

An Opportune Moment: Realizing the Rights of Persons with Disabilities in Africa

ICJ's study of nine sub-Saharan African States' implementation of the Convention on Persons with Disabilities

May 2025



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Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ADP or Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
African Commission	African Commission on Human and Peoples' Rights
AU	African Union
AUEOM	African Union Election Observation Mission
CR	Convention on the Rights of the Child
CmRPD	Committee on the Rights of Persons with Disabilities
CRPD or Convention	Convention on the Rights of Persons with Disabilities
EUEOM	European Union Election Observation Mission
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
Maputo Protocol of Women in Africa	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
OPDs	Organizations of Persons with Disabilities

Summary

This study is a synthesis of national, sub-regional, and international research and analysis on the progress made by nine African States in complying with their legal obligations to secure the rights of persons with disabilities under the Convention on the Rights of Persons with Disabilities (CRPD) through legislative, administrative, policy and other measures.

The study identifies the extent to which the nine States have implemented the CRPD in the areas of legal capacity, liberty of person, access to justice, political participation, education, work, and sexual and reproductive health services. It also identifies critical gaps in disability inclusion in the study States. In addition, the study reflects on the importance of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP), which came into force in 2024 upon being ratified by the minimum of 15 States required under the instrument. It is this recent coming into force of the ADP which makes this an opportune moment to take stock of progress made, as well as gaps and weaknesses in the enforcement of disability rights in Africa.

The nine study States are: **Ghana, Nigeria and Sierra Leone** from West Africa; **Kenya, Rwanda and Uganda** from East Africa; and **Malawi, South Africa, and Zimbabwe** from Southern Africa. The States are party to the CRPD, and seven of them are also party to the ADP (Ghana and Sierra Leone are not).

The ICJ undertook research drawing from academic sources, as well as from national, regional and global international databases of peer-reviewed and grey literature. The study also interviewed key informants from organizations of persons with disabilities (OPDs) drawn from most of the study States to provide background and context.

The ICJ, in the study, finds that despite some progress, much more is needed by these States to make human rights protections for persons with disabilities real. A more detailed summary of the contents of the report is available on the ICJ's website.¹

Findings and Recommendations

The study identifies the extent to which the nine sub-Saharan African States have implemented the CRPD and the Protocol in the following selected areas: legal capacity; liberty of person; access to justice; political participation; education; work; and sexual and reproductive health rights. The study therefore makes specific findings and recommendations in respect of each of these topics.

Section and topic-specific findings and recommendations are included at the end of each section. The findings and recommendations in all specific sections are presented in full immediately below, for convenience. Broader recommendations to a range of stakeholders, including state authorities, the African Commission on Human and Peoples' Rights (African Commission), justice actors, organizations of persons with disabilities and civil society organizations are included in the conclusion of the report.

Legal capacity

Legal capacity, which is the ability under the law to hold rights and duties and the ability to exercise those rights and duties, is provided in Article 12 of the CRPD and Article 7 of the ADP.

¹ https://www.icj.org/wp-content/uploads/2025/05/Summary_An-Opportune-Moment_Realizing-the-Rights-of-Persons-with-Disabilities-in-Africa.pdf

Findings:

1. The constitutions of all nine States have general provisions guaranteeing every person equality before the law, equal protection of the law, and equal benefit of the law. None of the constitutions, however, affirm explicitly that persons with disabilities must specifically be afforded recognition to exercise those rights and duties.
2. The nine States provide for, in legislation and/or practice, substituted decision-making, under which legal representatives or guardians make decisions on behalf of persons with psychosocial and/or intellectual disabilities. They also limit access to justice for persons with disabilities, and they restrict persons with psychosocial disabilities from participating in elections as voters and candidates.
3. The criminal and civil codes of the majority of the study States use discriminatory language that serves to diminish the humanity and legal personhood of persons with psychosocial and/or intellectual disabilities, in particular.
4. The nine States, to a greater or lesser extent, use the assumed legal incapacity of persons with psychosocial and/or intellectual disabilities to justify their arbitrary detention and forced treatment.
5. Mental health laws in five of the nine States protect some rights for persons with psychosocial disabilities. Even these mental health laws, however, typically conflate legal capacity and mental capacity. For example, these laws employ the “best-interest” principle, which is paternalistic and should not be applied to adults, instead of the “best will and preferences” principle, which, under the CRPD, is used to determine the needs of persons with disabilities who require support to exercise their legal capacity. These mental health laws are therefore not fully compliant with the CRPD.
6. Some States have established or are contemplating establishing advance directives frameworks to provide support to persons with mental health conditions. Advance directives enable persons with psychosocial disabilities to express their will and dictate their preferences, ahead of time, for what they desire in crisis situations.
7. In some of the study States, *de facto* guardianship of persons with disabilities is also a common practice. Such practices occur in the absence of any source of law restricting the legal capacity of individuals with disabilities or in the absence of the application of any such laws that might exist. Under such practices, affected persons with disabilities are deprived of the ability to make decisions and choices for themselves.

Recommendations:

1. States should enact new laws or amend existing ones so as to include provisions expressly affirming that persons with disabilities have the right to equal recognition before the law, equal protection of the law, and equal benefit of the law.
2. States should consider amending their constitutions to prohibit disability-based discrimination. In addition, enabling legislation should define disability-based discrimination to include denial of reasonable accommodation. In any event, disability-based discrimination must be prohibited by law in all States, in accordance with their international legal obligations.
3. States should adopt laws which specifically recognize and operationalize the legal capacity of persons with disabilities in various spheres of life. They should thereby provide guarantees for respect for the will and preferences of each person with disability, including persons with psychosocial and/or intellectual disabilities. Mental health laws, in particular, should be reviewed and amended accordingly.
4. States should establish, with the full and meaningful participation of persons with disabilities, organizations of persons with disabilities and civil society organizations concerned with the rights of persons with disabilities, standards, guidelines, and good practices for implementing supported decision-making regimes, including using support persons, peer support networks, and advance directives. Support measures for the exercise of legal capacity should be informed by local contexts.

5. States should take measures aimed at countering the prevalence of stereotypes that serve to promote *de facto* guardianship of persons with disabilities, including by undertaking public awareness raising campaigns, and by training state officials, including justice actors.

Liberty of person

Liberty of person, which guarantees persons' freedom from confinement of the body in settings such as pre-trial detention, house arrest and hospitalisation, is protected in terms of Article 14 of the CRPD and Article 9 of the ADP, which prohibit the unlawful or arbitrary detention of persons with disabilities.

Findings:

1. The constitutions of five of the nine study States expressly provide every person with the right to personal liberty – Kenya, Malawi, Rwanda, South Africa, and Zimbabwe. The constitutions of four States expressly limit the personal liberty of persons with intellectual and/or psychosocial disabilities, who are variously referred to as “persons of unsound mind” or “lunatics” – Ghana, Nigeria, Sierra Leone, and Uganda.
2. Laws of all nine study States provide for the arbitrary detention of persons with psychosocial and/or intellectual disabilities who are deemed criminally incapable of standing trial. They provide for the detention of an accused person, often referred to as a “criminal lunatic”, until such time as a court deems such person capable of standing trial. This frequently results in the indefinite detention of persons with disabilities, without the opportunity to participate in a free trial and without any findings in respect of their guilt or innocence.
3. Courts in some States, including Kenya and Uganda, have ruled that laws which allow for the detention of persons with psychosocial and/or intellectual disabilities who are deemed to be criminally incapable of standing trial to be unconstitutional.
4. Mental health legislation in the study States provides for the involuntary treatment of persons with intellectual and/or psychosocial disabilities. Even where some States have endeavoured to legislate ostensibly CRPD-compliant mental health laws, those attempts have, both in law and practice, been trumped by the policy imperatives which provide for or require involuntary treatment.
5. Persons with psychosocial disabilities are detained or confined in traditional religious shrines, Christian prayer-camps, and Islamic rehabilitation centres. This is the case in Ghana, Kenya, and Nigeria. The human rights violations and abuses such confined persons have faced include lack of adequate food, unsanitary conditions, lack of hygiene, lack of freedom of movement, and sexual violence.
6. Study States have not taken adequate measures to ensure that persons with disabilities in custody or prison are detained in barrier-free environments. The architectural design of some prisons is not conducive to barrier-free access. Some prisons refuse to allow inmates with disabilities to retain mobility aids and auxiliary devices such as crutches, callipers, and even white canes, arguing they are a security risk. States have failed to put in place adequate measures to ensure that detained persons with disabilities in pre-trial or post-trial detention have access to accommodations and other support measures, including information in accessible formats.

Recommendations:

1. States should enact or amend legislation to fully secure the right to liberty for persons with disabilities, without any exceptions relating to the deprivation of liberty of persons with psychosocial and/or intellectual disabilities.
2. States should repeal all provisions in statutes by which persons are deprived of liberty on the basis of their disability. This requires a full review of laws depriving persons with disabilities of their liberty, including criminal codes, criminal procedure codes, civil codes, guardianship laws and mental health laws.

3. States should repeal mental health legislation that provides for the involuntary treatment of persons with intellectual and/or psychosocial disabilities. Additionally, they should improve the delivery of mental health services using a human rights framework that takes psychosocial approaches to treatment instead of being overly dependent on medication that can undermine the effective treatment of persons with mental illnesses.
4. States should prohibit and accordingly sanction the forcible confinement of persons with psychosocial and/or intellectual or other disabilities in faith-based premises such as traditional religious shrines, Christian prayer-camps, and Islamic rehabilitation centres.
5. States should take effective measures to ensure that persons with disabilities in custody or prison are detained in barrier-free environments. States should put in place adequate measures to ensure prisoners with disabilities have access to accommodations and other support measures, including information in accessible formats.

Access to justice

Access to justice, which covers effective access by people to the systems, procedures, information and locations used in the administration of justice, is governed under Article 13 of the CRPD and Article 13 of the ADP, which establish state obligations on access to justice.

Findings:

1. The Constitutions of four study States establish general guarantees on access to justice that apply to all persons - Kenya, Malawi, South Africa, and Zimbabwe.
2. The legal aid frameworks of some of the States recognise the importance of availing persons with disabilities with access to legal aid to enable them to litigate or defend cases – Kenya, Sierra Leone, and Zimbabwe. These States have, however, failed to implement the letter and spirit of such laws to ensure access to legal aid for persons with disabilities.
3. Persons with disabilities quite often do not file cases on rights violations in courts because litigation is expensive and takes too long to be completed. Rather, as the study found in Nigeria and Rwanda, persons with disabilities preferred to settle matters out of court. Comparatively, more persons with disabilities have undertaken litigation in Kenya, South Africa, and, to a lesser extent, Uganda.
4. Persons with disabilities face institutional failings that impede their ability to access justice on an equal basis with others. For example, poor policing compromised the investigation of crimes against persons with albinism in Malawi. In some instances, the justice sector took measures to remedy these institutional weaknesses, such as when the investigation and prosecution of crimes against persons with albinism in Malawi was expedited after the government had designated specific prosecutors to prosecute particular crimes against persons with albinism and after the Chief Justice directed that such cases should be litigated before the professional rather than lay magistracy.
5. Court premises and services across the study States remain relatively inaccessible for persons with disabilities. While newly built court premises tend to be more accessible, older court premises are typically not. Courts in Kenya, South Africa, and Uganda have determined that siting courtrooms in inaccessible premises violates guarantees of accessibility for persons with disabilities.
6. Courts do not provide procedural accommodations to persons with disabilities on a consistent basis. Information on court services is also not availed to persons with disabilities consistently in accessible formats. Some courts also expect persons with disabilities or their organisations to organise and pay for Sign Language interpreters where they are required.
7. Lack of barrier-free access to the justice system has particularly adverse impacts for women with disabilities who face gender-specific impacts, children with disabilities who face age-specific impacts, and persons with intellectual and/or psychosocial disabilities.
8. The study States do not undertake adequate training for justice actors, including judges, on how to ensure persons with disabilities have access to justice.

Recommendations:

1. States should enact or amend legislation to include specific guarantees entrenching the right of persons with disabilities to access to justice, including through the provision of necessary supports and accommodations.
2. States should avail free legal aid to persons with disabilities to enable them to litigate or defend cases.
3. Court and other premises where justice sector services are provided must be made barrier-free. States must put in place programmes to adapt existing premises to ensure their accessibility.
4. States should engage with stakeholders with disabilities towards providing them with procedural accommodations. Procedural accommodations must take account of the particular needs of women, children, and persons with intellectual and/or psychosocial disabilities. Courts must not obligate victims, witnesses, and other litigants with disabilities to pay for services such as Sign Language interpretation. Criminal cases against persons with disabilities should be dismissed where the state fails to provide the accused with procedural accommodations to ensure the fairness of trials.
5. States should undertake adequate training for justice actors, including judges, on how to ensure persons with disabilities have access to justice. Training should focus on equipping justice institutions such as the police, prosecutors, and judicial officers to understand the rights of persons with disabilities and recognise and address ableism.

Participation in political and public life

Political participation includes the exercise of legislative, executive, and administrative powers, and it is realised, among others, through the right to elect and stand as leaders who determine the political agenda. For persons with disabilities, political participation is governed under Article 29 of the CRPD and Article 21 of the ADP, which obligate States to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

Findings:

1. The nine study States guarantee their citizens the right to political participation, including the right to join and form political parties and to participate in political activities.
2. The constitutions of the nine study States treat persons with psychosocial disabilities differently, often by limiting them from registering as voters and voting, and from standing in parliamentary or presidential elections.
3. Some of the study States have established specific measures to enhance the inclusion of persons with disabilities in their legislatures. These include establishing specific legal frameworks to ensure persons with disabilities have parliamentary representation. This is the case in Kenya, Rwanda, Uganda, and Zimbabwe. Electoral laws, such as in South Africa, also enable persons with disabilities to use the innovation of special voters' rolls so that they may vote at a more convenient time, usually before election day, either at the voting station or at their place of residence.
4. The nine study States provide persons with disabilities some reasonable accommodations and other support measures to facilitate their voting and their candidacy in elections. These measures include the use of tactile ballots and Sign Language, priority voting, assisted voting, and reduced registration fees for candidates with disabilities.
5. All nine study States have taken measures towards ensuring that electoral environments, such as registration centres and polling stations, are accessible to persons with disabilities. However, significant barriers remain. While some registration centres and polling stations are accessible to persons with disabilities, this is not the case universally, and voters with disabilities frequently encounter physical barriers when attempting to vote.
6. The nine States have not succeeded in ensuring that electoral material and services are availed to voters with disabilities in accessible formats.

7. The inclusion of persons with disabilities in parliaments is low. Ghana, Nigeria, and Sierra Leone do not have any parliamentarians with disabilities. The first past-the-post electoral system tends not to be configured to enable the election of individuals from marginalised groups such as persons with disabilities. Candidates with disabilities face stigma from electors who feel they cannot be represented by persons with disabilities.

Recommendations:

1. States should enact new laws or amend existing laws to repeal all disability-based voting restrictions.
2. States should take all necessary measures to ensure the inclusion of persons with disabilities in all legislatures, whether on national, provincial, or local levels. In particular, Ghana, Malawi, Nigeria, and Sierra Leone should expeditiously institute measures for the inclusion of persons with disabilities in their legislatures.
3. States should ensure that persons with disabilities have barrier-free access to registration centres, polling stations, and other forums where political participation takes place.
4. States should provide persons with disabilities with information and communication materials necessary to participate in elections on an equal basis and in accessible formats.

Education

The right to education for persons with disabilities is understood as the right to inclusive education, which obligates States to undertake or facilitate systemic changes and modifications in education to ensure that all learners, including learners with disabilities, have an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. This right is governed under Article 24 of the CRPD and Article 16 of the ADP.

Findings:

1. Constitutional provisions on the right to education in some of the study States (Nigeria and Sierra Leone) are framed as fundamental principles of state policy which, therefore, are not directly enforceable in the courts. The constitutions of the other study States establish guarantees on the right to education which may be enforced directly in the courts.
2. All the study States have enacted laws or adopted policies that recognise inclusive education for learners with disabilities, and some States have endeavoured to ensure that learners with certain categories of disabilities learn in regular, community schools.
3. All the study States continue to face significant difficulties in implementing inclusive education, including transitioning from segregated education to inclusive education. Education for children with disabilities remains dominated by segregated schools, special needs education, and inaccessible and ill-equipped regular schools.
4. The study States have not put in place effective measures to facilitate inclusive education for learners with disabilities, including by ensuring accessibility, providing reasonable accommodation, and availing other necessary support measures. Barriers to access to inclusive education include denials of admission; inaccessible school premises; inadequate curricula and teaching material; limited staff trained on inclusive education; limited expertise on Sign Language, Braille, Easy-Read, and other communication formats; and negative social attitudes on the attendance of learners with disabilities in regular schools.
5. The marginalization of learners with disabilities are compounded by gender-related factors, such as when girls are unable to attend classes for up to a week because they do not have adequate access to menstrual hygiene products and services.
6. Inclusive education in the study States also faces resistance from society and communities in the study States, which is driven by negative attitudes about the value and practicality of inclusive education for learners with disabilities.

Recommendations:

1. States should enact new laws or amend existing laws to include rights to education which are fully enforceable.
2. States should legislate that the right to education includes a right to inclusive education for all learners with disabilities.
3. States should clarify, in law and policy, their understanding of inclusive education, and they should establish timebound plans for transitioning to inclusive education. This understanding and planning must be based on the goal of ensuring that learners with different categories of disabilities attain quality education in their communities and are not compelled to access education through segregated special schools.
4. States should put in place effective measures to facilitate inclusive education for learners with disabilities by ensuring accessibility, providing reasonable accommodation, and availing all other necessary support.
5. States should establish specific interventions to ensure girls with disabilities attend school, including by providing them with gender-specific products.
6. States should undertake awareness-raising in communities to combat negative attitudes on the value and practicality of inclusive education for learners with disabilities.

Work

The right to work covers rights at work and the collective dimension of work. This right is governed under Article 27 of the CRPD and Article 19 of the ADP, which require States to safeguard and promote the realisation of the right to work for persons with disabilities, on an equal basis with others, in an open, inclusive and accessible labour market and work environment.

Findings:

1. The nine study States have constitutional provisions on work, with some being directive principles which are not enforceable directly by the courts – Nigeria and Sierra Leone – while others are quite detailed and directly enforceable. Some Constitutions legislate expressly on rights at work – Ghana, Kenya, Malawi, Rwanda, South Africa, Uganda, and Zimbabwe.
2. Persons with disabilities in several of the study States have successfully sought judicial interventions when their work-related rights have been violated by state or non-state actors – Kenya, South Africa, and Zimbabwe.
3. Laws in the nine States prohibit discrimination against persons with disabilities in the workplace, and statutes in some of the States provide guidance on the reasonable accommodation measures that employers should provide to persons with disabilities. However, laws in the majority of the States do not define reasonable accommodation, require the provision of reasonable accommodation to persons with disabilities, or confirm that the denial of reasonable accommodation amounts to discrimination.
4. Laws in the nine States include specific measures intended to increase the number of persons with disabilities in employment. These range from tax incentives to employers who employ persons with disabilities or who adapt their work environments to accommodate employees with disabilities, to tax exemptions on the incomes of persons with disabilities in employment or who start businesses. Other specific measures include preferential employment of persons with disabilities, numerical employment targets for persons with disabilities, and preferential allocation of procurement contracts.
5. Despite the various measures that States have put in place to guarantee and enhance employment for persons with disabilities, progress is stymied by systemic institutional weaknesses, limited resources, restrictions on career opportunities for persons with disabilities, and limited vocational training opportunities.

Recommendations:

1. States should enact or amend laws to include rights to work which are fully enforceable.
2. States should legislate for the protection of the right to work for persons with disabilities.
3. States should enforce laws that prohibit the discrimination of persons with disabilities in the workplace. They should clarify and monitor the provision of reasonable accommodation measures for employees with disabilities. Their laws should state expressly that denial of reasonable accommodation amounts to discrimination.
4. States should initiate or enhance specific measures as tools for facilitating the employment of persons with disabilities, including the provision of tax incentives for persons with disabilities and their employers.

