act 17 of 2002 in South Africa, or the Assisted Decision-Making (Capacity) Act, 2015 in Ireland. Mental capacity laws create rules and processes for restricting the legal capacity of people with intellectual, cognitive, and psychosocial disabilities, and enabling substituted decision-making. Decisions typically concern care about a person, whether by families seeking to attain decision-making authority, or by health and social services seeking to pursue an ostensibly protective intervention.

The spaces of mental capacity law takes the reader through debates in law, the humanities, and social sciences concerning mental capacity, asking what issues the law makes visible, and those it obscures. The book focuses on the often-hidden encounters of care experienced by people governed by mental capacity law. Care is conceptualised in the book as practice but also political theory, as Clough draws attention to the political, economic, and

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1 B Clough *The spaces of mental capacity law: Moving beyond binaries* (2022).

legal framework that makes space for care – or, as the case may be, *uncaring* conditions. In so doing, she takes aim at the underlying norms and assumptions beneath the very idea of mental capacity.

The jurisdictional focus is England and Wales, concentrating on the Mental Capacity Act 2005 (MCA). Yet, doctrinal differences in capacity law – whether concerning ‘guardianship’ or ‘conservatorship’ or whatever the jurisdictional terminology used throughout the world – quickly give way to shared practical and conceptual issues. This is especially so in common law countries, given the MCA largely consolidates and codifies English common law responses to matters of capacity, impairment, and decision-making. These responses have not diverged significantly throughout the common law world, at least not yet. As Clough notes, the United Nations’ Convention on the Rights of Persons with Disabilities (CRPD) has profoundly challenged the very idea of capacity law, sparking some noteworthy global experimentation and variation.²

Readers, therefore, could rightly acknowledge the MCA not just for exemplifying a new wave of mental capacity law, but also for sparking a proliferation of (largely British) scholarship on the topic.³ The CRPD has expanded this critical scholarship, law reform, and activism internationally, sparking a proliferation of commentary on questions of capacity, personhood, disability, equality, and care.⁴

Clough, who is a Professor of Law at Manchester Metropolitan University, has contributed significantly to the field, having produced three co-edited collections, including a new collection with Laura Pritchard-Jones, titled *Mental capacity law, sexual relationships, and intimacy*.⁵

2 M Bach & N Espejo-Yaksic *Legal capacity, disability and human rights* (2023).

3 For example, P Bartlett ‘At the interface between paradigms: English mental capacity law and the CRPD’ (2020) 11 *Frontiers in Psychiatry* Article 570735; C Kong *Mental capacity in relationship: Decision-making, dialogue, and autonomy* (2018); L Series *Deprivation of liberty in the shadows of the institution* (2022).

4 For example, Bach & Espejo-Yaksic (n 2); D Bilchitz ‘Dignity, fundamental rights and legal capacity: Moving beyond the paradigm set by the General Comment on article 12 of the Convention on the Rights of Persons with Disabilities’ (2017) 32 *South African Journal on Human Rights* 410; W Holness ‘Equal recognition and legal capacity for persons with disabilities: Incorporating the principle of proportionality’ (2014) 30 *South African Journal of Human Rights* 313; W Holness & S Rule ‘Legal capacity of parties with intellectual, psycho-social and communication disabilities in traditional courts in KwaZulu-Natal’ (2018) 6 *African Disability Rights Yearbook* 27; J Duffy *Mental capacity, dignity and the power of international human rights* (2023); E Flynn and others *Global perspectives on legal capacity reform: Our voices, our stories* (2018); E Kamundia & I Grobelaar-du Plessis ‘Supported decision-making and legal capacity in Kenya’ in C Sunkel and others (eds) *Mental health, legal capacity, and human rights* (2021) 199; D Msipa ‘A critical review of legal capacity reforms in the African region’ in Bach & Espejo-Yaksic (n 2) 177; Y Maker *Care and support rights after neoliberalism: Balancing competing claims through policy and law* (2022); K Wilson *Mental health law: Abolish or reform?* (2021).

5 B Clough & L Pritchard-Jones (eds) *Mental capacity law, sexual relationships, and intimacy* (2024).

These works form part of her broader contribution to socio-legal scholarship concerned with disability, ageing, gender, and family.