Sexual and reproductive health rights and services

Sexual and reproductive health services, which include family planning, maternal health care, preventing and managing gender-based violence, and preventing and treating sexually transmitted infections, are governed under Article 25 of the CRPD and a series of articles in the ADP, including Article 17.

Findings:

1. Three of the study States establish constitutional guarantees on reproductive health services - Kenya, South Africa, and Zimbabwe. The constitutions of the other study States establish more general guarantees on health.
2. While all the study States do not provide specifically for sexual and reproductive rights under legislation for persons with disabilities, many of them have disability specific policy statements on sexual and reproductive health services. For example, South Africa's National Integrated Sexual and Reproductive Health and Rights Policy requires facilities to remove barriers to accessing sexual and reproductive health and rights by ensuring access to information, physical access, financial access, and access to comprehensive sexual and reproductive health and rights care.
3. The drivers of negative attitudes on providing sexual and reproductive health services to women with disabilities include questioning why women with disabilities should have sex, become pregnant and have a child, or adopt a child; and questioning why they should access post-abortion services, family planning, and other reproductive health services.
4. With the exception of South Africa, the other study States criminalize abortion, and place additional disability-related restrictions on the circumstances under which persons with disabilities can lawfully access abortion services.
5. Laws inhibiting and often criminalising the autonomous sexual choices of persons with disabilities prevail in the study States. Eight of the nine States (apart from Rwanda) apply laws that limit or criminalise the sexual choices of persons with disabilities.
6. The sexual and reproductive health rights of persons with disabilities across the nine States are violated by public actors or abused by private actors in various ways. These violations or abuses either impact persons with disabilities generally or they impact specific sub-categories of persons with disabilities, including women and girls with disabilities, adolescents with disabilities, youth with disabilities, and persons with hearing, mobility, visual, intellectual, psychosocial, multiple, or other disabilities. The violations are evident in the physical, attitudinal, and institutional barriers that persons with disabilities face when they seek to access sexual and reproductive health services.
7. While all persons with disabilities face sexual and reproductive health barriers, those barriers are compounded for women and girls with disabilities on account of their intersecting marginalisation as women and persons with disabilities. Significant problems that women with disabilities face include rape; coerced procedures such as sterilisation; and denial of access to sexual and reproductive health services.

8. Youth with disabilities also face significant barriers when they seek to access sexual and reproductive health services. Parents assume that youth with disabilities are asexual and therefore fail to provide them with information on sex and reproduction.

Recommendations:

1. States should amend their laws to include the right for all, including persons with disabilities, to access reproductive health services, including abortion services.
2. States should decriminalize abortion completely, and they should guarantee the right to safe and legal abortion to everyone.
3. States should repeal disability—related limitations on abortion, and they should provide persons with disabilities with the reasonable accommodation measures and other supports they may require in that regard.
4. States should undertake capacity building programmes for their officials and public awareness programmes for the public to combat negative attitudes on providing sexual and reproductive health services to persons with disabilities.
5. States should decriminalise and destigmatise the autonomous sexual choices of persons with disabilities, so that persons with disabilities may have intimate sexual relations with whomsoever they choose, on an equal basis with other persons.

I. Background

The human rights of persons with disabilities are protected under general international law and general principles of law, which include the principles of non-discrimination, equality, and equal protection. Human rights treaties provide for particularized and more specific protections, and States that become parties to such treaties assume obligations in that regard. The principal treaties containing such specificities in respect of the rights of persons with disability that are applicable to States in Africa are the CRPD² and the ADP.³ These treaties obligate States to take a broad range of legislative, administrative, and practical measures to ensure that persons with disabilities enjoy their rights fully.

i. Purpose of the study

This study synthesizes key national, sub-regional, and regional research and evidence on the progress made by African States in complying with their obligations to secure the rights of persons with disabilities through legislative, policy, and other measures.

It focuses on the standards established under the CRPD and the generally authoritative interpretation of the Convention's supervisory body, the Committee on the Rights of Persons with Disabilities (CmRPD). It also takes account of the rights and obligations entrenched in the ADP.

The study's specific aims are:

1. To identify the extent to which select African States have implemented the CRPD, including through enacting disability specific legislation, amending existing legislation, and aligning their policies and practices with the Convention;
2. To inform relevant stakeholders about the implementation of the rights of persons with disabilities in select States in sub-Saharan Africa;
3. To identify the gaps in disability inclusion in select States in sub-Saharan Africa, and to recommend further in-depth analysis where needed; and
4. To identify the added value for States of becoming party to the ADP.

ii. Methodology

This study is based on a sample of nine sub-Saharan African States. The sample States were drawn sub-regionally from Eastern, Western, and Southern Africa. Criteria for selecting the States included:

- A balance between the three selected sub-regions;
- The length of time a state had been party to the CRPD;
- Whether a state had signed and/or ratified the ADP;
- Access to information in English; and
- Strategic fit with ICJ Africa's broader goals in advocating for the rights of persons with disabilities.

Table 1: Study States

State	CRPD ratification (r) or accession (a)	ADP signatory/ratification (s/r)
West Africa		

² Convention on the Rights of Persons with Disabilities (CRPD), Sixty-first session of the UN General Assembly, adopted on 12 December 2006, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP), African Union, adopted on 29 January 2018, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa>.

Ghana	2012 (r)	
Nigeria	2010 (r)	2024 (r)
Sierra Leone	2010 (r)	
East Africa		
Kenya	2008 (r)	2022 (r)
Rwanda	2008 (a)	2022 (r)
Uganda	2008 (r)	2024 (r)
Southern Africa		
Malawi	2009 (r)	2024 (r)
South Africa	2007 (r)	2023 (r)
Zimbabwe	2013 (a)	

This means that the nine study States are party to the CRPD, while three States have not become party to the ADP – Ghana, Sierra Leone, and Zimbabwe.

The ICJ employed qualitative research to realize the study's aims. The study is predominantly based on academic sources, as well as on national, regional, and global databases of peer reviewed as well as grey literature. These included reports of organisations of persons with disabilities (OPDs) and other sources emanating from the advocacy and research efforts of persons with disabilities; cases including judgments and decisions of national courts; national constitutions, statutes and policies; situation reports on the rights of persons with disabilities; periodic reports to the CmRPD, and its concluding observations; reports to other United Nations treaty bodies and their concluding observations; periodic reports to the African Commission on Human and Peoples' Rights (African Commission), and the Commission's concluding observations; reports of UN Special Mandate holders; reports of National Human Rights Institutions; and African and international human rights journals. The study also identified and sought to interview stakeholders from at least one OPD in each of the nine study States, to provide background and context. Eight were interviewed in the end.

Table 2: Interviewees for the study

No.	State	Interviewee	Position	Date of interview
Key Informant 1	Ghana	Abdul Wahab Adam	Disability Inclusion Adviser, Ghana Federation of the Disabled (GFD)	17 July 2024
Key Informant 2	Kenya	Sally Nduta	Director, United Disabled Persons of Kenya	22 May 2024
Key Informant 3	Malawi	Simon Munde	Executive Director, Federation of Disability Organisations of Malawi (FEDOMA)	21 June 2024
Key Informant 4	Nigeria	Adetunde Ademefun	Head of Secretariat, Joint National Association of Persons with Disabilities	18 June 2024
Key Informant 5	Rwanda	Jean-Baptiste Murema	Legal/Disability Inclusion Officer, National Union of Disability Organisations of Rwanda (NUDOR)	24 June 2024
Key Informant	Sierra	Abubakarr	Programme Coordinator, African	31 July 2024

6	Leone	Bangura	Youth Network for Persons with Disabilities	
Key Informant 7	Uganda	Esther Kyoziira	Director, National Union of Disabled Persons of Uganda (NUDIPU)	4 June 2024
Key Informant 8	Zimbabwe	Joyce Matara	Director, National Association of Societies for the Care of the Handicapped (NASCOH)	July 2024

iii. Limitations and qualifications

The ICJ, in undertaking the study, encountered several limitations and qualifications.

First, the laws and policies of different States use varying frameworks and terms to conceptualize and define disability. The study also takes into account that some persons with disabilities prefer the use of person-first language, for example, “person with disability” and “person with psychosocial disability”, while others prefer the use of disability-first language, for example, “disabled person” and “deaf person”. Person-first language is based on the fact that a person’s primary identity is as a human being and that disability is secondary to that. Disability-first language draws attention to the centrality of disability in the individual’s identity.⁴ While the study mostly employs person-first language in keeping with international law and standards, it also uses disability-first language from time to time as dictated by context.

Second, there were distinctly varying levels of disability-specific information across the study States. The dearth of available online sources – including in respect of government data and information, judgments, OPD and NGO reports – presents a significant limiting factor in any research on the rights of persons with disabilities, including the study States.

Finally, there was a dearth of reliable data on the prevalence of disability in the study States. At least 15% of the global population consists of persons with disabilities,⁵ yet, as table 3 below shows, official figures in the nine study States reported improbable single-digit figures on the prevalence of disability. Only Uganda and Malawi reported double-digit prevalence of disability, respectively at 14% and 10.4%. Sierra Leone, with 1.3%, and Kenya, with 2.2%, reported the lowest prevalence of disability in the study States. According to a recent continental study, disability data tends to be limited to a narrow set, usually of physical impairments, which again are, at times, conflated with health conditions. The data is mainly collected through census or survey methods, resulting in differences in disability prevalence even within the same countries or regions.⁶ This study proceeds with the assumption that the quality of this data is questionable, and that disability prevalence is significantly underestimated in most, if not all, study States.

Table 3: Prevalence of disability in the study States

State	Prevalence of disability (%)	Year
Ghana	8	2021 ⁷
Kenya	2.2	2019 ⁸

⁴ Arlene Kanter, “The Relationship between Disability Studies and Law” in Arlene S. Kanter and Beth A. Ferri (eds) *Righting Educational Wrongs: Critical Perspectives on Disability* (Syracuse University Press, 2013) 15.

⁵ The World Bank and World Health Organisation, *World Report on Disability* 2011, <https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability#:~:text=World%20Report%20on%20Disability%202011,a%20figure%20of%20around%2010%25>, accessed on 20 May 2024.

⁶ Mo Ibrahim Foundation, *The Power of Data for Governance: Closing Data Gaps to Accelerate Transformation*, 2023 IIAG Series Report, January 2024, <https://mo.ibrahim.foundation/sites/default/files/2024-01/2023-iiag-series-report.pdf>, accessed on 10 June 2024, 34.

⁷ 2021 Population and Housing Census, Ghana Statistical Services, <https://census2021.statsghana.gov.gh/>, accessed on 20 July 2024.

Malawi	10.4	2018 ⁹
Nigeria	7	2018 ¹⁰
Rwanda	3.4	2022 ¹¹
Sierra Leone	1.3	2015 ¹²
South Africa	6	2022 ¹³
Uganda	14	2014 ¹⁴
Zimbabwe	9.5	2022 ¹⁵

⁸ 2019 Kenya Population and Housing Census Analytical Report on Disability, Kenya National Bureau of Statistics, 2023, <https://www.knbs.or.ke/wp-content/uploads/2023/09/2019-Kenya-population-and-Housing-Census-Analytical-Report-on-Disability.pdf>, accessed on 1 June 2024.

⁹ 2018 Malawi Population and Housing Census, Main Report, National Statistical Office, May 2019, <https://malawi.unfpa.org/sites/default/files/resource-pdf/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report%20%281%29.pdf>, accessed on 1 June 2024.

¹⁰ Nigeria Demographic and Health Survey 2018, National Population Commission Abuja, Nigeria, October 2019, <https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf>, accessed on 20 July 2024.

¹¹ 5th Rwanda Population and Housing Census (PHC), 2022 (Main Indicator Report), Ministry of Finance and Economic Planning National Institute of Statistics of Rwanda, February 2023, https://statistics.gov.rw/publication/main_indicators_2022#:~:text=The%20analysis%20of%20the%20fifth,2.3%25%20between%202012%20and%202022, accessed on 1 June 2024.

¹² Sierra Leone 2015 Population and Housing Census: Thematic Report on Disability, Statistic Sierra Leone, October 2017, <https://sierraleone.unfpa.org/en/publications/sierra-leone-population-and-housing-census-thematic-reports-disability>, accessed on 27 May 2024. The 2018 Integrated Household Survey, however, indicated a higher disability prevalence of 4.3%. Sierra Leone Integrated Household Survey (SLIHS) Report 2018, Statistics Sierra Leone, October 2019, https://www.statistics.sl/images/StatisticsSL/Documents/SLIHS2018/SLIHS_2018_New/sierra_leone_integrated_household_survey2018_report.pdf, accessed on 27 May 2024.

¹³ Statistical Release, Census 2022, Stats SA (Department: Statistics South Africa), https://census.statssa.gov.za/assets/documents/2022/P03014_Census_2022_Statistical_Release.pdf, accessed on 1 June 2023.

¹⁴ Uganda Bureau of Statistics 2016, The National Housing and Population Census 2014 - Main Report, https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf, accessed on 1 June 2024.

¹⁵ Zimbabwe Population and Housing Census Report (2023), https://www.zimstat.co.zw/wp-content/uploads/Demography/Census/2022_PHC_Report_27012023_Final.pdf, accessed on 1 June 2024.

II. Conceptual and Legal Framework for the Rights of Persons with Disabilities

i. International legal framework

Under general international law, States must protect and guarantee the rights to equality, equal protection, and non-discrimination. This obligation is provided for in the International Covenant on Civil and Political Rights (ICCPR), to which all of the States in this study are party. Specifically, article 26 of the ICCPR provides:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁶

In addition, the ICCPR provides that the rights guaranteed must be respected and ensured "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".¹⁷ As the Human Rights Committee, the supervisory body for the ICCPR, has explained, "other status" includes disability status.¹⁸ The supervisory bodies of the principal human rights treaties which do not expressly prohibit discrimination on the basis of disability have also interpreted those treaties to cover persons with disabilities. This includes, for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁹ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁰ The Convention on the Rights of the Child (CRC) contains express provisions prohibiting the discrimination of children with disabilities in Articles 2(1) and 23.

The African Charter on Human and Peoples' Rights, to which the study States are party, provides that "every individual shall be equal before the law" and that "[e]very individual shall be entitled to equal protection of the law."²¹ It also provides that "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."²² The African Commission has affirmed that the phrase "other status" covers persons with disabilities.²³

The CRPD and the ADP set out specific rights that States parties must protect in respect of persons with disabilities. The two instruments also establish institutional mechanisms for assessing the compliance of States with their obligations to ensure the rights of persons with disabilities. These include, in the first place, and as we will show in this chapter, the CmRPD, established under Article 34 of the CRPD, and the African Commission, established under Article 30 of the ACHPR.

¹⁶ International Covenant on Civil and Political Rights (ICCPR), United Nations General Assembly, adopted on 16 December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁷ Ibid, Article 2.

¹⁸ While the ICCPR does not mention persons with disabilities expressly, see, for example, how the Human Rights Committee interprets the phrase "other status" in Article 2 of the Convention in General Comment No. 18: Non-discrimination (1989) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGEC%2F6622&Lang=en#.

¹⁹ General Comment No. 5: Persons with Disabilities (Committee on Economic, Social and Cultural Rights (CESCR), 1994), <https://www.globalhealthrights.org/wp-content/uploads/2013/10/CESCR-General-Comment-No.-5-Persons-with-Disabilities.pdf>.

²⁰ General Recommendation No. 18: Disabled Women (Committee on Elimination of Discrimination Against Women, 1991) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F4729&Lang=en.

²¹ African Charter on Human and Peoples' Rights (ACHPR), Organization of African Unity, 1981, Art 3, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

²² Ibid, Art 2.

²³ *Purohit and Moore v Gambia* African, (African Commission), Communication 241/01 (2003), <https://achpr.au.int/index.php/en/decisions-communications/purohit-and-moore-v-gambia-24101>.

a. Status of CRPD and ADP

As of May 2025, 54 African Union member States had ratified or acceded to the CRPD.²⁴ This amounts to all of the African States that are members of the UN, with Eritrea being the most recent country to ratify in 2025.²⁵ Of these States, 31 had ratified or acceded to the Optional Protocol to the CRPD, including seven of the study States, Ghana, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda, and Zimbabwe.²⁶ Kenya and Malawi are not party to the Optional Protocol, meaning that the CmRPD does not have competence to receive individual communications and determine violations of the provisions of the CRPD by the two States.²⁷

As of May 2025, 16 States, including seven study States, had become party to the ADP: Angola, Burundi, Cameroon, Republic of the Congo, Kenya, Mali, Malawi, Mozambique, Namibia, Nigeria, Niger, Rwanda, South Africa, Sahrawi Democratic Republic, Uganda, and Zimbabwe.²⁸ The Protocol has come into force now that it has been ratified by at least 15 States.²⁹

b. Aims of the disability rights instruments

The aims of the two disability rights treaties are mostly coterminous. The purpose of the CRPD is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.³⁰ The purpose of the ADP departs only slightly from that of the CRPD, to introduce the nomenclature of “human and peoples’ rights”,³¹ in accordance with the continent’s flagship human rights instrument, the African Charter.

Prior to the adoption of the CRPD in 2006, most international human rights treaties did not have express provisions on the rights of persons with disabilities. A significant exception to this lack of legally-binding recognition was the CRC, which expressly protected children with disabilities from discrimination, and also specified their rights, as well, at the regional level, of the Inter-American regional Convention.³² Consequently, the CRPD codifies an expression of disability justice, heralding a paradigm shift that honours and respects persons with disabilities as subjects rather than treating them as objects, that restores voice, power and authority to persons with disabilities, and that forges pathways to their independent living and participation.³³

²⁴ For the status of ratifications of the CRPD, see <https://indicators.ohchr.org/>, accessed on 30 April 2024.

²⁵ The UN does not recognize the Sahrawi Arab Democratic Republic (SADR), which is recognized as a state by the AU.

²⁶ See the status of ratification at: <https://indicators.ohchr.org/>, accessed on 30 April 2024.

²⁷ The Optional Protocol to the Convention on the Rights of Persons with Disabilities, United Nations General Assembly, 2006, Art 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-persons-disabilities>.

²⁸ Press Release on the entry into force of the Protocol to the African Charter on Human and Peoples’ Rights relating to the Rights of Persons with Disabilities in Africa, June 2024, <https://achpr.au.int/en/news/press-releases/2024-06-09/entry-force-protocol-persons-disabilities>, accessed on 15 June 2024; and Resolution on the Entry into Force and Implementation of the Protocols Rights on the Rights of Older Persons and Persons with Disabilities in Africa, ACHPR/Res.617 (LXXXI), 2024, <https://achpr.au.int/en/adopted-resolutions/617-implementation-protocols-rights-rights-older-persons>. For the latest news on the ratification of the ADP, including by Zimbabwe, see 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/#:~:text=Countries%20that%20have%20ratified%20the,South%20Africa%2C%20Uganda%20and%20Zimbabwe>, accessed on 29 April 2025.

²⁹ ADP, Art 38.

³⁰ CRPD, Art 11.

³¹ ADP, Art 2.

³² Convention on the Rights of the Child, United Nations General Assembly, adopted on 20 November 1989, Arts 2 and 23, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; The Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, Organization of American States, 1999, <https://www.oas.org/juridico/english/treaties/a-65.html>.

³³ Gerard Quinn “Rethinking Personhood: New Directions in Legal Capacity Law and Policy,” University of British Columbia, Vancouver, Canada, International Dialogue on UN Convention on the Rights of Persons with Disabilities: Alternatives to Guardianship (29 April 2011) on file with author.

Eight principles are at the heart of the Conventions' legal framework. These are:

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.³⁴

Though sharing a common set of aims, the ADP also codifies some principles not included expressly in the CRPD, while reframing others. Additional codified or reframed principles include ensuring respect for and protecting the inherent dignity, privacy, individual autonomy including the freedom to make one's own choices, and independence of persons; providing reasonable accommodation; and the best interests of the child.³⁵

The value that the ADP brings for the enjoyment of human rights by persons with disabilities in Africa is both legal and pragmatic.³⁶

At the legal level, the ADP supplements the scant and outdated standard on disability rights established in the African Charter by detailing more provisions to cover the rights of persons with disabilities. The Charter's sole disability-specific provision states that "the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."³⁷ This provision is anchored on the "medical model" of disability. It portrays persons with disabilities as dependent, and it does not serve to address the social and environmental barriers that concretize their discrimination.³⁸

A number of other African human rights instruments establish limited standards on the rights of persons with disabilities. The African Charter on the Rights and Welfare of the Child uses a medical model lexicon to provide for "special measures of protection for physically or mentally disabled children" to ensure their dignity and promote self-reliance and active participation in the community.³⁹ It also obligates States to accommodate children with disabilities according to their specific needs.⁴⁰ In a similar fashion, the African Youth Charter⁴¹ recognizes the rights of "mentally and physically challenged" youth and seeks to ensure access to education, training, employment, sport, physical education, and cultural and

³⁴ CRPD, Art 3.

³⁵ ADP, Art 3.

³⁶ Lawrence Mute and Elizabeth Kalekye, "An Appraisal of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa" (2016/2017) *East African Law Journal* (Special Issue on Disability Rights), 70

³⁷ ACHPR, Art 18 (4).

³⁸ Lilian Chenwi, "Protection of the Economic, Social and Cultural Rights of Older Persons and Persons with Disabilities in the African Regional System" in Danwood Mzikenge Chirwa and Lilian Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa* (Cambridge University Press 2016). Still, the significance of the obligation established in Article 18(4) of the ACHPR cannot be understated, since Africa was the first continent to adopt a hard-law instrument with a specific provision covering disabled persons in 1981. Emmanuel Guematcha explains that although the 1961 European Social Charter recognised the rights for persons with disabilities explicitly, States could choose the provisions and rights they wished to implement, unlike the ACHPR whose state parties had to implement all of its provisions, including the rights of persons with disabilities. Emmanuel Guematcha, "The Need for a Comprehensive Overhaul of Disability Rights in the African Union" in Ottavio Quirico (ed) *Inclusive Sustainability: Harmonising Disability Law and Policy* (Springer 2022).

³⁹ 52 States, including the nine study States, have ratified or acceded to the African Charter on the Rights and Welfare of the Child, Organisation of African Unity, 1990, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf; for the status of ratification, see <https://www.acerwc.africa/en/member-states/ratifications>, accessed on 1 April 2025.

⁴⁰ African Charter on the Rights and Welfare of the Child, Art 13.

⁴¹ 41 States, including eight of the study States (except Sierra Leone), are party to the African Youth Charter, African Union, adopted in 2006, https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf. For the status of ratification, see https://au.int/sites/default/files/treaties/7789-sl-AFRICAN_YOUTH_CHARTER_0.pdf, accessed on 1 April 2025.

recreational activities for youth with disabilities.⁴²

The African Charter on Democracy, Elections and Governance obligates States to take specific actions in respect of two of this study's themes.⁴³ It requires States to promote the participation of people with disabilities in the governance process and, accordingly, to ensure systematic and comprehensive civic education to encourage their full participation in democracy and development processes.⁴⁴ It also obligates States to "endeavour to provide free and compulsory basic education to ... people with disabilities" and "to ensure the literacy of citizens with disabilities above compulsory school age".⁴⁵ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁴⁶ establishes the right of women with disabilities to protection from violence, including sexual abuse, discrimination based on disability, the right to be treated with dignity and their access to employment, professional and vocational training, as well as their participation in decision making.⁴⁷

The ADP compliments the CRPD, which many African States participated in negotiating,⁴⁸ and to which all African States are already party. The ADP is an expression of the principle established in Article 37 of the 1993 Vienna Declaration and Programme of Action that: "Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection."⁴⁹ To that end, the ADP effectively reaffirms the standards established in the CRPD, while additionally addressing issues which were not dealt with by the global disability rights instrument. It contextualizes the realization of the rights of persons with disabilities on the continent by explicitly requiring States to take budgetary steps to ensure the full implementation of the Protocol, an obligation that, for example, spurs African States to prioritize spending on socio-economic concerns, which they often do not do adequately.⁵⁰ Hence, the ADP's wide-ranging provisions on disability, alongside the CRPD, provide a solid basis, for example, to submit detailed reports to the African Commission under Article 34 of the ADP on the implementation of their obligations to persons with disabilities. It should also help to facilitate individuals and groups to litigate on the rights of persons with disabilities before the African Commission, the African Court on Human and Peoples' Rights,⁵¹ the African Committee of Experts on the Rights and Welfare of the Child, and other subregional mechanisms. Until now, African States have tended to include quite brief disability-specific information in their periodic reports to the Commission under Article 62 of the African Charter, largely focusing on explaining the extent to which they were implementing Article 18 (4) of the Charter.⁵² In the same vein, the African Commission has determined only one case under the African Charter whose central theme was on the rights of persons with disabilities.⁵³

⁴² African Union, African Youth Charter, *ibid*, Art 24.

⁴³ The African Charter on Democracy, Elections, and Governance, African Union, adopted in 2007, <https://au.int/en/treaties/african-charter-democracy-elections-and-governance>.

⁴⁴ *Ibid*, Arts 8 and 31.

⁴⁵ *Ibid*, Art 43.

⁴⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), African Union, adopted in 2003, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>.

⁴⁷ *Ibid*, Art 23. For an assessment of the implementation of Article 23 of the Protocol, see Lilian Chenwi, "Article 23: Special Protection of Women with Disabilities" in Annika Rudman, Celestine Nyamu Musembi and Tresor Muhindo Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (Pretoria University Law Press 2023), https://www.soawr.org/resources_posts/the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-women-in-africa-a-commentary/.

⁴⁸ See generally, Ilias Bantekas, Michael Stein and Dimitris Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).

⁴⁹ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, 25 June 1993, <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

⁵⁰ Yvette Basson, "The Right to an Adequate Standard of Living in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa" (2019) 7 *African Disability Rights Yearbook* 260.

⁵¹ The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Organization of African Unity, 1998, <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> accessed 1 April 2025. So far, 34 States are party to the Protocol. For the status of ratification, see https://au.int/sites/default/files/treaties/36393-sl-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS_0.pdf accessed on 1 April 2025.

⁵² Lawrence Mute and Elizabeth Kalekye, "An Appraisal of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa" (2016/2017) *East African Law Journal* (Special Issue on Disability Rights).

⁵³ *Purohit and Moore v Gambia* (African Commission), Communication 241/01, (2003),

At the pragmatic level, the ADP is a home-grown instrument that will make it easier for persons with disabilities to engage continental political and diplomatic bodies, including the AU and its member States.⁵⁴ The ADP also designates institutions and mechanisms before which persons with disabilities may seek redress for human rights violations. These mechanisms include the African Commission and the African Court on Human and Peoples' Rights. While the provisions under the CRPD are subject to redress through the CmRPD, this possibility is available only in respect of States that are party to the Optional Protocol to the CRPD.⁵⁵

ii. The human rights model of disability

During the 20th century, disability was typically understood by policy-makers and policy-implementers as a pathology or problem borne in the individual, under the "medical model" and the charity/welfare models of disability, which propagate notions that serve to reduce persons with disabilities to medical subjects or objects of charity.⁵⁶ On the contrary, the social model of disability locates the experience of disability in the social environment rather than in the individual's impairment, and it seeks to dismantle the social and physical barriers that impede the participation of individuals with impairments in various spheres of life.⁵⁷ The medical model of disability is incompatible with state obligations under the CRPD, which adopts the human rights model of disability. The human rights model, which was inspired by and drew from the social model of disability,⁵⁸ acknowledges persons with disabilities as subjects of rights and holders of rights. As the CmRPD has explained, the human rights model of disability recognizes that disability is a social construct and that impairments must not be taken as a legitimate ground for the denial or restriction of human rights. The CmRPD explains that disability is one of several layers of identity, and disability laws and policies must take the diversity of persons with disabilities into account.⁵⁹

The human rights model has become the basis for transforming the approach that States historically used to determine policies and laws on disability. This transformation is witnessed, as examples, by changes from segregated education to inclusive education, from sheltered employment to open employment, from residential institutions to community-based living, and from deeming incompetence as inherent in the individual to addressing disability as a social problem.⁶⁰

iii. State obligations under the CRPD and ADP

States have a wide range of legal obligations under the CRPD and ADP, overall, to ensure the full protection and enjoyment of all human rights by persons with disabilities on an equal, non-discriminatory basis.

State obligations established in the ADP are distinct from those in the CRPD in a number of respects. For example, the ADP obligates States to modify, outlaw, criminalize, or campaign against harmful practices applied to persons with disabilities.⁶¹ By contrast, under the heading of awareness-raising, the CRPD obligates States to establish more generalized measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities.⁶² Additionally, the ADP obligates expressly to put in place

<https://achpr.au.int/index.php/en/decisions-communications/purohit-and-moore-v-gambia-24101>.

⁵⁴ Lawrence Mute and Elizabeth Kalekye, "An Appraisal of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa" (2016/2017), *East African Law Journal* (Special Issue on Disability Rights), 75.

⁵⁵ Optional Protocol to the Convention on the Rights of Persons with Disabilities, Art 1.

⁵⁶ Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities," (2008) 8 *Human Rights Law Review* 6.

⁵⁷ Ibid

⁵⁸ Eilíonór Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, (Ashgate Publishing 2015) 7.

⁵⁹ CmRPD, General Comment No. 6, Article 5 on Equality and Non-Discrimination, CRPD/C/GC/6, 24 April 2018, para9.

⁶⁰ Ibid, Part VII.

⁶¹ ADP, Art 4(d).

⁶² CRPD, Art 8(1)(b).

adequate resources to ensure the full implementation of the Protocol.⁶³

The CRPD and the ADP have, respectively, established or designated the CmRPD and the African Commission as institutional frameworks for monitoring the realization of state obligations. The nine study States have all submitted at least one report to the CmRPD on the measures they have taken to implement the rights of persons with disabilities, in accordance with Article 35 of the Convention: Ghana in 2018,⁶⁴ Kenya in 2012,⁶⁵ Malawi in 2017,⁶⁶ Nigeria in 2021,⁶⁷ Rwanda in 2015,⁶⁸ Sierra Leone in 2020,⁶⁹ South Africa in 2014,⁷⁰ Uganda in 2013,⁷¹ and Zimbabwe in 2022.⁷² As of May 2025, the CmRPD had issued concluding observations and recommendations on the measures six of the States should take towards the further implementation of their obligations – Ghana,⁷³ Malawi,⁷⁴ Rwanda,⁷⁵ South Africa,⁷⁶ Uganda,⁷⁷ and Kenya.⁷⁸

Table 4: Status of submission of reports by the study States to the CmRPD

State	Submission of initial report to the CmRPD	Issuance of concluding observations by CmRPD
Ghana	2018	2024
Kenya	2012	2015
Malawi	2017	2023
Nigeria	2021	-
Rwanda	2015	2019
Sierra Leone	2019	-
South Africa	2014	2018
Uganda	2013	2016
Zimbabwe	2022	-

iv. National legal frameworks

States carry general obligations to adopt legislative, administrative and other measures for the

⁶³ ADP, Art 4(i).

⁶⁴ Initial Report Submitted by Ghana under Article 35 of the Convention, CRPD/C/GHA/ (5 June 2018).

⁶⁵ Initial Report Submitted by Kenya under Article 35 of the Convention, CRPD/C/KEN/1 (3 April 2012).

⁶⁶ Combined Initial and Second Periodic Reports Submitted by Malawi under Article 35 of the Convention CRPD/C/MWI/1-2 (16 February 2017).

⁶⁷ Initial Report Submitted by Nigeria under Article 35 of the Convention, CRPD/C/NGA/1, 26 March 2021.

⁶⁸ Initial Report Submitted by Rwanda under Article 35 of the Convention, CRPD/C/RWA/1, 22 April 2015.

⁶⁹ Initial Report Submitted by Sierra Leone under Article 35 of the Convention, CRPD/C/SLE/1, 29 August 2020.

⁷⁰ Initial Report Submitted by South Africa under Article 35 of the Convention, CRPD/C/ZAF/1, 26 November 2014). South Africa also submitted its combined second to fourth periodic report on 14 March 2025, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&CountryID=162&DocTypeID=29, accessed on 30 April 2025.

⁷¹ Initial Report Submitted by Uganda under Article 35 of the Convention, CRPD/C/UGA/1, 22 January 2013. Also see, Combined second, third and fourth periodic reports of Uganda, CRPD/C/UGA/2-4, 28 March 2023.

⁷² Initial Report Submitted by Zimbabwe under Article 35 of the Convention, CRPD/C/ZWE/1, March 2022.

⁷³ Concluding Observation on the Initial Report of Ghana, CRPD/C/GHA/CO/1, 2 October 2024.

⁷⁴ Concluding Observations on the Combined Initial and Second Periodic Reports of Malawi, CRPD/C/MWI/CO/1-2, 5 October 2023.

⁷⁵ Concluding Observations on the Initial Report of Rwanda, CRPD/C/RWA/CO/1, 3 May 2019.

⁷⁶ Concluding Observations on the Initial Report of South Africa, CRPD/C/ZAF/CO/1, 23 October 2018.

⁷⁷ Concluding Observations on the Initial Report of Uganda, CRPD/C/UGA/CO/1, 12 May 2016.

⁷⁸ Concluding Observations on the Initial Report of Kenya, CRPD/C/KEN/CO/1, 30 September 2015.

implementation of the rights provided for in the CRPD and in the ADP. This section provides a general overview of the constitutional and statutory disability-specific frameworks that apply in the nine study States.

a. Constitutional frameworks

Table 5: Overview of the constitutions of the study states

Constitution	Adopted	Remarks
Constitution of the Republic of Ghana ⁷⁹	1992	Adopted before Ghana became a party to the CRPD. Includes disability in the directive principles of state policy. Includes a specific article on persons with disabilities. Does not expressly prohibit discrimination on the basis of disability.
Constitution of Kenya ⁸⁰	2010	Adopted after Kenya became party to the CRPD. Includes a specific article on persons with disabilities. Prohibits discrimination on the basis of disability.
Constitution of the Republic of Malawi ⁸¹	1994	Adopted before Malawi became party to the CRPD. Includes disability in directive principles of state policy. Prohibits discrimination on the basis of disability.
Constitution of the Federal Republic of Nigeria ⁸²	1999	Enacted before Nigeria became party to the CRPD. Includes one minor disability-specific provision. Does not expressly prohibit discrimination on the basis of disability.
Constitution of the Republic of Rwanda ⁸³	2003	Adopted after Rwanda became party to the CRPD. Includes disability-specific article. Prohibits discrimination on the basis of disability.
Constitution of the Republic of Sierra Leone ⁸⁴	1991	Adopted before Sierra Leone became party to the CRPD. Includes disability in directive principles of state policy. Does not expressly prohibit discrimination on the basis of disability.
Constitution of the Republic of South Africa ⁸⁵	1996	Adopted before South Africa became party to the CRPD. Prohibits discrimination on the basis of disability.
Constitution of the Republic of Uganda ⁸⁶	1995	Adopted before Uganda became party to the CRPD. Includes disability in directive principles of state policy. Includes a specific article on disability. Prohibits discrimination on the basis of disability.
Constitution of Zimbabwe ⁸⁷	2018	Adopted after Zimbabwe became a party to the CRPD. Includes disability in directive principles of state policy.

⁷⁹ The Constitution of the Republic of Ghana (Constitution of Ghana), 1992 (rev. 1996), Art 37-38, https://www.constituteproject.org/constitution/Ghana_1996, accessed on 8 April 2024.

⁸⁰ The Constitution of Kenya, 2010, Art.27 (3), <https://www.kenyalaw.org/kl/index.php?id=398>, accessed on 11 April 2024.

⁸¹ Constitution of the Republic of Malawi (Constitution of Malawi), 1994 (rev. 2017), s13, https://www.constituteproject.org/constitution/Malawi_2017, accessed on 8 April 2024.

⁸² Constitution of the Federal Republic of Nigeria (Constitution of Nigeria), 1999 (rev. 2010, 2017, 2023), s16(2)(d), <https://www.refworld.org/legal/legislation/natlegbod/1999/en/104229>, accessed on 9 April 2024.

⁸³ Constitution of the Republic of Rwanda (Constitution of Rwanda), 2003, (rev.2015), Art 16 (2), https://www.constituteproject.org/constitution/Rwanda_2015?lang=en, accessed on 9 April 2024.

⁸⁴ Constitution of the Republic of Sierra Leone (Constitution of Sierra Leone), 1991 (rev.1996, 2013), s8(3)(f), https://www.constituteproject.org/constitution/Sierra_Leone_2013, accessed on 9 April 2024.

⁸⁵ Constitution of the Republic of South Africa (Constitution of South Africa), 1996, s9(3), <https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997>, accessed on 10 April 2024.

⁸⁶ Constitution of the Republic of Uganda (Constitution of Uganda), 1995 (rev. 2017), Section XVI, https://www.constituteproject.org/constitution/Uganda_2017, accessed on 9 April 2024.

⁸⁷ Constitution of Zimbabwe (Constitution of Zimbabwe), 2013 (rev. 2017), s22, https://www.constituteproject.org/constitution/Zimbabwe_2017, accessed on 9 April 2024.

		Includes a disability-specific article on disability. Prohibits discrimination on the basis of disability
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As the above table shows, two of the study States adopted new constitutions after they had become party to the CRPD – Kenya and Zimbabwe. The constitutions of the other States predate the CRPD’s adoption, sometimes by several decades.

The constitutional provisions covering persons with disabilities in the study States have common as well as distinctive features. Some of them have overly generic provisions on disability, while others possess quite detailed and specific provisions in respect of disability rights. These provisions are anchored, on one end of the spectrum, to the medical and welfare/charity models of disability, and on the other end, to the human rights model of disability and its antecedent, the social model of disability.

The Constitutions of all nine States refer to disability or persons with disabilities expressly at least once. The constitution of Nigeria, which employs a charity/welfare approach in legislating on disability, makes one reference to disability, in its requirement for the state to direct its economic policy towards ensuring “that suitable and adequate shelter, right to food and food security, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens”.⁸⁸

The Constitutions of five States include matters of disability under their chapters on directive principles of state policy: Ghana, Malawi, Sierra Leone, Uganda and Zimbabwe.⁸⁹ Directive principles are, however, not directly enforceable by the courts and, hence, arguably hold only persuasive value. In the words of the Constitution of Sierra Leone, those provisions do not “... confer legal rights and ... (are) not ... enforceable in any court of law, but the principles contained therein shall nevertheless be fundamental in the governance of the State, and it shall be the duty of Parliament to apply these principles in making laws”.⁹⁰

The constitutions of six of the nine study States expressly include disability as a prohibited ground of discrimination: Kenya, Malawi, Rwanda, South Africa, Uganda, and Zimbabwe.⁹¹ The constitutions of three States do not include disability as a specifically protected ground under their equality clauses: Ghana, Nigeria and Sierra Leone.⁹² Indeed, as a general matter, and contrary to international law and standards, the Constitution of Nigeria only guarantees Nigerians formal equality, as distinct from substantive equality, by prohibiting direct discrimination and differential treatment.⁹³ Hence, the Constitution of Nigeria does not expressly protect persons with disabilities and others from indirect discrimination.⁹⁴ This is unlike the constitutions of other study States, including the Constitution of Kenya and the Constitution of South Africa, which specifically legislate for the full and equal rights of all persons, including the right to substantive equality.⁹⁵

None of the constitutions provides definitions of discrimination on the basis of disability. The CRPD and ADP define discrimination on the basis of disability 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 in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial

⁸⁸ Constitution of Nigeria, s16(2)(d).

⁸⁹ Constitution of Ghana, Arts 37-38; Constitution of Malawi, s13; Constitution of Sierra Leone, s8(3)(f); Constitution of Uganda, Section XVI; Constitution of Zimbabwe, s22.

⁹⁰ Constitution of Sierra Leone, s14.

⁹¹ Constitution of Kenya, Art 27(3); Constitution of Malawi, s20(1); Constitution of Rwanda, Art 16(2); Constitution of South Africa, s9(3); Constitution of Uganda, Art 21(2); and Constitution of Zimbabwe, s56(3).