In the early 2000s, MCA drafters sought to create a progressive and rights-focused law during a period of medical advances and an ageing population. The MCA was designed, at least partly, to ‘empower’ those for whom substituted decision-making was deemed necessary. But for Clough, the drafters’ ambitions have fallen short because of deep conceptual problems, centring on its outmoded idea of the ‘legal subject’ – a ‘legal subject built on Enlightenment ideals of autonomy and rationality’.⁶ These unrealistic ideals, Clough contends, and the elevation of expert and judicial intervention to mediate the border of capacity/incapacity are ‘dangerous and damaging [with] far-reaching repercussions across the legal landscape’.⁷

Instead, Clough makes the case for decentring the ‘legal subject and their agency/choice’, and refocusing on the ‘recursive relationship between the legal subject and the material and discursive spaces’ in which they are embedded.⁸ She seeks to expose and agitate several key binaries that ‘shape and form the logics’ of mental capacity law, and broader legal frameworks,⁹ namely: capacity/incapacity, autonomy/paternalism, empowerment/protection, carer/cared-for, disabled/non-disabled, and public/private. These binaries, Clough suggests, act as boundaries, falsely presented as ‘natural, immovable and given’¹⁰ in ways that cement the place of the state in mediating between them.

The book brings welcome theoretical attention to the often-overlooked matter of mental capacity in legal scholarship. As Clough points out, mental capacity law occupies a ‘curious position’ in law given it is typically presented as a peripheral or niche field.¹¹ When mental capacity law appears in legal education, for example (if it appears at all), it is typically presented as a minor sub-field of medical law or makes a brief appearance in the law of contracts. This is curious when you consider that countries like England and Wales have two million people thought to meet the definition of mental incapacity who receive some form of care, whether formally or informally from around six million people¹² – in what is a combined total of over ten per cent of the population.

6 Clough (n 1) 1.

7 Clough (n 1) 4.

8 Clough (n 1) 8.

9 Clough (n 1) 4.

10 Clough (n 1) 5.

11 Clough (n 1) 2.

12 Social Care Institute for Excellence (SCIE) ‘Mental Capacity Act 2005 at a glance’ (Last updated 2022) <https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance/> (accessed 21 November 2024).

2 Chapter outline

There are seven chapters. **Chapter 1 and 2** set out key concepts. Clough draws from diverse theoretical traditions in cultural studies, geography and legal theory concerning ‘spatial approaches’ to law – drawing on authors such as David Delaney, Sarah Keenan, and Andreas Philippopoulos-Mihalopoulos –¹³ which are brought into conversation with philosophies of vulnerability and relational autonomy, CRPD jurisprudence, with its profound challenge to theories of justice and the legal subject,¹⁴ as well as ethics of care, critical disability studies, and feminist new materialist theory.

The latter theory of ‘new materialism’ features heavily, of which theoretical physicist Karen Barad is perhaps the most widely cited proponent.¹⁵ New materialism emphasises the ‘entanglements’ of bodies, environments, and technologies. Applied to the disability context, this theory reframes disability not as an inherent lack or deficit, but as a predicament embedded in dense networks of material, social, and technological circumstances – or ‘assemblages’. This may sound similar to the social model of disability, but Clough argues that new materialism addresses significant flaws in the social model by helping to examine diverse sources of agency at play in any given situation. Shifting the view of the capacity to act from an *individual* to a diverse *network* of people, things, and ideas which are in a constant state of interaction and co-constitution, helps Clough to then apply a spatial analysis to mental capacity law.