⁹² Constitution of Ghana, Art 17; Constitution of Nigeria, s42(1); Constitution of Sierra Leone, s27(3).

⁹³ Constitution of Nigeria, s42(1).

⁹⁴ Ngozi Chuma Umeh, “Reading ‘Disability’ into the Non-Discrimination Clause of the Nigerian Constitution”, (2016) 4 *African Disability Rights Yearbook* 53-76.

⁹⁵ Constitution of Kenya, Art 27(2); Constitution of South Africa, s9(2).

of reasonable accommodation.”⁹⁶

The constitutions of all nine study States contain provisions which serve to deprive persons deemed mentally incompetent (commonly referred to as “persons of unsound mind” or “lunatics”) of certain internationally protected rights. These include the right to personal liberty (Ghana, Nigeria, Sierra Leone and Uganda);⁹⁷ to property (Ghana);⁹⁸ to register to vote (Kenya and Malawi);⁹⁹ and to seek membership in parliament (Ghana, Malawi, Nigeria, Sierra Leone, South Africa and Uganda).¹⁰⁰

The Constitutions of five States include articles providing further elaboration on the rights or welfare of persons with disabilities. The measures they establish are, however, primarily anchored on medical and charity models of disability, even where the provisions themselves state they are rights-based. As examples:

- Article 29 of the Constitution of Ghana enumerates the rights of persons with disabilities. The article, however, conflates rights and welfare in its paternalistically expressed provision that: “A disabled person shall not be subjected to differential treatment in respect of his residence other than that required by his condition or by the improvement which he may derive from the treatment”.¹⁰¹
- Article 51 of the Constitution of Rwanda is titled “welfare of persons with disabilities and other needy persons”. It places a duty on “the State” “... within its means, to undertake special actions aimed at the welfare of persons with disabilities”.¹⁰²
- The Constitution of Zimbabwe obligates the state to take measures within its available resources to ensure that persons with disabilities “achieve their full potential and to minimise the disadvantages suffered by them”.¹⁰³ This same provision, however, restricts State actions on the rights of persons with disabilities to available resources, thereby limiting the effective implementation of those rights.¹⁰⁴

While the constitutions of most of the study States delegate the establishment of disability-mandated institutions to statute, the Constitution of Rwanda establishes the National Council for Persons with Disabilities expressly.¹⁰⁵ That Constitution, as well as the constitutions of Kenya, Uganda, and Zimbabwe, also reserve legislative seats for a specified number of persons with disabilities.¹⁰⁶

b. Statutes on disability rights

Table 6: Disability statutes in the study States

State	Statute	Enacted	Remarks
Ghana	Persons with Disability Act ¹⁰⁷	2006	Does not define disability or a person with disability. Protects a range of rights for persons

⁹⁶ CRPD, Art 2; ADP, Art 1.

⁹⁷ Constitution of Ghana, Art14(1)(d); Constitution of Nigeria, s35(1)(e); Constitution of Sierra Leone, s17(1)(i); Constitution of Uganda, Art 23(f).

⁹⁸ Constitution of Ghana, Art 20(4)(a).

⁹⁹ Constitution of Kenya art83(1)(b); Constitution of Malawi s77(3)(a).

¹⁰⁰ Constitution of Ghana, Art 94(2)(b)(ii); Constitution of Malawi, s51(2)(b); Constitution of Nigeria, s66(1)(d); Constitution of Sierra Leone, s76(1)(c); Constitution of South Africa, s47(1)(d); Constitution of Uganda, Art 80(2)(a).

¹⁰¹ Constitution of Ghana, Art 29(2).

¹⁰² Constitution of Rwanda, Art 51(2).

¹⁰³ Constitution of Zimbabwe, s83.

¹⁰⁴ Cowen Dziva, Munatsi Shoko and Ellen Zvobgo, “Implementation of the 2006 Convention on the Rights of Persons with Disabilities in Zimbabwe: A Review” (2018) 7 *African Journal of Disability* 389.

¹⁰⁵ Constitution of Rwanda, Art 139(3)(c).

¹⁰⁶ Ibid, Art 75(1)(d); Constitution of Kenya, Arts 97-98; Constitution of Uganda, Art 78(1)(c); Constitution of Zimbabwe, s120(1)(d).

¹⁰⁷ Persons with Disability Act of Ghana, 2006 (Act 715), [https://ir.parliament.gh/bitstream/handle/123456789/1910/PERSONS%20WITH%20DISABILITY%20ACT,%202006%20\(ACT%20715\).pdf](https://ir.parliament.gh/bitstream/handle/123456789/1910/PERSONS%20WITH%20DISABILITY%20ACT,%202006%20(ACT%20715).pdf).

			with disabilities.
Kenya	Persons with Disabilities Act ¹⁰⁸	2025	Defines disability using the medical model. Protects a range of rights for persons with disabilities. Provides a definition of reasonable accommodation. Defines discrimination to include failure to provide reasonable accommodation.
Malawi	Persons with Disabilities Act ¹⁰⁹	2024	Defines disability using the social model. Protects a range of rights for persons with disabilities.
Nigeria	Discrimination against Persons with Disabilities (Prohibition) Act ¹¹⁰	2018	Does not define disability or person with disability. Employs the “medical model”. Protects a range of rights for persons with disabilities.
Rwanda	Law Relating to Protection of Disabled Persons in General ¹¹¹	2007	Uses the medical model to define disability. Protects a range of rights for persons with disabilities.
Sierra Leone	Persons with Disability Act ¹¹²	2011	Uses the medical model to define disability. Protects a range of rights for persons with disabilities.
South Africa			Does not have a standalone law on disability. The government intends to produce disability-specific legislation. ¹¹³
Uganda	Persons with Disabilities Act ¹¹⁴	2020	Uses medical model to define disability. Protects a range of rights for persons with disabilities.
Zimbabwe	Disabled Persons Act ¹¹⁵	1992	Uses medical model to define disability. Protects a limited number of rights for persons with disabilities.

¹⁰⁸ The Persons with Disabilities Act, 2025 was assented to by the President on 8th May 2025. See Kenya National Commission on Human Rights “Enactment of the Persons with Disabilities Act 2025: A Landmark Victory for Human Rights in Kenya” (9 May 2025), available:

<https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1224/Enactment-of-the-Persons-with-Disabilities-Act-2025-A-Landmark-Victory-for-Human-Rights-in-Kenya>; President Ruto Assents to Persons with Disabilities Bill (8 May 2025): <https://www.president.go.ke/president-ruto-assents-to-persons-with-disabilities-bill/>. This study was carried out prior to the enactment of the Act. However, relevant sections have been updated to include references to this Act using the version of the Act in circulation, which at the time of concluding the writing does not appear to have been gazetted.

¹⁰⁹ Malawi Disabilities Act – Chapter 33:06, Legislation as at 31 December 2014, <https://media.malawilii.org/files/legislation/akn-mw-act-2012-8-eng-2014-12-31.pdf>.

¹¹⁰ Discrimination against Persons with Disabilities (Prohibition) Act of Nigeria, 2018, https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Nigeria_Discrimination-Against-Persons-with-Disabilities-Prohibition-Act-2018.pdf.

¹¹¹ Law Relating to Protection of Disabled Persons in General of Rwanda, Law 1 of 2007, <https://rwandalii.org/akn/rw/act/law/2007/1/eng@2007-05-21/source.pdf>.

¹¹² Persons with Disability Act of Sierra Leone, 2011, https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Sierra-Leone_Persons-with-Disability-Act-2011.pdf.

¹¹³ “White Paper on the Rights of Persons with Disabilities” [South Africa], 09 March 2016, <https://knowledgehub.health.gov.za/system/files/elibdownloads/2023-04/White%2520Paper%2520on%2520the%2520rights%2520of%2520person%2520with%2520disabilities%25202015.pdf>, accessed on 1 August 2024, p 9-10.

¹¹⁴ Persons with Disabilities Act of Uganda, Act 3 of 2020, <https://ulii.org/akn/ug/act/2020/3/eng@2020-02-14>.

¹¹⁵ Disabled Persons Act Chapter 17-1 of Zimbabwe [as of 15 September 2016], 1992, <https://www.veritaszim.net/node/468>.

The nine study States sometimes do mainstream disability rights into general legislation. Over and above that, and as the table shows, eight of the nine study States have specific disability statutes. South Africa is the sole study state that does not have such specific legislation, and a process is currently underway to draft disability-specific legislation which is intended to be produced through “a comprehensive review of gaps in existing legislation and the development of new legislation to strengthen accountability by duty-bearers and recourse for rights-holders”.¹¹⁶

While specific legislation in four States predates the CRPD (Ghana, Kenya, Rwanda, and Zimbabwe), legislation in four study States (Malawi, Nigeria, Sierra Leone, and Uganda) was enacted after the CRPD was adopted. All these laws predate the coming into effect of the ADP, presenting opportunities for the review of such legislation for compliance with both the ADP and CRPD.

As the table shows, legislation on disability across the study States ranges from statutes which employ the “medical model” of disability to laws which employ the human rights model of disability in part. Unfortunately, even laws enacted after the adoption of the CRPD continue to be anchored on the medical model of disability and commonly fail to comply with the requirements set out in the CRPD.

The definitions of “disability” and “persons with disabilities” provided in these laws are illustrative of their inadequate articulation of the human rights model of disability and the lack of clarity on how to frame CRPD-compliant legislation. The preamble of the CRPD defines disability as:

“an evolving concept ... [that] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

Article 1 of the Convention provides that, persons with disabilities:

“include those 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.”

The statutes of seven of the study States do not fully conform to the definitions and understandings of disability and persons with disabilities established in the CRPD:

- The Persons with Disability Act of **Ghana** and the Discrimination against Persons with Disabilities (Prohibition) Act of **Nigeria** do not define disability or person with disability. The ICJ has received information, according to which a bill to repeal and replace Ghana’s Persons with Disability Act, whose preparation started in 2019 with stakeholder participation, has been validated and should be presented for Cabinet approval soon before being tabled in Parliament.¹¹⁷ However, the version of this Bill dated 2024, accessed during this research, fails to define disability consistently with the CRPD.¹¹⁸
- Despite being a post-CRPD disability-specific statute, the Nigerian law remains anchored on the medical model of disability. This is incongruous with the stated purposes of the Act, which seek to domesticate the CRPD,¹¹⁹ and to prohibit persons or institutions from discriminating against persons with disabilities on the ground of disability “in any manner or circumstance”.¹²⁰ The Act employs a medical approach to disability, which restricts the understanding of disability to bodily pathologies rather than social or environmental problems.¹²¹ In any case, the Act has by and large gone unimplemented, owing in part to limited awareness of its existence by the general public,

¹¹⁶ “White Paper on the Rights of Persons with Disabilities” [South Africa], p 9-10.

¹¹⁷ Key Informant 1.

¹¹⁸ Clause 89 of the Bill defines persons with disabilities as meaning “an individual with a physical, mental or sensory impairment which gives rise to physical, cultural or social barriers that substantially limits one or more of the major life activities of that individual.” (on file with author).

¹¹⁹ Oبراori Nmabunwa and Peters Adiola, “Access to Justice for Persons with Disabilities in Nigeria” (2023) 13 *Cranbrook Law Review* 1, 1-12.

¹²⁰ Discrimination against Persons with Disabilities (Prohibition) Act of Nigeria, s1(1).

¹²¹ Adetokunbo Johnson, “The Voiceless Woman: Protecting the Intersectional Identity under Section 42 of Nigeria’s Constitution,” (2021) 9 *African Disability Rights Yearbook* 88-116.

law-enforcement bodies and other responsible state agencies.¹²² Moreover, as of July 2024, 23 of Nigeria's 36 States had reportedly domesticated the Act. This is critically important because the Act cannot, by Nigerian law, come into force in States which had not domesticated it. In States in which it has not been domesticated, the Act cannot, as example, be enforced in court or used as a basis for raising government financing for projects aimed at its implementation. Despite this, the Act has become the focal point for advocacy on the rights of persons with disabilities.¹²³

- Similar to the repealed law, the 2025 Persons with Disabilities Act of **Kenya** uses medical model terms to define disability to include: "any physical, sensory, mental, psychological or other impairment, condition or illness that has or is perceived to have a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities".¹²⁴ This definition views a person's impairment *per se* as a limiting factor, unlike that of the CRPD, which recognizes that it is the interaction between an impairment and attitudinal and environmental barriers that hinders equal participation.¹²⁵ The Constitution of Kenya is the sole constitution in the study States that defines disability, although its approach also does not adequately incorporate a human rights or social model of disability. It defines disability as including "any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities".¹²⁶ According to this definition, the Constitution of Kenya still locates the "problem" that hinders an individual's ability to undertake day-to-day activities in the person rather than in society.¹²⁷
- The Law Relating to Protection of Disabled Persons in General of **Rwanda** defines disability as "the condition of a person's impairment of health ability he or she should have been in possession, and consequently leading to deficiency compared to others."¹²⁸ A disabled person is "any individual who was born without congenital abilities like those of others or one who was deprived of such abilities due to disease, accident, conflict or any other reasons which may cause disability."¹²⁹ Following a recommendation from the CmRPD, the government has reportedly initiated a review of the Act in 2022 with stakeholder involvement, and a bill to replace the Act which apparently conforms with the CRPD is before Parliament.¹³⁰ OPDs are also advocating for a new rights-based disability policy, which Rwanda adopted in 2021.¹³¹
- The Persons with Disability Act of **Sierra Leone** defines disability as "a physical, sensory, mental or other impairment which has a substantial long-term adverse effect on a person's ability to carry out normal day-to-day activities".¹³² A bill to replace the Act is reportedly being prepared, and persons with disabilities are lobbying to ensure they are involved fully in that process.¹³³
- Under the Persons with Disabilities Act of **Uganda**, disability is "a substantial functional limitation of a person's daily life activities caused by physical, mental, or sensory impairment and environmental barriers, resulting in limited participation in society on equal basis with others and includes an impairment specified in Schedule 3 to this Act." Hence, this definition is anchored on the medical model of disability. Nonetheless, the Act affirms a wide range of rights for persons with disabilities, including the right to enjoy family life, prohibition of inhuman and degrading treatment, and non-discrimination in education, health, employment, transport, accessibility, and access to

¹²² Obraori Nwabunwa and Peters Adiola, "Access to Justice for Persons with Disabilities in Nigeria" (2023) 13 *Cranbrook Law Review* 1, 9.

¹²³ Key Informant 4. Also see, Yemi Michael, "Domestication of disability act, political appointments ... progress made by PWD community in 2023," *The Cable*, 29 December 2023, <https://www.thecable.ng/domestication-of-disability-act-political-recognitions-progress-made-by-pwd-community-in-2023/>, accessed on 26 July 2024.

¹²⁴ The Persons with Disabilities Act of Kenya, s2.

¹²⁵ Equal Rights Trust, Review of the Kenyan Legislative and International Framework Governing the Right to Equal Work and Employment for Persons with Disabilities (2023) (on file with author).

¹²⁶ Constitution of Kenya, Art 260.

¹²⁷ Lawrence Mute and Agnes Meroka-Mutua, "Leveraging Continental Norms and Mechanisms to Enhance Barrier-Free Access for Pedestrians with Disabilities in Kenya" (2024) 13 *Laws* 11, <https://www.mdpi.com/2075-471X/13/2/11>.

¹²⁸ Law Relating to Protection of Disabled Persons in General of Rwanda, Art 2.

¹²⁹ *Ibid*.

¹³⁰ Key Informant 5.

¹³¹ *Ibid*; National Policy of Persons with Disabilities and Four Years Strategic Plan 2021-2024 (on file with author).

¹³² Persons with Disability Act of Sierra Leone, s1.

¹³³ Key Informant 6.

justice.¹³⁴ Since the adoption of the Persons with Disabilities Act in 2020, regulations have not been passed to operationalize it.¹³⁵ Nonetheless, persons with disabilities and others cited the Act on an ongoing basis whenever and as necessary to affirm and assert the rights contained in it.¹³⁶

- The Disabled Persons Act of **Zimbabwe** uses the medical model when it defines a disabled person as: “a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society”.¹³⁷ The act prohibits discrimination of persons with disabilities in only two respects: their entry into premises and services ordinarily open or provided to the public, and their discrimination in employment.¹³⁸ Even when the Act prohibits the discrimination of persons with disabilities, it employs patronizing terms to limit the scope of the prohibition. For example, it provides that a person with disability may be denied entry onto a premise where the denial is motivated by a genuine concern for the safety of the disabled person.¹³⁹ Zimbabwe, too, is in the process of replacing the Act with new disability legislation.¹⁴⁰ The Bill provides for a definition of disability which is largely consistent with the CRPD.¹⁴¹

Of the standalone statutes, only the Persons with Disabilities Act of **Malawi**, which was enacted in 2024 to replace the Disability Act,¹⁴² is anchored on the human rights model of disability. This is manifested, for example, in the Act’s definition of disability, adapted from the CRPD and ADP, as “a long-term physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairment which in interaction with various barriers may hinder full and effective participation in society of a person on an equal basis with others”.¹⁴³

Finally, it should be noted that despite being anchored on the medical model of disability, the laws of four States – **Ghana, Kenya, Rwanda, and Sierra Leone** – provide for the recognition of rights and entitlements for persons with disabilities. These laws cover areas such as accessibility, employment, and education.¹⁴⁴

¹³⁴ Persons with Disabilities Act of Uganda.

¹³⁵ Key Informant 7; Section 48 of the Persons with Disabilities Act of Uganda provides that: “The Minister may, in consultation with the Council, by statutory instrument, make regulations for the better carrying into effect the provisions of this Act.”

¹³⁶ Key Informant 7. Also see Persons with Disabilities Act of Uganda, s3(2).

¹³⁷ Disabled Persons Act [Chapter 17-1] of Zimbabwe, s2.

¹³⁸ Ibid, s8-9.

¹³⁹ Ibid, s8.

¹⁴⁰ Persons with Disabilities Bill 2023, <https://www.veritaszim.net/node/7004>, accessed on 30 May 2024.

¹⁴¹ Ibid, Clause 2 of the Bill defines disability to mean: “an evolving concept involving the interaction between persons with impairments, on one hand, and attitudinal and environmental barriers, on the other hand, that may have the effect of hindering persons with impairments from fully and effectively participating in society on an equal basis with others.”

¹⁴² Malawi Disabilities Act.

¹⁴³ Ibid, s2.

¹⁴⁴ See generally the Persons with Disabilities Act of Kenya; the Persons with Disability Act of Ghana; Law Relating to Protection of Disabled Persons in General of Rwanda; and the Persons with Disability Act of Sierra Leone.

III. Legal Capacity

Article 12 of the CRPD: Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 7 of the ADP: Equal recognition before the law

1. States Parties shall recognise that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall take all appropriate and effective measures to ensure that:
 - a) Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
 - b) Non-state actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
 - c) Persons with disabilities are provided with effective legal protection and support they may require in enjoying their legal capacity consistent with their rights, will and specific needs;
 - d) Appropriate and effective safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity;
 - e) Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed;
 - f) Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity;
 - g) Persons with disabilities have the equal right to own or inherit property and are not arbitrarily dispossessed of their property;
 - h) Persons with disabilities have equal rights to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

This chapter explores the extent to which the nine study States implement their obligations to secure the right of persons with disabilities to legal capacity. The chapter's principal focus is the extent to which the nine study States apply substituted decision-making rather than supported decision-making measures for persons with disabilities. In particular, the chapter addresses the extent to which they deprive or restrict persons with psychosocial and/or intellectual disabilities of their legal capacity.

i. Legal content and state obligations

According to the CmRPD, legal capacity is both the ability to hold rights and duties (legal standing) and the ability to exercise those rights and duties (legal agency).¹⁴⁵ It is the right to make decisions which have legal consequences and to have those decisions respected by the law.¹⁴⁶

The ICCPR provides that everyone has the right to recognition everywhere as a person before the law.¹⁴⁷ Article 12 of the CRPD and Article 7 of the ADP provide for obligations on legal capacity. Article 12(1) of the CRPD requires States to reaffirm that persons with disabilities have the right to recognition as persons before the law.¹⁴⁸ Article 7 of the ADP provides for the equality of persons with disabilities before and under the law, and their entitlement, without discrimination, to the equal protection and benefit of the law.¹⁴⁹ Both instruments require States to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.¹⁵⁰

States bear three key obligations in this regard. First, they must take appropriate measures to provide access to persons with disabilities to the support they may require in exercising their legal capacity.¹⁵¹ This means that they must replace substituted decision-making regimes with supported decision-making regimes.¹⁵² Under substituted decision-making, a legal representative or guardian makes decisions on behalf of an individual with psychosocial, intellectual, or other disability, the assumption being that such an individual cannot make decisions for themselves.

Under supported decision-making, by contrast, the individual is assisted by a trusted person with information, clarification, or guidance to make decisions while the individual retains control of the decision-making process.¹⁵³ The CmRPD enjoins States not to conflate legal capacity with mental capacity. As the Committee explains, mental capacity refers to the decision-making skills of a person, which vary from one person to another, irrespective of disability, and may also differ for a given person depending on environmental, social and other factors.¹⁵⁴ Mental capacity, the Committee clarifies, cannot lawfully be used as a reason to diminish or eliminate an individual's legal capacity, as this amounts to discrimination.¹⁵⁵

Second, States must ensure support measures are provided for appropriate and effective safeguards to prevent the abuse of the right to legal capacity. Such measures must respect the rights, will, and preferences of the person with disability,¹⁵⁶ what the ADP refers to as "the rights, will and specific needs" of persons with disabilities.¹⁵⁷ The CmRPD clarifies that States must employ "best interpretation of an individual" determinations where it is not practicable to figure more clearly the will and preferences of an individual, and that they must not apply the "best interest" principle, which is paternalistic and is a principle only applicable to children.¹⁵⁸ While the right to support is universal, contextual factors (both personal and societal) are relevant in determining the support measures that States should ensure are

¹⁴⁵ CmRPD, General Comment No.1 - Article 12: Equal Recognition before the Law, CRPD/C/GC/1, 19 May 2014, para13.

¹⁴⁶ Cliona de Bhailís, "Theoretical Framework for the Voices Project" in Eilionóir Flynn, Anna Arstein-Kerslake, Cliona de Bhailís, and María Laura Serra (eds) *Global Perspectives on Legal Capacity Reform: Our Voices, Our Stories* (Routledge 2019).

¹⁴⁷ ICCPR, Art 16. Also, see CEDAW, Art 15(2) which provides that: "States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."

¹⁴⁸ CRPD, Art 12(2).

¹⁴⁹ ADP, Art 7(1).

¹⁵⁰ CRPD, Art 12(2); ADP, Art 7(2)(a).

¹⁵¹ CRPD, Art 12(3); ADP Art 7(2)(c).

¹⁵² CmRPD, General Comment No.1 - Article 12: Equal Recognition before the Law, para3.

¹⁵³ See, for example, Mary Keys, "Article 12 (Equal Recognition Before the Law)" in Valentina Della Fina, Rachele Cera, and Giuseppe Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer International Publishing Switzerland 2017).

¹⁵⁴ CmRPD, General Comment No.1 - Article 12: Equal Recognition before the Law, paras13-15.

¹⁵⁵ Ibid.

¹⁵⁶ CRPD, Art 12(4).

¹⁵⁷ ADP, Art 7(2)(c).

¹⁵⁸ CmRPD, General Comment No.1 - Article 12: Equal Recognition before the Law, para21.

provided for the full exercise of legal capacity.¹⁵⁹

Third, States must take appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit. Measures must also ensure that persons with disabilities are not arbitrarily deprived of their property.¹⁶⁰

Article 7 of the ADP also establishes further or more nuanced state obligations for ensuring the legal capacity of persons with disabilities. States must ensure that:

- Non-state actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
- Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed; and
- Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity.¹⁶¹

ii. Implementation

The extent to which the nine study States are realising their obligations to guarantee that persons with disabilities exercise their legal capacity on an equal basis with others is reflected in the concerns which the CmRPD raised with them under its Article 35 reporting procedure. These concerns included the following:

- That States deprive persons with psychosocial and/or intellectual disabilities of legal capacity, particularly in relation to political participation, property rights, marriage and family relations, and the right to free and informed consent;¹⁶² and
- That prevailing stereotypes in society lead to instances of *de facto* guardianship of persons with disabilities, thereby depriving them of their ability to make choices in various aspects of life.¹⁶³

a. Guarantees of equality

The constitutions of seven of the study States have general provisions guaranteeing every person equality before the law, equal protection of the law and equal benefit of the law (**Ghana, Kenya, Malawi, Rwanda, South Africa, Uganda and Zimbabwe**).¹⁶⁴ The Constitutions of Nigeria and Sierra Leone prohibit discrimination,¹⁶⁵ in addition to the other seven States.¹⁶⁶

While these constitutions establish rights for all, in several instances, they also take those rights away from persons with certain disabilities. In addition, legislative provisions commonly limit, restrict, or nullify the enjoyment of these rights by persons with disabilities. The Constitution of Malawi is a case in point. It provides that every person has the right to recognition before the law,¹⁶⁷ and that no adult person shall be prevented from marrying.¹⁶⁸ However, Malawian statutes deny persons with disabilities their legal capacity in relation to marriage and divorce, land transactions, wills, elections, and decisions

¹⁵⁹ Mary Keys, "Article 12 (Equal Recognition Before the Law)" in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer International Publishing Switzerland 2017).

¹⁶⁰ CRPD, Art 12(5); ADP, Art 7(2)(g) and (h).

¹⁶¹ ADP, Art 7(2)(b), (e) and (f).

¹⁶² CRPD/C/MWI/CO/1-2, para25; CRPD/C/RWA/CO/1, para23; CRPD/C/ZAF/CO/1, para22; CRPD/C/UGA/CO/1, para22; CRPD/C/KEN/CO/1, para23.

¹⁶³ CRPD/C/MWI/CO/1-2, para23; CRPD/C/MWI/CO/1-2, para 25.

¹⁶⁴ Constitution of Ghana, Art 17(1); Constitution of Kenya, Art 27(1); Constitution of Malawi, s20(1); Constitution of Rwanda, Art 15; Constitution of South Africa, s9(1); Constitution of Uganda, Art 21(1); Constitution of Zimbabwe, s56(1).

¹⁶⁵ Constitution of Nigeria, s42(1); Constitution of Sierra Leone, s27(1).

¹⁶⁶ Constitution of Ghana, Art17(2); Constitution of Kenya, Art 27(3) and (4); Constitution of Malawi, s20(1); Constitution of Rwanda, Art 16; Constitution of South Africa, s9(3); Constitution of Uganda, Art 21(2); Constitution of Zimbabwe, s56(3).

¹⁶⁷ Constitution of Malawi, s41(1).

¹⁶⁸ Ibid, s22(6).

relating to the treatment of their mental health.¹⁶⁹

b. Entrenchment of legal incapacity in mental health legislation

Terminology used to describe persons in mental health settings is particularly complex because, as the former Special Rapporteur on the Right to Health explains, “many will experience occasional and short-lived psychosocial difficulties or distress that require additional support,”¹⁷⁰ while not all such persons identify as persons with psychosocial disabilities. The Special Rapporteur stresses that “regardless of self-identification or diagnosis”, many persons will “face barriers in the exercise of their rights on the basis of a real or perceived impairment and are therefore disproportionately exposed to human rights violations in mental health settings”.¹⁷¹

Mental health legislation in the study States often employ medicalized frameworks to treat persons deemed to have “mental illnesses”. This focuses on impairment instead of focusing on the interaction between impairment and societal or environmental barriers, as required under the CRPD. Fundamentally, therefore, this type of mental health legislation is inconsistent with the CRPD. More specifically, such laws frequently also contain provisions stripping persons with psychosocial disabilities of legal capacity.

Table 7: Mental health legislation in the study States

State	Statute	Date of enactment
Ghana	Mental Health Act ¹⁷²	2012
Kenya	Mental Health Act ¹⁷³	1989, 2022
Malawi	Mental Treatment Act ¹⁷⁴	2014
Nigeria	National Mental Health Act ¹⁷⁵	2021
Rwanda	-	-
Sierra Leone	Lunacy Act ¹⁷⁶	1902, 1956
South Africa	Mental Health Care Act ¹⁷⁷	2002
Uganda	Mental Health Act ¹⁷⁸	2018
Zimbabwe	Mental Health Act ¹⁷⁹	1996

¹⁶⁹ see, the various Alternative Reports to the CmRPD by various civil societies in Malawi, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=En&CountryID=104&ct00_PlaceHolderMain_radResultsGridChangePage=1_50&ct00_ContentPlaceholder1_radResultsGridChangePage=17, accessed on 16 April 2024.

¹⁷⁰ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/35/21, 28 March 2017, <https://documents.un.org/doc/undoc/gen/q17/076/04/pdf/q1707604.pdf> accessed, para 4.

¹⁷¹ Ibid.

¹⁷² Mental Health Act of Ghana, Act No. 846, 2012, <https://www.refworld.org/legal/legislation/natlegbod/2012/en/97417>.

¹⁷³ Mental Health Act of Kenya, Cap.248, 1991 (Rev. 2012, 2022, 2023), https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MentalHealthAct_Cap248.pdf.

¹⁷⁴ Malawi Mental Treatment Act [Chapter 34:02], 2014, <https://malawilii.org/akn/mw/act/1948/14/eng@2014-12-31>.

¹⁷⁵ National Mental Health Act of Nigeria, 2021, <https://static1.squarespace.com/static/63438980e505485cb3299aad/t/63f39b465a87b9639c5ff2f5/1676909382894/National%20Mental%20Health%20Act%202021.pdf>.

¹⁷⁶ Lunacy Act of Sierra Leone, Cap. 157, 1902 (Rev. 1956), <http://www.sierra-leone.org/Laws/Cap%20157.pdf>.

¹⁷⁷ Mental Health Care Act of South Africa, 2002, https://www.gov.za/sites/default/files/gcis_document/201409/a17-02.pdf.

¹⁷⁸ Mental Health Act of Uganda, 2018, <https://bills.parliament.ug/attachments/Mental%20Health%20Act%202018.pdf>.

¹⁷⁹ Mental Health Act of Zimbabwe [Chapter 15:12], 1996, <https://commons.laws.africa/akn/zw/act/1996/15/eng@2016-12-31.pdf>.

As Table 7 shows, mental health legislation establishing frameworks for the treatment of “mentally ill” persons is common to all study States, with the exception of Rwanda. Mental health laws in two of the study States – **Sierra Leone** and **Zimbabwe** – were enacted before the CRPD was adopted, while mental health laws in six States were enacted or revised following the CRPD’s adoption – **Ghana, Kenya, Malawi, Nigeria, South Africa** and **Uganda**. The inconsistencies between mental health laws and the CRPD, therefore, persist despite affirmative commitments by States to revise them in compliance with the CRPD.

The Lunacy Act of **Sierra Leone**, which is over a century old, is highly discriminatory.¹⁸⁰ The Act denies legal capacity to what it refers to as “lunatics”, who may not deal with their property or enter into contracts. Sierra Leone is indeed in the process of overhauling its mental health legislation, a professed purpose for which is to make it “more humane to meet the demands of present-day society”.¹⁸¹ Neither the Mental Health Act of **Zimbabwe**, which was enacted prior to the adoption of the CRPD, nor the Mental Treatment Act of **Malawi**, enacted after Malawi became a party to the Convention, provides substantive rights for persons with intellectual and/or psychosocial disabilities. The Mental Health Act of Zimbabwe only establishes procedural rights of appeal for mental health patients.¹⁸²

Rwanda does not have a comprehensive mental health law,¹⁸³ although there are existing statutes that deny legal capacity to persons with psychosocial and/or intellectual disabilities in a manner typical of mental health laws in other study States. For example, the Law Governing Persons and Family¹⁸⁴ establishes a guardianship system in respect of persons with psychosocial disabilities. The Law empowers a court to declare an adult with “mental disability” legally incapacitated and, accordingly, to appoint a guardian for such adult when they “liv[e] in a habitual state of mental deficiency even if such deficiency shows lucid intervals”.¹⁸⁵ In a similar fashion, Rwanda’s Law Governing Contracts provides that persons under guardianship or who are “mentally ill or insane” do not have legal capacity to contract.¹⁸⁶ As a study undertaken by Rwandan OPDs concludes, “(t)his means that persons with psychosocial disabilities cannot sign contracts to rent a house, get a mobile phone contract, obtain a loan or mortgage, enter into business agreements or agreements of sale to purchase property.”¹⁸⁷ The mental health laws in five study States – **Ghana, Kenya, Nigeria, South Africa** and **Uganda** – affirm some rights of persons with psychosocial disabilities:

- The Mental Health Act of Kenya provides for a number of rights for persons with “mental illness”, including: the right to protection from physical and mental abuse and to be free from exploitation; the right to recognition before the law and to enjoy legal rights on an equal basis with other persons in all aspects of life; and the right to participate in the formulation of their treatment plans.¹⁸⁸
- The range of rights established in the National Mental Health Act of **Nigeria** include protection from physical and mental abuse, and torture or ill-treatment, including chaining.¹⁸⁹ The Act also prohibits the use of sterilization as treatment for mental health conditions.¹⁹⁰

¹⁸⁰ Dawn Harris, *et. al.*, “Mental Health in Sierra Leone,” 2020, 17 BJPSYCH International 1.

¹⁸¹ Republic of Sierra Leone Ministry of Health and Sanitation, Mental Health Policy 2010 – 2015, https://www.nationalplanningcycles.org/sites/default/files/country_docs/Sierra%20Leone/mental_health_policy_2010_-_2015.pdf, accessed on 27 May 2024.

¹⁸² Mental Health Act of Zimbabwe, s59 and 67.

¹⁸³ According to Rwanda’s Mental Health Policy, the government aims to enact mental health legislation establishing a framework to clarify patients’ rights, care-givers’ rights and responsibilities, and those of families and various structures. Ministry of Health, National Mental Health Policy in Rwanda, <https://medbox.org/document/national-mental-health-policy-in-rwanda#:~:text=The%20national%20mental%20health%20policy,is%20close%20to%20the%20community>, accessed on 28 April 2024. Also see, Courtney Sabey, “Implementation of Mental Health Policies and Reform in Post-conflict Countries: the Case of Post-genocide Rwanda” (2022) 37 *Health Policy and Planning* 1248-1256.

¹⁸⁴ Law No. 32/2016 of 28/08/2016, Governing Persons and Family, <https://www.refworld.org/legal/legislation/natlqebod/2016/en/123716>.

¹⁸⁵ *Ibid*, Art 150.

¹⁸⁶ Law no 45/2011 of 25/11/2011 Governing Contracts, Art 7, <https://rdb.rw/notary/CONTRACTS-LAW.pdf>.

¹⁸⁷ NOUSPPR - National Organisation of Users and Survivors of Psychiatry in Rwanda and Human Rights First Rwanda Association, “My Decisions, My Right! Assessing the Protection of the Right to Equal Recognition before the Law of Persons with Psychosocial Disabilities in Rwanda,” August 2018, <https://www.ecoi.net/en/document/1449559.html>, accessed on 30 May 2024.

¹⁸⁸ Mental Health Act of Kenya, s3(c), s3K, and s3C.

¹⁸⁹ National Mental Health Act of Nigeria, s12(2).

- Under the Mental Health Care Act of **South Africa**, the rights of mental health care users include respect for person, human dignity and privacy; protection from unfair discrimination; protection from exploitation, abuse and degrading treatment; and right to legal representation.¹⁹¹
- The Mental Health Act of **Uganda** protects rights for persons with mental illness, such as respect, human dignity and privacy, protection from torture, protection from exploitation and abuse, and non-discrimination.¹⁹²

Certain provisions of these laws, nevertheless, undermine the rights of persons with psychosocial disabilities. For example, the Ghana Federation of Disability Organisations, in its alternative report to the CmRPD,¹⁹³ pointed out that while the Mental Health Act of Ghana prohibits discrimination on the basis of psychosocial disability,¹⁹⁴ it provides for guardianship and capacity assessment tests,¹⁹⁵ seclusion and restraints,¹⁹⁶ and involuntary admission to hospital.¹⁹⁷ In fact, Ghana has acknowledged in its report to the CmRPD the common practice of allowing parents/family members, guardians and traditional or religious leaders to enforce substituted decision-making regimes on persons with disabilities.¹⁹⁸

Even the mental health laws that seek to comply with the CRPD, in reality, root their “supported decision-making” regimes on the bedrock of substituted decision-making:

The Mental Health Act of **Kenya** seeks to conform with Article 12 of the CRPD by establishing a supported, as distinct from a substituted, regime for persons with “mental illness”. Under the Act, where a person is deemed incapable of giving consent to treatment or participating in the preparation of a treatment plan, those roles may be played by a “supporter”, appointed by the ill person under a supportive decision-making agreement, who while providing support must comply with the will and preferences of the ill person.¹⁹⁹ The Act specifies the considerations a supporter should take into account when determining whether a decision conforms with the will and preferences of a mentally ill person, including that: the decision should conform to the longer lasting general beliefs, values and desires that the person with mental illness subscribes to; and that the decision should take account of the rights conferred on such person under the Constitution and international human rights law.²⁰⁰ However, the Act defines a “supporter”, using a substituted decision-making framework, as someone tasked with making decisions “on behalf of” the person with a mental illness.²⁰¹ Moreover, the Act conflates the will and preferences and the best-interest principles, for example, when it provides that information on the care and treatment of a mentally ill person is confidential except where disclosure “is in the best interest of the person with mental illness”.²⁰² The recently enacted Persons with Disabilities Act, provides that persons with disability have “the right to recognition everywhere as persons before the law, and to enjoy legal capacity on an equal basis with others in all aspects of life”, and that they “are entitled to such support services as they may require in exercising their right to legal capacity”.²⁰³ The Act defines legal capacity as “the ability to hold rights and duties under the law and to exercise these rights and duties”, consistently with the CRPD.²⁰⁴ The Act appears to exclude a provision indicating how conflicts between its provisions and other prevailing laws should be dealt with. This creates significant uncertainty in a variety of areas where the Act better protects the rights of persons with disabilities in compliance with the CRPD and the ADP, including, as an example, regarding legal capacity. The apparent conflict

¹⁹⁰ Ibid, s36. Also see the rights established in s54-57 of the Mental Health Act of Ghana.

¹⁹¹ Mental Health Care Act of South Africa, s8, 10, 11 and 15.

¹⁹² Mental Health Act of Uganda, s52-54.

¹⁹³ Submission by the Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, (2022) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2540&Lang=en, accessed on 16 April 2024.

¹⁹⁴ Ibid, para, 33; Mental Health Act of Ghana, s54.

¹⁹⁵ Mental Health Act of Ghana, s55.

¹⁹⁶ Ibid, s58.

¹⁹⁷ Ibid, s42.

¹⁹⁸ CRPD/C/GHA/1, paras 181-182.

¹⁹⁹ Mental Health Act of Kenya, s3B (2), s3C (4), s3I.

²⁰⁰ Ibid, s3J.

²⁰¹ Ibid, s2.

²⁰² Ibid, s3H(2)(g).

²⁰³ Kenya, Persons with Disabilities Act 2025, s7.

²⁰⁴ Ibid, s2.

between the Act's provision on legal capacity and the provisions of the Mental Health Act detailed here is a case in point.