For readers unfamiliar with new materialism, the analytical concept of assemblages might feel conceptually chaotic. Which networks of people, things, and discourses are important? Who decides? Clough turns in Chapter 2 to disability studies, and more latterly, critical disability studies, to clarify the kind of variables she suggests are worth prioritising in any given assemblage. Clough cites a helpful passage from Michael Feely¹⁶ to elaborate:

[A]n assemblage account of why a particular service user, diagnosed as having cerebral palsy, cannot currently speak might consider:

- 13 D Delaney *The spatial, the legal and the pragmatics of world-making: Nomospheric investigations* (2010); S Keenan *Subversive property: Law and the production of spaces of belonging* (2015); A Philippopoulos-Mihalopoulos ‘And for law: Why space cannot be understood without law’ (2018) 17 *Law, Culture and the Humanities* 1.
- 14 E Flynn & A Arstein-Kerslake ‘Legislating personhood: Realising the right to support in exercising legal capacity’ (2014) 10 *International Journal of Law in Context* 81.
- 15 K Barad *Meeting the universe halfway: Quantum physics and the entanglement of matter and meaning* (2007).
- 16 M Feely ‘Disability studies after the ontological turn: A return to the material world and material bodies without a return to essentialism’ (2016) 31 *Disability & Society* 863.

- the biology of the particular body and its actual physical capacities (the things it can and cannot do in its current material context);
- existent communication technologies and current research into communication technologies;
- what funding is, or is not, available for this;
- how the relevant legislation and policies enable and constrain access to speech technologies; and
- how societal discourses construct speechless subjects and the provision of expensive technologies to them.

The assemblage analyst would seek to map how the complex interaction of all of these elements produces the problem of a body that cannot currently speak.

By applying these concepts to law, in what is a dense and challenging set of conceptual arguments, Clough suggests that ‘spatialising the analysis’ allows us to better recognise the conceptual, doctrinal, and material constraints of current law.

Clough joins critics of dominant accounts of the social model of disability, who argue that the model reinforces able-bodied norms and the classical liberal subject. Instead, she argues – per Barad’s new materialism – that agency ought to no longer be tied solely to human subjects. From this view, the MCA’s core focus on a person being able to ‘understand, use, and weigh information’¹⁷ fares poorly, exemplifying as it does the liberal legal subject in his splendid isolation.

Chapter 3 focuses on ‘the processes through which the binary divide between capacity/incapacity is created and sustained’, and its consequences.¹⁸ The capacity/incapacity binary is presented as sort of an arch, organising binary for the MCA. Clough rejects calls by other figures in the British field for capacity assessment processes that are simply improved by integrating a more relational account of autonomy, or by acknowledging subjective elements to the capacity test.¹⁹ Instead, she looks to ‘disrupt the ideas of causality, temporality, responsibility, and agency that shape the mental capacity framework’ and sees the assemblage, and the spatial and relational analysis as the means for such disruption.²⁰ Clough then applies these analyses to unpack key MCA cases. Article 12 of the CRPD is discussed briefly, but Clough raises concerns that some responses to the CPRD (typically more moderate interpretations) are merely overlaid onto existing binaries of mental capacity law, which leave deeper conceptual problems undisturbed.

17 *Mental Capacity Act 2005* (England and Wales) sec 3(1).

18 Clough (n 1) 52.

19 See for example Kong (n 3); A Ruck Keene ‘Is mental capacity in the eye of the beholder?’ (2017) 11 *Advances in Mental Health and Intellectual Disabilities* 30.

20 Clough (n 1) 60.

Chapter 4 turns to the binaries of carer and disabled person in mental capacity law and Clough suggests that the capacity/incapacity binary, which is presented as technical and apolitical, obscures the role and responsibilities of the state and institutions. She calls for a shift from focusing on the disabled/carer dyadic to instead envisioning 'landscapes of care'.²¹ Care ethics scholarship and critics like Jenny Morris²² have largely bridged care theory with disability scholarship, even as some conceptual and political tensions remain, which can see the political interests of carers and disabled people pitted against one another.²³

Clough argues that a spatial and relational approach avoids reinforcing problematic binaries in a way that neither the MCA or CRPD seem able to do. Within the MCA, the test of 'best interests' focuses solely on the individual deemed to lack capacity, thus sidelining carers, while the CRPD characterises families in a separate and instrumental fashion in relation to the disabled person – though on this latter point, it was not clear why the CRPD provisions on disabled people as parents were left out (article 23(1)-(2)). By highlighting that disablement and carer status are context-dependent and influenced by factors such as changes over time and the people and resources to hand, Clough calls for a reframing of 'care as a practice involving a number of actors and institutional relations'.²⁴ This, she argues, can challenge the static views of care settings found in mental capacity law and adjacent policy, which applies different rules and regimes depending on the site in which care takes place. For example, different rules apply in an 'institution' versus a 'home', even as the distinction between the two is often far from clear.