Under the National Mental Health Management Act of **Nigeria**, a person or institution is prohibited from performing electroconvulsive therapy, psychosurgery and other irreversible treatments where performing such treatments is "not in the best interest of the person with a mental health condition".²⁰⁵ This provision thereby employs the "best-interest" principle on adults with disabilities which, as explained above, should apply only to children and not adults. Additionally, the provision appears to permit disability-based torture or cruel, inhuman and degrading treatment.²⁰⁶ While defining "supported decision-making,"²⁰⁷ the Act also contains several provisions in relation to the stripping of persons with "mental disorders" of legal capacity and allowing for substituted decision making.²⁰⁸

The Mental Health Care Act of **South Africa** also frames its rights regime for mental health care users around the best-interest principle,²⁰⁹ permitting involuntary treatment of persons "incapable of making informed decisions".²¹⁰ Additionally, the Choice on Termination of Pregnancy Act allows medical practitioners in consultation with parents or guardians to terminate the pregnancy of a person who is "severely mentally disabled so that she is completely incapable of understanding and appreciating the nature or consequences of the termination of her pregnancy".²¹¹ This provision, which is echoed in the Sterilisation Act,²¹² serves to violate a woman's right to legal capacity and amounts to discrimination on the basis of psychosocial disability.²¹³

While the Mental Health Act of **Uganda** provides for the rights to legal capacity for persons with mental illness and a right to "manage his or her own affairs",²¹⁴ the same provision allows for individuals to be declared to be "incapable" of doing so. The Act also employs the best-interest principle as the basis for providing involuntary treatment, instead of considering the individual's will and preferences.²¹⁵

Some States have established or are contemplating establishing advance directives frameworks to provide support to persons with mental health conditions. Advance directives enable persons with mental health conditions to predetermine, in advance, the support and the supporters who may provide them with support to make decisions during crises in which their decision-making may be compromised.²¹⁶ In other words, advance directives enable persons with psychosocial disabilities to express their will and dictate their preferences, ahead of time, for what they desire in crisis situations. **South Africa**, for example, reported to the CmRPD that its Law Reform Commission had undertaken an extensive participatory investigation on the need for alternative and additional measures of supported decision-making for adults with disabilities that impact on their decision-making.²¹⁷ However, one study has raised concerns about the deployment of advance directives in contexts with weak healthcare service infrastructure. In the instance of Malawi, the study notes that the country lacked basic healthcare services to implement such a system.²¹⁸

²⁰⁵ National Mental Health Act of Nigeria, s37.

²⁰⁶ See, for example, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

²⁰⁷ Section 57 of the National Mental Health Act of Nigeria defines supported decision making as "decision-making with support, arrangements and relationships which allow persons with mental health conditions to retain and exercise their decision-making capacity by choosing supporters to assist them make and communicate treatment and according decisions, and may include support by family members, accredited organisations, or professionals".

²⁰⁸ Ibid, s18, 49, 50.

²⁰⁹ Mental Health Care Act of South Africa, s7.

²¹⁰ Ibid, s 26-38.

²¹¹ Choice on Termination of Pregnancy Act of South Africa, 1996 [No.92 of 1996], s5, https://www.saflii.org/za/legis/num_act/cotopa1996325/#:~:text=92%20OF%201996%3A%20CHOICE%20ON%20TERMINATION%20OF%20PREGNANCY%20ACT%2C%201996,-It%20is%20hereby&text=To%20determine%20the%20circumstances%20in,Assented%20to%2012%20November%201996.

²¹² Section 3 of the Sterilisation Act provides that sterilisation may be performed on a person who is incapable or incompetent to consent on account of mental disability, upon request by a parent, spouse, guardian or curator. Sterilisation Act (1998), https://www.gov.za/sites/default/files/qcis_document/201409/a44-98.pdf.

²¹³ Ashwanee Budoo and Rajendra Gunpath, "Termination of Pregnancy of Persons with Mental Disabilities on Medical Advice: A Case Study of South Africa," 2014, 2 *African Disability Rights Yearbook*, 101-119.

²¹⁴ Mental Health Act of Uganda, s60.

²¹⁵ Ibid, s51(2), s22(10).

²¹⁶ Karrie A. Shogren, et al. (eds), *Supported Decision-Making* (Cambridge University Press 2019) 153.

²¹⁷ CRPD/C/ZAF/1, para124.

²¹⁸ Alexious Kamangila, "Advance Directives in Mental Health: A Solution that Legitimatises the Problem?" (2022) 10 *African*

c. De facto guardianship

As illustrated below by the situations in **Ghana, South Africa, and Uganda**, stereotypes about disability are ubiquitous in the study States, resulting in the entrenchment of *de facto* guardianship of persons with disabilities. Such *de facto* guardianship may occur “despite the absence of any source of law restricting the legal capacity”²¹⁹ of individuals with disabilities or in the absence of the application of any such laws. The CmRPD has expressed concern about such practices in Kenya²²⁰ and Uganda.²²¹

A study of attitudes on persons with mental health conditions and psychosocial disabilities as rights-holders in Ghana²²² highlighted the *de facto* biases on persons with certain disabilities common in society. The survey found that:

- 70.91% of participants agreed with the use of coercive techniques in the treatment of persons with mental health conditions, including the use of restraints and seclusion.
- 48.43% of participants believed that involuntary admissions were more beneficial than harmful, and that controlling people to maintain order was acceptable (46.85% of participants).
- 14.86% of participants agreed that it was acceptable to pressure people into unwanted treatment.
- 60.93% of study participants thought that persons with lived experiences of mental conditions should not make their own decisions when in crisis, and that the opinions of professionals should mean more than the opinions of persons with intellectual disabilities (46.60%).
- 61.82% of the participants agreed that persons with lived experiences have the right to make decisions, suggesting a difference between attitudes towards general decision-making and attitudes towards decision-making when in crisis.
- 68.72% of the participants felt that people with intellectual disabilities should be empowered to make their own decisions.²²³

A survey found that people in **Nigeria** thought mental illness was caused by drug abuse (84% of respondents), sickness of the mind (60%), possession by evil spirits (54%), passed down in families (32%), and God’s punishment (23%). The survey also found that 65% of the respondents would take a person with mental illness to hospital, 18% would take the person to a prayer house for deliverance, 8% would take the person to a traditional medicine healer, and some respondents would lock up the person (4%) and beat the disease out of the person (2%).²²⁴

A **South African** study showed that persons with disabilities were typically denied legal capacity when they sought redress before traditional courts.²²⁵ The study found that traditional courts in South Africa, which were the closest and least costly dispute resolution forums in rural areas, did not have rules for determining the “mental” capacity of a person.²²⁶ Rather, capacity or incapacity to act in proceedings affecting persons with psychosocial disabilities was more likely divined by participants in the traditional courts, such as family members or members of the courts.²²⁷ The study questioned the ability of family members, caregivers or other persons to determine the capacity of a person with a disability in traditional court proceedings, and the dearth of training to enable the provision of necessary support

Disability Rights Yearbook 62-77.

²¹⁹ Lucy Series and Anna Nilsson, “Article 12: Equal Recognition of the Law” in Ilias Bantekas, Michael Stein and Dimitris Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).

²²⁰ CRPD/C/KEN/CO/1, para 23.

²²¹ CRPD/C/UGA/CO/1, para 22.

²²² Briony Harden, *et al.*, “Attitudes towards Persons with Mental Health Conditions and Psychosocial Disabilities as rights holders in Ghana: a World Health Organization study” (2023) 23 *BMC Psychiatry* 142.

²²³ *Ibid.*

²²⁴ Mental Health in Nigeria Survey, Conducted by Africa Polling Institute and EpiAFRIC, 20 January 2020, <https://africapolling.org/2020/01/13/mental-health-in-nigeria-survey-report-2020/#:~:text=Findings%20from%20the%20survey%20revealed,indicated%20that%20it%20is%2C%20%E2%80%9CWhen,> accessed on 20 August 2024.

²²⁵ Willene Holness and Sarah Rule, “Legal Capacity of Parties with Intellectual, Psycho-Social and Communication Disabilities in Traditional Courts in KwaZulu-Natal” (2018) 6 *African Disability Rights Yearbook* 44-45.

²²⁶ *Ibid.*

²²⁷ *Ibid.*

measures, including safeguards against abuse.²²⁸

iii. Findings and recommendations

The ICJ makes the following findings:

1. The Constitutions of all nine States have general provisions guaranteeing every person equality before the law, equal protection of the law, and equal benefit of the law. None of the constitutions, however, affirm explicitly that persons with disabilities must specifically be afforded recognition to exercise those rights and duties.
2. The nine States provide for, in legislation and/or practice, substituted decision-making, under which legal representatives or guardians make decisions on behalf of persons with psychosocial and/or intellectual disabilities. They also limit access to justice for persons with disabilities, and they restrict persons with psychosocial disabilities from participating in elections as voters and candidates.
3. The criminal and civil codes of the majority of the study States use discriminatory language that serves to diminish the humanity and legal personhood of persons with psychosocial and/or intellectual disabilities in particular.
4. The nine States, to a greater or lesser extent, use the assumed legal incapacity of persons with psychosocial and/or intellectual disabilities to justify their arbitrary detention and forced treatment.
5. Mental health laws in five of the nine States protect some rights for persons with psychosocial disabilities. Even these mental health laws, however, typically conflate legal capacity and mental capacity. For example, these laws employ the “best-interest” principle, which is paternalistic and should not be applied to adults, instead of the “best will and preferences” principle which under the CRPD is used to determine the needs of persons with disabilities who require support to exercise their legal capacity. These mental health laws are therefore not fully compliant with the CRPD.
6. Some States have established or are contemplating establishing advance directives frameworks to provide support to persons with mental health conditions. Advance directives enable persons with psychosocial disabilities to express their will and dictate their preferences, ahead of time, for what they desire in crisis situations.
7. In some of the study States, *de facto* guardianship of persons with disabilities is also a common practice. Such practices occur in the absence of any source of law restricting the legal capacity of individuals with disabilities or in the absence of the application of any such laws that might exist. Under such practices, affected persons with disabilities are deprived of the ability to make decisions and choices for themselves.

The ICJ therefore makes the following recommendations:

1. States should enact new laws or amend existing ones so as to include provisions expressly affirming that persons with disabilities have the right to equal recognition before the law, equal protection of the law, and equal benefit of the law.
2. States should consider amending their constitutions to prohibit disability-based discrimination. In addition, enabling legislation should define disability-based discrimination to include denial of reasonable accommodation. In any event, disability-based discrimination must be prohibited by law in all States, in accordance with their international legal obligations.
3. States should adopt laws which specifically recognize and operationalize the legal capacity of persons with disabilities in various spheres of life. They should thereby provide for guarantees for respect for the will and preferences of each person with disability, including persons with psychosocial and/or intellectual disabilities. Mental health laws, in particular, should be reviewed and amended accordingly.

²²⁸ Ibid.

4. States should establish, with the full and meaningful participation of persons with disabilities, organizations of persons with disabilities, and civil society organizations concerned with the rights of persons with disabilities, standards, guidelines and good practices for implementing supported decision-making regimes, including using support persons, peer support networks, and advance directives. Support measures for the exercise of legal capacity should be informed by local contexts.
5. States should take measures aimed at countering the prevalence of stereotypes that serve to promote *de facto* guardianship of persons with disabilities, including by undertaking public awareness raising campaigns, and by training state officials, including justice actors.

IV. Liberty of Person

Article 14 of the CRPD: Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - a) Enjoy the right to liberty and security of person;
 - b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

Article 9 of the ADP: Right to liberty and security of person

1. Every person with a disability has the right to liberty and security of person.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
 - a) Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
 - b) Are not forcibly confined or otherwise concealed by any person or institution;
 - c) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.
4. Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.
5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.²²⁹

This chapter explores the extent to which the nine study States have implemented their obligations to ensure that persons with disabilities are not illegally or unlawfully deprived of their liberty, particularly through practices of involuntary confinement. It examines guarantees of deprivation of liberty of such persons, including through their involuntary institutionalization in mental health facilities. It also assesses the inaccessibility of facilities and services and the absence of reasonable accommodation measures in pre-trial and correctional institutions, and the confinement of persons with disabilities in residential centres and faith-based premises.

i. Legal content and state obligations

Under universal human rights standards, liberty of person guarantees persons freedom from confinement of the body, in settings such as prison, pre-trial detention, house arrest, administrative detention, and hospitalization.²³⁰ An individual is deprived of liberty when they are confined to a restricted space or placed in an institution or setting; or when they are under continuous supervision and control; not free to leave; and the individual has not been provided with the opportunity to free and informed consent to treatment and/or institutionalization.²³¹ The rights to freedom from torture and

²²⁹ Also see, ICCPR; Art 9; and ACHPR, Art 6.

²³⁰ UN Human Rights Committee, General Comment No.35: Article 9 (Liberty and Security of Person), CCPR/C/GC/35, 16 December 2014, para. 5.

²³¹ Eilionoir Flynn, Monica Pinilla-Rocancio, and Maria Gornez-Carrillo de Castro, Report on Disability-Specific forms of Deprivation of Liberty (April 2019) (on file with author).

cruel, inhuman and degrading treatment are also protected under the ICCPR (articles 7 and 10), the African Charter (article 5), and the Convention Against Torture.

The ICCPR (article 9) and the African Charter (article 6) guarantee everyone the right to liberty and security of person. More specific to disability, Article 14 of the CRPD and Article 9 of the ADP prohibit all unlawful or arbitrary detention of persons with disabilities. Taken together, the CRPD and the ADP obligate States to undertake a number of measures to ensure that persons with disabilities enjoy the right to liberty on an equal basis with others.²³²

First, the CRPD and ADP obligate States to ensure that persons with disabilities are not deprived of liberty unlawfully or arbitrarily and/or on the basis of disability.²³³ In that regard, while interpreting Article 6 of the African Charter, the African Commission has determined that deprivation of liberty is unlawful when the grounds invoked to support it are not sufficient, necessary, and relevant,²³⁴ and when measures are not taken towards ascertaining the likelihood of individual wrongdoing.²³⁵ In its authoritative interpretation of Article 9 of the ICCPR, the Human Rights Committee identifies arbitrariness to include the elements of inappropriateness, injustice, lack of predictability and due process of law; in addition to elements of reasonableness, necessity and proportionality.²³⁶ Hence, an arrest or detention which may be permissible – and even required – under domestic law may be arbitrary and unlawful by reason of its inappropriate, unjust or unpredictable nature.²³⁷

Second, the CRPD provides that a person may not be deprived of liberty on account of disability,²³⁸ and it requires States to repeal laws that authorize the deprivation of liberty or other restrictions on liberty and security of person based on impairment.²³⁹ The ADP specifies that the existence of a disability “or perceived disability” shall in no case justify deprivation of liberty.²⁴⁰

Third, the CRPD and ADP require States to ensure that where persons with disabilities are deprived of liberty, they are provided reasonable accommodation in the facilities in which their liberty is so deprived.²⁴¹ The African Commission has explained that reasonable accommodation and accessibility measures for persons with disabilities in police custody or pre-trial remand may include:

- Accessing, on an equal basis with others, the physical environment, information, and communications, and other facilities provided by detaining authorities;
- Adapting the physical environment of police custody and pre-trial detention to take into account the needs of persons with physical, mental, intellectual, or sensory disabilities;
- Ensuring communication with and by persons with disabilities in custody or detention on an equal basis with others;
- Providing procedural and substantive due process rights in the criminal justice system;
- Upholding the right of persons to informed consent to treatment; and
- Permitting persons with disabilities to retain any aids they need to mitigate disability, and, where aids are removed on account of security, providing suitable alternatives.²⁴²

Fourth, Article 9 of the ADP requires States to take appropriate and effective measures to ensure that persons with disabilities, on the basis of equality, are not forcibly confined or otherwise concealed by

²³² CRPD, Art 14(1)(a); ADP, Art 9(2).

²³³ CRPD, Art 14(1)(b); ADP, Art 9(2)(a).

²³⁴ *Jean-Marie Atangana Mebara v Cameroon*, (African Commission), Communication 416/12, (2016), para 126.

²³⁵ *Abdel Hadi, Ali Radi and Others v Sudan*, (African Commission), Communication 368/09, (2014), para. 80.

²³⁶ UN Human Rights Committee, General Comment No.35: Article 9 (Liberty and Security of Person), CCPR/C/GC/35, 16 December 2014, para12.

²³⁷ Allwell Uwazuruike, *Human Rights under the African Charter* (Springer 2020), section 3.1.1.4.

²³⁸ CRPD, Art 14(1)(b).

²³⁹ CmHPR, Guidelines on Deinstitutionalization, including in Emergencies, CRPD/C/5, 10 October 2022, <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>. Also, see generally *Purohit and Moore v Gambia*, (African Commission), Communication 241/01, (2003).

²⁴⁰ ADP, Art 9(5).

²⁴¹ CRPD, Art 14(2); ADP, Art 9(4).

²⁴² African Commission, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 2014, Section 33.

any person or institution; and that they are protected, both within and outside the home, from all forms of exploitation, violence and abuse.²⁴³ The need for this provision is heightened by the concealment or hiding of persons with disabilities by their families who feel ashamed not to disclose that they have a child or other family member with disability.²⁴⁴ The ADP also obligates States to eliminate harmful practices perpetrated on persons with disabilities, including abandonment and concealment.²⁴⁵

Finally, the ADP requires States to take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.²⁴⁶

ii. Implementation

The extent to which the study States are fulfilling their obligations to protect persons with disabilities from deprivation of liberty is reflected in the concerns which the CmRPD raised with the States it has reviewed under its Article 35 reporting procedure. These concerns included the following:

- That the States used mental health regimes to institutionalize persons with psychosocial and/or intellectual disabilities involuntarily;²⁴⁷
- That the criminal codes of the States provided for the detention of persons with psychosocial and/or intellectual disabilities who they deemed criminally incapable or unfit to stand trial;²⁴⁸ and
- That States did not ensure that persons with disabilities in custody or prison were detained in barrier-free environments, and they did not provide persons with disabilities in remand or prisoners with disabilities with reasonable accommodation and other support measures, and information in accessible formats.²⁴⁹

a. Guarantees of protection from deprivation of liberty

The Constitutions of five of the study States expressly provide every person with the right to personal liberty – **Kenya, Malawi, Rwanda, South Africa and Zimbabwe**.²⁵⁰ The Constitution of Malawi provides that every person has the right to personal liberty, and the right to freedom and security of person.²⁵¹ The Constitution of Kenya and the Constitution of South Africa guarantee every person the right to freedom and security of person, including the right not to be deprived of freedom arbitrarily or without just cause.²⁵² The Constitutions of four States limit the personal liberty of persons with intellectual and/or psychosocial disabilities, who are variously referred to as “persons of unsound mind” or “lunatics” – **Ghana, Nigeria, Sierra Leone and Uganda**.²⁵³ The Constitution of Ghana, for example, entitles every person to personal liberty, and prohibits the deprivation of liberty for any person. It, however, then limits the right to personal liberty of “a person of unsound mind, ... for the purpose of his care or treatment or the protection of the community.”²⁵⁴

²⁴³ ADP, Art 9(2)(b) and (c).

²⁴⁴ Shimelis Tesemma and Susanna Coetzee, “Conflicting Discourses on Conceptualising Children with Disabilities in Africa” (2019) 7 *African Disability Rights Yearbook* 59-80.

²⁴⁵ ADP, Art 11(1).

²⁴⁶ *ibid*, Art 9(3).

²⁴⁷ CRPD/C/KEN/CO/1, para 27; CRPD/C/MWI/CO/1-2, para 29(a); CRPD/C/RWA/CO/1, para 27; CRPD/C/ZAF/CO/1, para 26(b); CRPD/C/UGA/CO/1, para 26.

²⁴⁸ CRPD/C/KEN/CO/1, para 27; CRPD/C/MWI/CO/1-2, para 29(b); CRPD/C/ZAF/CO/1, para 26(c).

²⁴⁹ CRPD/C/MWI/CO/1-2, para 29(d).

²⁵⁰ Constitution of Kenya, Art 29(a); Constitution of Malawi, s18; Constitution of Rwanda, Art 24; Constitution of South Africa, s12(1)(a); Constitution of Zimbabwe, s49(1).

²⁵¹ Constitution of Malawi, s18, 19(6).

²⁵² Constitution of Kenya, Art29(a); Constitution of South Africa, s12(1)(a).

²⁵³ Constitution of Ghana, Art 14(1)(d); Constitution of Nigeria, s35(1)(e); Constitution of Sierra Leone, s17(1)(i); Constitution of Uganda, Art 23(1)(f).

²⁵⁴ Constitution of Ghana, Art 14(1)(d).