Chapter 5 examines the role of the state, suggesting that mental capacity law veils the role of the state and other institutions when it frames issues through the binaries of autonomy/paternalism and empowerment/protection. Clough nods to theories of vulnerability, relational autonomy, and Amartya Sen's capabilities approach, which she acknowledges as important advances in more relational accounts of care, but they fall short for Clough due to their limited imagination for what is possible in law, as they too are bounded by the binaries noted above. Drawing on Margaret Davies' socio-legal work, Clough critiques the centrality of 'liberty as non-interference' in liberal legalism and stresses the 'state's ubiquitous presence' in everyone's life, a presence that is often made invisible, as the water in which fish swim.²⁵ But the state is never absent – it supports, intrudes, maintains, and generates conditions for people's lives. It is just that the state resources available to those who fit the mould of the ideal

21 Clough (n 1) 78.

22 J Morris 'Impairment and disability: Constructing an ethics of care that promotes human rights' (2001) 16 *Hypatia Special Issue: Feminism and Disability, Part 1* 1.

23 For example, Maker (n 4).

24 Clough (n 1) 95.

25 Clough (n 1) 29. M Davies *Law unlimited* (2017).

liberal legal subject are more often taken as a given, and falsely cast as natural within the zone of freedom to which he is afforded. But what of those who do not fit this ideal? Professional expertise and institutional resources are also obscured by a narrow either/or focus on autonomy or paternalism. The very processes of assessment, the operation of services, and the decisions as to what type of support can and cannot be provided, are then recast as neutral and unassailable – at least through the private law frame of mental capacity law which seems unable to marshal public resources as in public law.

Turning again to the CRPD, Clough discusses the right to independence and participation in community (article 19), suggesting it draws welcome attention to the role of the state in resourcing diverse ways to ensure people with disabilities can join and contribute to social life. Yet she warns, again, of a possible interpretation that is overly individualistic and built on the ideal of the autonomous liberal norm.

Chapter 6 critically examines liberty in the mental capacity framework, and reflects on the accounts of the state and legal subject they evoke. The chapter sets out the case for a move from the individualising concern with liberty to a focus on ‘facilitating and enabling freedom *through* – by unbounding liberty and being attentive to the relational and spatial dynamics and what they allow or foreclose’.²⁶ Clough criticises both liberal and republican theories of liberty, for reinforcing individualistic framings that do not account for the relational nature of freedom. By recognising the entangled processes that shape experiences of freedom and constraint – and not a single source of domination or power imbalance – she calls for ‘unbounding liberty’²⁷ in ways that move from a highly individualising account to one which considers those contextual power dynamics; and which does not denigrate dependency and instead acknowledges it as part of the assemblages in which all people live.

Chapter 7 focuses on the public/private divide and how it is deployed under the MCA, in Clough’s reading, to entrench disempowerment and avoid scrutiny of broader disabling structures through society. She argues that the judiciary actively reproduces and reinforces the boundary between public and private, by assiduously avoiding a situation in which the court orders the deployment of resources or certain service configurations owed to the person. Instead, the MCA is designed to attend the private law matter of the ‘best interests’ of the person, maintaining jurisdictional boundaries in ways that, Clough suggests, obscures responsibility and constrains responses to the binaries noted earlier, particularly intervention or non-intervention. The outsized powers ascribed by courts to expert judgement by health and social care professionals function similarly. The

26 Clough (n 1) 160.

27 As above.

judiciary, from this view, ought not be seen as neutral observers, powerless to direct government resources, but as active participants in constructing and defining these dividing lines – and it is this role, Clough argues, that can and should be reconfigured around a richer account of the legal subject and the state.

The **Conclusion** contains an intriguing passage on the role of the CRPD in advancing the ideas in the book, which, for Clough, are dependent on the extent to which the CRPD ‘can break out of a liberal legal mould’.²⁸ But Clough also stresses that the book is not about CRPD compliance, but rather aims to reveal the binaries on which mental capacity law seems to be built and constrained.

3 Commentary

Clough’s writing is lively and enthusiastic – memorable was her rejection of a view of law ‘as a static, authoritative, and positivist “thing”, rather than the politically infused, shifting, and active beast that socio-legal scholars have long been illuminating’.²⁹ The writing-style reflects the deconstructive approach of the book itself; it pulls apart established binaries and persistently interrogates concepts rather than offering clear-cut definitions. Legal and social theorists are likely to be most at home with the long tracts of abstraction and forays into diverse theoretical traditions (particularly Chapters 1 and 2). This may not be a book for strict doctrinal researchers or black letter practitioners seeking guidance on the workings of mental capacity law.

The book is premised on an argument that the complexity of the concepts – primarily the instability of the idea of capacity itself, but also of disability, care, agency, and so on – are resistant to simplistic accounts, requiring complexity, abstraction, and intertextuality. Clough’s resulting work is a rich tapestry of ideas, difficult to convey in a short review.

For readers in low and middle-income settings – acknowledging that I am not such a reader – the extent to which the book is relevant is perhaps the same extent to which any deep theoretical analysis of mental capacity law in the common law tradition is relevant. In most low- and middle-income countries, mental capacity law is not likely to touch on the lives of anywhere near the proportion of those in England and Wales, and other high-income countries. Yet, the basic theoretical suggestion that laws like the MCA narrowly constrain the focus in ways that obscure a multitude of other important factors that really *should* be considered, is likely to be of interest to anyone deeply interested in improving legal responses to care or

28 Clough (n 1) 191.

29 Clough (n 1) 6.

in building legal frameworks that are more responsive to particular social and economic contexts.

On the CRPD, and acknowledging that any book has a limited purview, some discussion lacked detail granted to the other theoretical fields. Passages on article 19, for example, would have been enriched by sources like the Committee on the Rights of Persons with Disabilities General Comment 5, or the rich scholarship and activist traditions of those engaged in drafting it.³⁰ These materials raise almost identical questions to those discussed in the book concerning the nature of 'community', the role of the state, and the support/interference dichotomy. Such passages reflected a tendency, in my reading, to refer to quite specific interpretations of the CRPD without presenting their contested – and sometimes *highly* contested – status, and occasionally generalising very particular readings as dominant discourse.³¹ That said, any CRPD proponents would do well to grapple with the broader critique of the humanist and liberal baggage they carry, and disability rights scholars sometimes – and perhaps often – overlook the kind or rich theoretical scholarship covered in this book.

Another thread I was left wanting to pull was the call in new materialism to flatten the agency between human and non-human entities. A focus on interwoven webs of agency requires diluting agency *away* from human actors, which seems at odds with the decades-long effort of disabled people and others precisely to *gain* recognition of their agency – and humanity more broadly – amid the hostile social context that Clough so vividly conveys. Whether this political aspiration is advanced by theoretical reconfigurations that draw agency *away* from humans writ large, surely remains an open question.³² For her part, Clough seems to suggest that care ethics – as well as critical disability studies and perhaps certain accounts of the CRPD – can buttress new materialism to avoid such adverse consequences.

Regardless, this book is one of the most significant monographs to bridge the intellectual traditions of disability-related law with contemporary critical disability studies, care ethics, and political theory. Clough offers critique of mental capacity law in the true sense, not as mere rejection or criticism, but rather as an exercise in understanding what assumptions and preconditions underlie a problem. Her critique goes a step further and agitates many of those assumptions, offering a vital

30 For a survey, see Y Maker 'From care and welfare to independent living? Interpreting and assessing the human right to live independently and be included in the community' in S Robinson & KR Fisher (eds) *Research handbook on disability policy* (2023) 274; P Gooding 'The right to independent living and being included in the community: Lessons from the United Nations' (2018) 24 *International Journal of Mental Health and Capacity Law* 32.

31 Clough (n 1) 71-74, 128-132.

32 I am indebted to Prof Linda Steele for raising a query along these lines at a legal conference some years ago.

challenge for law reform, care practice and policy, activism, and scholarship ahead.