Table 8: Legislation providing for the detention of persons with disabilities deemed criminally incapable in the study States

State	Statute	Date of enactment
Ghana	Criminal Procedure Code ²⁵⁵	1960, 2003
Kenya	Criminal Procedure Code ²⁵⁶	1930, 2023
Malawi	Criminal Procedure and Evidence Code ²⁵⁷	1967
Nigeria	Criminal Procedure Act ²⁵⁸	1916, 2004
Rwanda	Law Relating to the Code of Criminal Procedure ²⁵⁹	2019
Sierra Leone	Criminal Procedure Acts ²⁶⁰	1965
South Africa	Criminal Procedure Act ²⁶¹	1977
Uganda	Trial on Indictments Act ²⁶²	1971
Zimbabwe	Criminal Law (Codification and Reform) Act ²⁶³	2004

The laws of the study States, set out in Table 8 above, provide for the detention of persons with psychosocial and/or intellectual disabilities who they deem criminally incapable or unfit to stand trial. Such provisions are enacted in Ghana,²⁶⁴ Kenya,²⁶⁵ Malawi,²⁶⁶ Nigeria,²⁶⁷ Sierra Leone,²⁶⁸ South Africa,²⁶⁹ Uganda,²⁷⁰ and Zimbabwe.²⁷¹

While the laws of the countries vary somewhat, there are certain common features. The Criminal Procedure Code of Ghana, for example, includes those common elements:

- Where a trial court considers that an accused is of unsound mind or otherwise incapable of making a defence, it shall take medical and other evidence on the matter.
- Where the court is satisfied that the accused indeed is of unsound mind, it shall postpone the trial.
- The court may release the accused on bail on condition that they will be taken care of so as not to commit personal injury or injury to others.

²⁵⁵ Ghana, Criminal Procedure Code, 1960 (Act 30, as amended up to Juvenile Justice Act,, 2003 (Act 653), <https://www.wipo.int/wipolex/en/text/493486>.

²⁵⁶ Kenya, Criminal Procedure Code, CAP. 75 (1930, 2023), https://www.kenyalaw.org/lex/actview.xhtml?actid=CAP.%2075#att_1_part_IX_sec_280.

²⁵⁷ Malawi, Criminal Procedure and Evidence Code, (Act 36 of 1967), <https://malawilii.org/akn/mw/act/1967/36/eng@2014-12-31>.

²⁵⁸ Nigeria, Criminal Procedure Act (1916, 2004), <https://www.refworld.org/legal/legislation/natlegbod/1916/en/65684>.

²⁵⁹ Rwanda, Law No. 027/2019 of 19/09/2019 Relating to the Criminal Procedure, <https://www.refworld.org/legal/legislation/natlegbod/2019/en/123718>.

²⁶⁰ Sierra Leone, Criminal Procedure Acts, 1965, <https://www.sierra-leone.org/Laws/1965-32.pdf>.

²⁶¹ South Africa, Criminal Procedure Act 51 of 1977, <https://www.justice.gov.za/legislation/acts/1977-051.pdf> accessed 7 May 2024.

²⁶² Uganda, Trial on Indictments Act, 1971, <https://www.uqandalaws.com/statutes/principle-legislation/trial-on-indictments-act.#:~:text=CHAPTER%2023-.TRIAL%20ON%20INDICTMENTS%20ACT..connected%20therewith%20and%20incidental%20thereto>.

²⁶³ Zimbabwe, Criminal Law (Codification and Reform) Act – Chapter 9:23, 2004, <https://www.jsc.org.zw/upload/Acts/2017/0923updated.pdf>.

²⁶⁴ Ghana, Criminal Procedure Code, ss133-134, 137-138.

²⁶⁵ Kenya, Criminal Procedure Code, ss162, 166, 167.

²⁶⁶ Malawi, Criminal Procedure and Evidence Code, ss133-35.

²⁶⁷ Nigeria, Criminal Procedure Act, s230.

²⁶⁸ Sierra Leone, Criminal Procedure Acts, s71.

²⁶⁹ South Africa, Criminal Procedure Act s79; Also, see Heléne Combrinck, "Rather Bad than Mad? A Reconsideration of Criminal Incapacity and Psychosocial Disability in South African Law in Light of the Convention on the Rights of Persons with Disabilities" (2018) 6 *African Disability Rights Yearbook* 3-26.

²⁷⁰ Uganda, Trial on Indictments Act, s82.

²⁷¹ Zimbabwe, Criminal Law (Codification and Reform) Act, ss227-229.

- In the alternative, the court may order the detention of the accused and accordingly inform the relevant minister.
- The minister then may order that the accused be “confined as a criminal lunatic in a lunatic asylum or other suitable place of custody”.
- That order may remain in place until such time as the minister or the court makes further orders. This frequently results in the indefinite detention of persons with disabilities, without the opportunity to participate in a fair trial and without any findings in respect of their guilt.

The Criminal Procedure Code of **Ghana** makes analogous provisions where an accused is found guilty but “insane”, in which instance the accused is detained as a criminal lunatic “until the president’s pleasure is known”.²⁷² The effect of this provision is that accused persons are confined for indefinite and indeterminate durations, and quite likely for longer than if they had been sentenced for the convicted crime.

Courts in a few study States have determined that laws and procedures the same as or substantially similar to the above are unconstitutional:

- In 2020, the Constitutional Court of **Uganda** declared Section 45(5) of the Trial on Indictments Act as unconstitutional for labelling defendants with mental disabilities as “criminal lunatics”, thereby violating their dignity, and for treating persons with such disabilities differentially, thereby contravening the principle of presumption of innocence and infringing on their rights to liberty. The Court also required Section 82(6) of the Trial on Indictments Act to be amended to conform with the Constitution of Uganda, to stop the indefinite detention of persons for reasons of insanity. It also found the use of the words “idiot” and “imbecile” in Section 130 of the Penal Code Act, as derogatory, dehumanising, degrading and hence unconstitutional.²⁷³
- In 2022, the High Court of **Kenya** found the detention of persons deemed to be of “unsound mind” at the “president’s pleasure” was unconstitutional. The Court’s finding was, however, not based directly on the issue of deprivation of liberty. Rather, the Court found that sections 162, 166 and 167 of the Criminal Procedure Code – by giving the President the power to determine the terms of detention – violated the constitutional principle of separation of powers. As such, the Court found that the procedure undermines judicial independence and was therefore inconsistent with the Constitution of Kenya. Additionally, the Court found detention the President’s pleasure violated several other rights guaranteed under the Constitution including the freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to equality and freedom from discrimination; the right to human dignity; the right to a fair trial; and the rights of persons detained, held in custody, or imprisoned.²⁷⁴

The criminal codes of some States also treat persons with other disabilities differentially. For example, the Criminal Law (Codification and Reform) Act of Zimbabwe empowers a court to detain an accused person who cannot conduct their defence on account of deafness or muteness in the interest of the public’s or the accused’s safety.²⁷⁵ On this matter, **Zimbabwe** advised the CmRPD that it was working to repeal that provision.²⁷⁶ **South Africa** also reported to the CmRPD that it would provide a law review platform for stakeholder consultations towards phasing out involuntary admissions “in a responsible

²⁷² Ghana, Criminal Procedure Code, s137.

²⁷³ *Centre for Health, Human Rights and Development and Iga Daniel v Attorney General*, Constitutional Petition No. 64 of 2011) [2020] UGCC 12 (19 August 2020), <https://ulii.org/akn/ug/judgment/ugcc/2020/12/eng@2020-08-19>.

²⁷⁴ *Isaac Ndegwa Kimaru & 17 others v Attorney General & another; Kenya National Human Rights and Equality Commission (Interested Party)* (Petition 226 of 2020) [2022] KEHC 114 (KLR) (Constitutional and Human rights, 1 February 2022, <http://kenyalaw.org/caselaw/cases/view/227655/>). It is important to note that this was not the first time courts in Kenya found Sections 166 and 167 of the Criminal Procedure Code. In several previous cases, the High Court found these provisions to be unconstitutional; For example, see *Hassan Hussein Yusuf v Republic*, [2016] KEHC 2860 (KLR); *HM v. Republic*, [2017] KEHC 2005 (KLR); and *Republic v. SOM*, [2017] eKLR. However, in contrast, other High Court decisions have upheld the procedures interpreting the President’s role not as determining the terms of detention, but rather as exercising a “power of mercy” which has Constitutional basis. See *Republic v Edwin Njihia Waweru* [2019] KEHC 6; and *Republic v JKN* [2021] KEHC 8687 (KLR).

²⁷⁵ Zimbabwe, Criminal Law (Codification and Reform) Act, s193.

²⁷⁶ CRPD/C/ZWE/1, para 160.

manner”.²⁷⁷

b. Confinement of persons with disabilities in faith-based premises

Certain study States have not put in place effective measures to prevent the detention of persons with psychosocial disabilities in faith-based centres, such as traditional religious shrines, Christian prayer-camps, and Islamic rehabilitation centres. The detention of persons with psychosocial disabilities in faith-based centres is driven by the assumption common across the continent that disability is caused by spiritual or moral failings, or ancestral or divine “curses”.²⁷⁸ In addition to amounting to disability based discrimination, and in many instances torture, the forced placement of a person in a faith-based facility where a person does not identify with that faith, whether in the abstract or as practiced in the facility, could constitute a violation of the person’s right to freedom of conscience, religion, or belief, protected under Article 18 of the ICCPR and Article 8 of the African Charter.

Reportedly, there are more than 5,000 prayer camps and traditional healing centres across Ghana²⁷⁹ where persons with psychosocial disabilities have been confined and even shackled. In 2022, Human Rights Watch (HRW) visited five camps and healing centres where more than 60 people, including children, were chained or confined in small cages, in some cases for more than seven months. Human rights abuses included a lack of adequate food, unsanitary conditions, a lack of hygiene, a lack of freedom of movement, and repeated sexual violence.²⁸⁰ The reported rationale underlying the practices is the belief within some communities that persons with psychosocial disabilities are possessed by spirits and that they are exorcised in these shrines.²⁸¹ When HRW revisited some of the camps in 2023, conditions for the confined individuals had not changed.²⁸²

In visits from 2018 to 2019, HRW also found that thousands of people with mental health conditions across Nigeria had been chained and locked up in psychiatric hospitals, general state hospitals, State-owned rehabilitation centres, Islamic rehabilitation centres, traditional healing centres, and Christian churches. Detainees faced human rights violations and abuses, including shackling, confinement, unhygienic conditions, forced treatment, exposure to natural elements, and denial of food for multiple days in the guise of fasting.²⁸³

Persons with psychosocial disabilities have also been deprived of liberty in faith-based centres in Kenya, where, again, the authorities have had limited success in shutting the centres down. The government of Kisumu County was unsuccessful in its petition to a magistrate’s court for the demolition of buildings in a Coptic Holy Ghost compound where a bishop confined people with mental illnesses against their will, under the pretext that he would pray for their healing.²⁸⁴ Later, an *ad hoc* committee established by the Senate to investigate the proliferation of religious organizations reportedly rescued eight mentally ill persons who were chained in the premises.²⁸⁵ Previously, the High Court had determined in favour of a

²⁷⁷ CRPD/C/ZAF/1, para 141.

²⁷⁸ See, for example, Magnus Mfoafo-M’Carthy and Jeff D Grishow “Mental Illness, Stigma and Disability Rights in Ghana” (2017) 5 *African Disability Rights Yearbook* 84-100.

²⁷⁹ Human Rights Watch, “Ghana: Invest More in Mental Health Services,” 4 December 2023, <https://www.hrw.org/news/2023/12/04/ghana-invest-more-mental-health-services?ref=disabilitydebrief.org>, accessed on 12 April 2024.

²⁸⁰ Human Rights Watch, “Ghana: Chaining People with Mental Health Conditions Persists,” 1 December 2022, <https://www.hrw.org/news/2022/12/01/ghana-chaining-people-mental-health-conditions-persists?ref=disabilitydebrief.org>, accessed on 11 April 2024.

²⁸¹ Key Informant 1.

²⁸² Human Rights Watch, “A Path to Belonging for People with Psychosocial Disabilities in Ghana,” 31 October 2023, <https://www.hrw.org/news/2023/10/31/path-belonging-people-psychosocial-disabilities-ghana#:~:text=What%20might%20her%20path%20back,issues%20to%20help%20fight%20stigma>, accessed on 12 April 2024.

²⁸³ Human Rights Watch, “Nigeria: People with Mental Health Conditions Chained, Abused,” 11 November 2019, <https://www.hrw.org/news/2019/11/11/nigeria-people-mental-health-conditions-chained-abused>, accessed on 20 May 2024.

²⁸⁴ Olivia Odhiambo, “Health Officials Want Cleric Jailed, Buildings Demolished,” *The Standard*, <https://www.standardmedia.co.ke/entertainment/national/article/2001465882/health-officials-want-cleric-jailed-buildings-demolished>, accessed on 24 April 2024.

²⁸⁵ “House Committee Rescues 8 Patients Detained at Coptic Church Kisumu,” *Kenya News Agency*, 25 June 2023, <https://www.kenyanews.go.ke/house-committee-rescues-8-patients-detained-at-coptic-church-kisumu/>, accessed on 24 April

student with a psychosocial disability who was taken by his father to the Coptic Church for faith healing, where he was detained for 25 months. The Court determined that the student's confinement violated his right to be free from psychological torture since the confinement meant he could not sit for his Kenya Certificate of Secondary Examination. The Court also found that the confinement violated the students' rights to education and freedom of movement.²⁸⁶

c. Inaccessible facilities and services and the absence of reasonable accommodation and other support measures

The study States generally have failed to ensure that persons with disabilities in custody or prison are detained in barrier-free environments. States also do not provide remand prisoners with disabilities with reasonable accommodation and other support measures, and information in accessible formats:

- A **Ghanaian** study found that prisoners with disabilities received medical supplies from prison officials, but that the architectural design of many prisons was not conducive to barrier-free access for persons with disabilities.²⁸⁷
- A study on the accessibility of pre-trial detention facilities in **Kenya** found, among others, that different prisons had different approaches on whether and the extent to which detainees with disabilities were allowed to retain mobility aids and auxiliary devices. Some prisons did not allow persons requiring such aids and devices to remain with crutches, callipers or even white canes and wheelchairs. Some prisons took away such aids and devices overnight. However, some prisons allowed inmates with disabilities to keep their aids and devices.²⁸⁸
- A study found that some prisons in **Sierra Leone** were built as long ago as the 19th century, and they remained inaccessible for inmates with disabilities. Even where rehabilitation works were undertaken on the buildings, the repairs turned out to be shoddy and deteriorated quickly.²⁸⁹
- As of 2022, most **Ugandan** prisons did not have accommodations for persons with disabilities.²⁹⁰
- **Zimbabwe** had overcrowded and unhygienic prisons, which did not have facilities for inmates with disabilities, such as toilets for persons with disabilities, and correctional officers did not provide them with proper care.²⁹¹ Prisoners with intellectual and/or psychosocial disabilities were often held with other prisoners until a doctor was available to make an assessment. Psychiatric sections were available in some prisons but offered little specialised care.²⁹²

iii. Findings and recommendations

The ICJ makes the following findings:

1. The Constitutions of five of the nine study States expressly provide every person with the right to personal liberty – Kenya, Malawi, Rwanda, South Africa, and Zimbabwe. The Constitutions of four States expressly limit the personal liberty of persons with intellectual and/or psychosocial disabilities, who are variously referred to as “persons of unsound mind” or “lunatics” – Ghana, Nigeria, Sierra Leone and Uganda.

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²⁸⁶ *Rose Ajwang & another v Holy Ghost Coptic Church of Africa & 6 others; National Gender and Equality Commission & another (Interested Parties)* (Petition 23 of 2018) [2020] KEHC 9293 (KLR), <http://kenyalaw.org/caselaw/cases/view/202305/>.

²⁸⁷ Dogbe, Owusu-Dabo, et al., “Assessment of Prison Life of Persons with Disability in Ghana” (2016) 16 *BMC International Health and Human Rights* 20.

²⁸⁸ African Policing Civilian Oversight Forum, and National Gender and Equality Commission, “Pre-trial Detention for Persons with Disabilities in Correctional Institutions,” 2017, <https://www.ngeckkenya.org/Downloads/APCOF%20PTD%20Kenya%20WEB.pdf>, accessed on 14 May 2024.

²⁸⁹ United Nations Integrated Peace Building Office in Sierra Leone, “Opening Minds to Rights Behind Bars: The Situation of Detention in Sierra Leone,” 2012, https://unipsil.unmissions.org/sites/default/files/behind_bars.pdf, accessed on 5 May 2024.

²⁹⁰ United States Department of State, “2022 Country Reports on Human Rights Practices: Uganda,” <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda>, accessed on 5 June 2024.

²⁹¹ Research and Advocacy Unit, “Policy Brief 3: The Rights of Marginalised Groups in Prisons,” <https://kubatana.net/wp-content/uploads/2019/09/The-Rights-of-Marginalized-Groups.pdf>, accessed on 4 May 2024.

²⁹² United States Department of State, “2022 Country Reports on Human Rights Practices: Zimbabwe,” [https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/zimbabwe/#:~:text=Prisoners%20with%20mental%20disabilities%20were,\(pretrial\)%20prisons%20were%20overcrowded](https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/zimbabwe/#:~:text=Prisoners%20with%20mental%20disabilities%20were,(pretrial)%20prisons%20were%20overcrowded), accessed on 5 June 2022.

2. Laws of all nine study States provide for the arbitrary detention of persons with psychosocial and/or intellectual disabilities who are deemed criminally incapable of standing trial. They provide for the detention of an accused person, often referred to as a “criminal lunatic”, until such time as a court deems such person capable of standing trial. This frequently results in the indefinite detention of persons with disabilities, without the opportunity to participate in a free trial and without any findings in respect of their guilt or innocence.
3. Courts in some States, including Kenya and Uganda, have ruled laws which allow for the detention of persons with psychosocial and/or intellectual disabilities who are deemed to be criminally incapable of standing trial to be unconstitutional.
4. Mental health legislation in the study States provides for the involuntary treatment of persons with intellectual and/or psychosocial disabilities. Even where some States have endeavoured to legislate notionally CRPD-compliant mental health laws, those attempts have both in law and practice been trumped by the policy imperatives which provide for or require involuntary treatment.
5. Persons with psychosocial disabilities are detained or confined in traditional religious shrines, Christian prayer-camps, and Islamic rehabilitation centres. This is the case in Ghana, Kenya and Nigeria. The human rights violations and abuses such confined persons have faced include lack of adequate food, unsanitary conditions, lack of hygiene, lack of freedom of movement, and sexual violence.
6. Study States have not taken adequate measures to ensure that persons with disabilities in custody or prison are detained in barrier-free environments. The architectural design of some prisons is not conducive to barrier-free access. Some prisons refuse to allow inmates with disabilities to retain mobility aids and auxiliary devices such as crutches, callipers and even white canes, arguing they are a security risk. States have failed to put in place adequate measures to ensure detained persons with disabilities in pre-trial or post-trial detention have access to accommodations and other support measures, including information in accessible formats.

The ICJ therefore makes the following recommendations:

1. States should enact or amend legislation to fully secure the right to liberty for persons with disabilities, without any exceptions relating to the deprivation of liberty of persons with psychosocial and/or intellectual disabilities.
2. States should repeal all provisions in statutes by which persons are deprived of liberty on the basis of their disability. This requires a full review of laws depriving persons with disabilities of their liberty, including criminal codes, criminal procedure codes, civil codes, guardianship laws and mental health laws.
3. States should repeal mental health legislation that provides for the involuntary treatment of persons with intellectual and/or psychosocial disabilities. Additionally, they should improve the delivery of mental health services using a human rights framework that takes psychosocial approaches to treatment instead of being overly dependent on medication that can undermine the effective treatment of persons with mental illnesses.
4. States should prohibit and accordingly sanction the forcible confinement of persons with psychosocial and/or intellectual or other disabilities in faith-based premises such as traditional religious shrines, Christian prayer-camps, and Islamic rehabilitation centres.
5. States should take effective measures to ensure that persons with disabilities in custody or prison are detained in barrier-free environments. States should put in place adequate measures to ensure prisoners with disabilities have access to accommodations and other support measures, including information in accessible formats.

V. Access to Justice

Article 13 of the CRPD: Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 13 of the ADP: Right to access to justice

- a) States Parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.
- b) States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.
- c) All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognised and implemented without discrimination.
- d) States Parties shall ensure legal assistance including legal aid to persons with disabilities.

This chapter explores the extent to which African States are implementing their obligations to secure the right of persons with disabilities to access to justice, including the right to effective remedies and reparation for human rights violations. The chapter focuses on the legal and practical safeguards in place in the nine study States that ensure that persons with disabilities have effective access to the systems, procedures, information and locations used in the administration of justice.

i. Legal content and state obligations

The principle of “access to justice” includes access to the formal systems and procedures that administer justice, for instance, by guaranteeing the right to effective remedies and providing for engagement in civil litigation in judicial or quasi-judicial procedures, and the right to an effective defence in criminal proceedings. The right to access to justice encompasses a number of other rights, such as due process rights and the right to legal representation.²⁹³ More broadly, access to justice covers effective access by people to the systems, procedures, information and locations used in the administration of justice.²⁹⁴ In this sense, access to justice comprises access to substantive justice, access to procedural justice, and access to symbolic justice.

Access to substantive justice focuses on the content of the legal framework which informs the decisions that are made.²⁹⁵ Procedural access to justice focuses on the opportunities and barriers to getting one’s claim into a dispute resolution forum. It requires the elimination of barriers that impede the lodging of justice claims and the provision of supports to enable persons to participate effectively in the

²⁹³ Eilíonóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Ashgate Publishing 2015) 11.

²⁹⁴ *Ibid*, at 12. Also see Stephanie Ortoleva, “Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System” (2010) 7 *ILSA Journal of International & Comparative Law* 2, 284.

²⁹⁵ Stephanie Ortoleva, *ibid*, 285.

administration of justice.²⁹⁶ Access to justice also empowers persons from disadvantaged or marginalized groups to participate as equal persons in an environment where they are entitled to equal standing and representation.

Persons with disabilities realize access to justice when physical, procedural and evidentiary barriers do not hinder them from accessing institutions of justice such as actions in pursuit of a remedy for human rights violations, complaints and investigation processes (such as police services), adjudication processes (such as courts and tribunals), and post-trial processes (such as correctional institutions).²⁹⁷

Article 13 of the CRPD and Article 13 of the ADP provide for effective access to justice for persons with disabilities on an equal basis with others. They obligate States to provide procedural and age-appropriate accommodations to persons with disabilities to facilitate their effective roles as direct and indirect participants in legal proceedings.²⁹⁸

Procedural and age-appropriate accommodations are more generic and less individualized than the obligation of providing reasonable accommodation established in Article 5 of the CRPD, where a potential undue burden for failing to provide reasonable accommodation may be taken into account in determining whether the obligation has been discharged.²⁹⁹ States may not evade the obligation to provide procedural accommodations based on the excuse of “unreasonableness” or “undue burden”. An example of procedural accommodation is the availing of Sign Language interpretation to support communication between an accused who is deaf and the court. In that instance, the prosecution cannot plead undue burden to justify its failure to provide Sign Language interpretation.³⁰⁰

Persons with disabilities become direct participants in legal proceedings, for example, when they are:

- charged with crimes or complainants in criminal cases;
- plaintiffs or defendants in civil suits;
- witnesses in judicial proceedings; or
- judges, lawyers or other actors in legal proceedings.³⁰¹

They may become indirect participants when they are, as examples, court staff or members of the public.³⁰²

The CRPD and ADP also require States to promote appropriate training for workers in the administration of justice (or justice actors), including police and prison staff.³⁰³

The ADP includes two further substantive provisions. It obligates States to take reasonable steps to ensure that customary law processes are inclusive and that they are not used to deny persons with disabilities their right to access appropriate and effective justice.³⁰⁴ Second, it obligates States to ensure legal assistance, including legal aid, to persons with disabilities.³⁰⁵

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ CRPD, Art13(1); ADP, Art 13(1).

²⁹⁹ Eilíonóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, 36.

³⁰⁰ Indeed, in a Kenyan case where the appellant was sentenced to life imprisonment for the offense of defilement, the High Court quashed the conviction and sentence on the basis that the fair trial rights of the accused were violated. The Court found that the Sign Language interpretation provided to the accused was inadequate, the interpreter having insufficient command of Sign Language, thereby prejudicing the appellant and rendering the proceedings a mistrial. *Kenga Hisa v Republic* [2020] eKLR, <http://kenyalaw.org/caselaw/cases/view/192899/>. Also see, Lawrence Mute, *From Affirmation to Practice: Assessing a Decade of Implementing the Constitution of Kenya 2010 for Persons with Disabilities* (United Disabled Persons of Kenya 2020), <https://www.udpkenya.or.ke/wp-content/uploads/2021/03/Assessing-A-Decade-of-Implementing-the-Constitution-for-PWDs-in-Kenya.pdf>, accessed on 2 July 2024.

³⁰¹ Eilíonóir Flynn, “Article 13: Access to Justice” in Ilias Bantekas, Michael Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).

³⁰² Ibid.

³⁰³ CRPD, Art 13(2); ADP, Art 13(3).

³⁰⁴ ADP, Art 13(2).

³⁰⁵ ADP, Art 13(4).

The International Principles and Guidelines on Access to Justice,³⁰⁶ which were prepared by the Special Rapporteur on the Rights of Persons with Disabilities in collaboration with the CmRPD, elaborate principles and good practices for guaranteeing access to justice to persons with disabilities. They stress that:

- All persons with disabilities have legal capacity and shall not be denied access to justice on the basis of disability;
- Facilities and services must be universally accessible to ensure equal access to justice without discrimination against persons with disabilities;
- Persons with disabilities have the right to appropriate procedural accommodations;
- Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others;
- Persons with disabilities are entitled to all substantive and procedural safeguards recognised in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process;
- Persons with disabilities have the right to free or affordable legal assistance;
- Persons with disabilities have the right to participate in the administration of justice on an equal basis with others;
- Persons with disabilities have the right to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies;
- Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities; and
- All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.³⁰⁷

ii. Implementation

The performance of the study States in fulfilling their obligations to ensure access to justice for persons with disabilities is generally poor, as reflected in the concerns which the CmRPD raised with States under its Article 35 reporting procedure. These concerns included the following:

- That the reviewed States typically equated mental capacity with legal capacity, on the basis of which they restricted the competence of persons with psychosocial and/or intellectual disabilities as litigants, witnesses, and officials in legal proceedings;³⁰⁸
- That the criminal and civil codes of those States provided only limited procedural accommodations for persons with disabilities to participate in judicial proceedings as accused persons, witnesses or court officials;³⁰⁹
- That the States had not taken adequate measures to ensure that law-enforcement and judicial premises and facilities had barrier-free access to such persons;
- That persons with disabilities, including women with disabilities in rural areas, did not have effective access to police stations and courts;
- That information relating to legal proceedings was available to persons with disabilities in accessible formats;³¹⁰ and
- That the States did not undertake adequate training for justice actors – including law-enforcement officials (police), legal professionals (judges, magistrates, prosecutors, lawyers and other court

³⁰⁶ Special Rapporteur on the Rights of Persons with Disabilities, International Principles and Guidelines on Access to Justice, 2020, <https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>.

³⁰⁷ Ibid.

³⁰⁸ CRPD/C/MWI/CO/1-2, para 27(a).

³⁰⁹ CRPD/C/KEN/CO/1, para 25; CRPD/C/ZAF/CO/1, para 24(a).

³¹⁰ CRPD/C/MWI/CO/1-2, para 27(b) and (c); CRPD/C/RWA/CO/1, para 25(b); CRPD/C/ZAF/CO/1, para 24(b).

staff), and correctional officials (prison and probation staff) – on their role in facilitating access to justice for persons with disabilities.³¹¹

a. Guarantees of access to justice

None of the constitutions of the study States have express disability-specific guarantees on access to justice. Kenya, Malawi, South Africa, and Zimbabwe maintain constitutional guarantees that apply to all persons on access to justice. For example, the Constitution of Malawi provides every person with the right of access to courts and the right to an effective remedy for conduct violating rights protected under the Constitution or other laws.³¹² **Kenya's**, newly enacted Persons with Disabilities Act provides an express right of access to justice for persons with disabilities: "every person with disability has a right to access to effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, at investigative and other preliminary stages."³¹³ The Act further obliges the Chief Justice to ensure expeditious disposal of all suits involving persons with disabilities and importantly, requires the Chief Justice to enact rules in respect of:³¹⁴

"the provision, to persons with disabilities who attend court, of free Kenyan sign language interpreters, Braille services, other communication formats and technologies accessible to persons with disabilities, physical guide assistance and intermediaries."

Persons with disabilities in **Rwanda** reportedly often fail to file cases alleging rights violations in courts. Litigation was reported to be expensive and took too long to be completed. As a result, persons with disabilities generally preferred to settle matters out of court, in the instance of Rwanda, using local government processes.³¹⁵

In **Nigeria**, very few cases concerning violations of the rights of persons with disabilities go to trial, and quite often, such matters were settled out of court. The ICJ was informed that "the end goal should not be sanctions ... it should be inclusion."³¹⁶ In other words, for some persons with disabilities, once a party agreed they had violated the rights of a person with disability and committed to remedying the violation, there was no need to proceed with litigation.

Litigation on matters of disability appears to be comparatively more common in Kenya, South Africa, and, to a lesser extent, Uganda. While further study would need to be undertaken to determine conclusively why litigation on disability rights is higher in these study States, available information suggests that Kenyans and South Africans with disabilities find it less onerous and bureaucratic to file and litigate cases in the courts, and that they have higher regard for the independence of their judiciaries. **Kenya** and **South Africa** also have a nascent practice of public interest litigation, more generally allowing for individuals and organizations to pursue judicial redress on matters affecting the broader public. Nonetheless, in Kenya, the umbrella body of organisations of persons with disabilities – the United Disabled Persons of Kenya – does not have an independent capacity to litigate on matters of disability. Therefore, it has to rely on collaborations with general human rights organisations to litigate cases.³¹⁷ Litigation often is lengthy and may carry on over the course and is costly, adding to these other barriers substantially.³¹⁸

³¹¹ CRPD/C/MWI/CO/1-2, para 27(d); CRPD/C/RWA/CO/1, para 25(a); CRPD/C/ZAF/CO/1, para 24(c).

³¹² Constitution of Malawi, s41(2)-(3). Also see Constitution of Kenya Art 48; Constitution of South Africa, s34; Constitution of Zimbabwe, s69(3).

³¹³ Kenya, Persons with Disabilities Act 2025, s28(1).

³¹⁴ Kenya, Persons with Disabilities Act 2025, s28(4).

³¹⁵ Key Informant 5.

³¹⁶ Key Informant 4.

³¹⁷ Key Informant 2.

³¹⁸ For example, following Kenya's 9 August 2022 general elections, the United Disabled Persons of Kenya partnered with other human rights organisations to file a petition challenging the fact that up to 21 County Assemblies did not have legislators with disabilities, in violation of Article 177 of the Constitution. This petition has still not been determined, nearly two years since it was filed. – (Notes on file with author).

b. Legal aid

For many persons with disabilities, effective access to justice may be realized only if there is legal aid available to enable them to litigate or defend cases. The legal aid frameworks of some of the States provide for some such support but are nonetheless inadequate to ensure that all persons with disabilities who need such assistance can access it.

The Persons with Disability Act of **Sierra Leone** provides that the Attorney General may make regulations for providing free legal services to persons with disabilities, when their rights are violated, or they are deprived of their property. It also requires the judiciary to make rules to exempt persons with disabilities from paying certain court fees, and to provide Sign Language interpretation, Braille services and physical guide assistance to persons with disabilities whenever they attend court.³¹⁹ Analogous provisions are made in the Persons with Disabilities Act in **Kenya** which requires the Attorney-General to make regulations providing for free legal services for persons with disabilities with respect to matters affecting the violation of the rights of persons with disabilities or the deprivation of their property, cases involving capital punishment of persons with disabilities and other matters that the Attorney-General may prescribe.³²⁰ The Act also mandates the Chief Justice to make rules to exempt persons with disabilities from paying fees on matters relating to violations of their rights under the Act, cases involving capital punishment of persons with disabilities or other matters that the Attorney-General may prescribe as entitled to free legal services above.³²¹ However, these statutory legal aid provisions in Sierra Leone³²² and Kenya are not replicated in the general legislation enacted to operationalize legal aid. In the instance of Kenya, eligibility for legal aid services under the Legal Aid Act is limited to an indigent resident who is: a citizen; a child; a refugee; a victim of human trafficking; or an internally displaced person or stateless person.³²³ Persons with disabilities are not included expressly, although they may fit within some of the other listed categories.

For its part, **Zimbabwe** reported to the CmRPD that its High Court has a roster of legal practitioners who provide free legal assistance to indigent persons, including those with disabilities, to fulfil the constitutional requirement that indigent persons be provided with free legal services.³²⁴ **Rwanda** also reported to the CmRPD that its Bar Association provides legal aid to persons with low income, including those with disabilities, although it acknowledged this support may be inadequate.³²⁵

c. Institutional failings

Persons with disabilities face institutional failings that impede their ability to access justice on an equal basis with others.

A Malawian study, for example, concluded that poor policing compromised access to justice for persons with albinism. The investigation of crimes against persons with albinism was impeded by police failures to identify and locate potential witnesses and gather evidence, thereby fostering a climate of impunity and non-deterrence.³²⁶ However, a key informant told the study that the investigation and prosecution of crimes against persons with albinism had been expedited by the government and the judiciary. Notably, the government had designated specific prosecutors to prosecute particular crimes against persons with albinism. Moreover, the Chief Justice had directed that such cases should be litigated

³¹⁹ Sierra Leone, Persons with Disability Act, s41.

³²⁰ Kenya, Persons with Disabilities Act 2025 of Kenya, s28(2)

³²¹ Kenya, Persons with Disabilities Act 2025, s28(3).

³²² CRPD/C/SLE/1, para 223-224.

³²³ Kenya, Legal Aid Act, CAP 16A (2016), s36, <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2016A>.

³²⁴ Constitution of Zimbabwe, s31; CRPD/C/ZWE/1, paras 123-124.

³²⁵ CRPD/C/RWA/1, para 96.

³²⁶ Amnesty International, "We are not Animals to be Hunted or Sold": Violence and Discrimination against People with Albinism in Malawi" (2016), <https://www.amnesty.org/en/documents/afr36/4126/2016/en/#:~:text=Since%20November%202014%2C%20Malawi%20has,by%20individuals%20and%20criminal%20gangs>, accessed on 22 April 2024.

before the professional rather than lay magistracy.³²⁷

d. Court premises and services

Court premises across the study States remain relatively inaccessible for persons with disabilities. Information on court services is also typically not made available to persons with disabilities consistently in accessible formats:

- In **Nigeria**, a study concluded that many high courts across the country, including the Rivers State High Court, were inaccessible, neither having lifts nor ramps for the use of counsel, litigants or witnesses with mobility disabilities.³²⁸
- In **Malawi**, courtrooms were located in multi-storeyed inaccessible buildings, and courts had to move to the ground floors for proceedings involving persons with disabilities, or persons with disabilities had to be carried to the courtrooms.³²⁹
- In **Ghana**, courts did not provide information in accessible formats for persons with disabilities, including Sign Language interpretation.³³⁰
- Regarding **Rwanda**, professionals within the justice sector such as the Investigation Bureau, did not know Sign Language, and reportedly requested the National Union of Disabled Organisations of Rwanda to send them interpreters. Deaf persons had indeed been prosecuted and convicted without being availed Sign Language interpretation.³³¹
- Similarly, in **Uganda**, courts reportedly encouraged deaf litigants to come with their own Sign Language interpreters, and some courts paid the interpreters while others did not do so.³³²
- A study on access to justice for women with disabilities in Rwanda found that they faced information, communication and physical barriers when they sought access to justice. Courts and investigation and prosecution premises remained inaccessible to women with mobility disabilities, despite the fact that the Building Code of 2015 includes accessibility standards for persons with disabilities.³³³

Litigants in a few States have sought judicial remedies against inaccessible judicial premises and facilities:

- Uganda's High Court found that the state had breached its duty regarding accessibility under Article 9 of the CRPD, the Persons with Disabilities Act, and the prohibition of discrimination under the Constitution of Uganda, by failing to make courtrooms accessible to the applicant, a lawyer with mobility disability. The applicant could not access a court hosted in a building that did not have ramps, lifts, rails, standard toilets, or other reasonable accommodation measures. The High Court also found that the failure to ensure the court was barrier-free violated the applicant's right to practice his profession.³³⁴
- In **South Africa**, in a case where a petitioner who used a wheelchair challenged the lack of access to a police station, the South African High Court required the police station to ensure accessibility, and in the meantime, to provide services on the ground floor. As a consequence, about 150 police stations were reconstructed to ensure accessibility.³³⁵

³²⁷ Key Informant 3.

³²⁸ Obraori Nwabunwa and Peters Adiola, "Access to Justice for Persons with Disabilities in Nigeria" (2023) 13 *Cranbrook Law Review* 1, 5.

³²⁹ Bernadette Malunga, Ngeyi Kanyongolo and Ngcimezile Mbano-Mweso, "Access to Justice of Children with Disabilities in Defilement Cases: A Myth or Reality?" (2017) 5 *African Disability Rights Yearbook*, 25-39.

³³⁰ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, 2022, para 37.

³³¹ Key Informant 4.

³³² Key Informant 7. This too was the case in Malawi; Key Informant 3.

³³³ Legal Aid Forum, "Assessment of Barriers to Effective Access to Justice for Girls and Women with Disabilities in Rwanda," 2019, https://www.legalaidrwanda.org/pdf/disability_assessment_report_2019_1_-2.pdf, accessed on 23 April 2024.

³³⁴ *Candia Emmanuel V Attorney General* (Miscellaneous Cause No 158 of 2018), <https://www.scribd.com/document/705606591/Candia-Emmanuel-v-Attorney-General-Miscellaneous-Cause-No-158-of-2018>, accessed 1 June 2024.

³³⁵ Ayesha Roomaney, "Assessing the Right to Physical Access to Justice for Persons with Disabilities" (Master Thesis, November 2017) 46, cited in Eilionóir Flynn, Catríona Moloney, and Janos Fiala-Butora, "Final Report: Access to Justice of Persons with Disabilities," December 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/CDLP-Finalreport-

- In a petition filed by a person with a mobility disability, the High Court of **Kenya** found that the Milimani Law Courts was sited in an inaccessible building, thereby violating the right to access justice under the Constitution for persons with disabilities. The Court found that the building had physical barriers, including that the lobby had a step to the reception area; witness stands were raised by a platform of as much as 200mm from the general floor; parking bays were set at a lower level to the general ground with concrete kerb stones; and the building had narrow court entrances.³³⁶

e. Women with disabilities

Lack of barrier-free access to the justice system may carry particularly adverse impacts for women with disabilities:

- A **Zimbabwean** study found that women with disabilities are more likely to become victims of crime because, among other factors, they often stayed alone for long periods. Rape and attempted rape were the crimes often committed against them.³³⁷
- In **South Africa**, women with disabilities faced particular barriers to access to justice. These included a tendency for police officers and court officials to not consider women with psychosocial and/or intellectual disabilities as credible witnesses; families of women with intellectual disabilities served as gatekeepers and barred women with intellectual disabilities from access to justice on account of fears of loss of income or creation of stigma; and deaf persons seeking access to justice lacked access to proficient Sign Language interpreters.³³⁸
- In **Kenya**, a barrier to access to justice peculiar to women with albinism was the prevalence of single mothers whose partners absconded after the birth of a child with albinism who, therefore, had little to no support or knowledge on where to seek redress. Victims of ritual attacks also did not get justice where perpetrators absconded to neighbouring countries. The state authorities also did not furnish victims with information on the legal status of cases under investigation or prosecution.³³⁹ **Kenya's** newly enacted Persons with Disabilities Act explicitly safeguards specific rights of a woman with disability to enjoyment of her human rights and fundamental freedoms without discrimination on an equal basis with others, including the rights to: control her fertility; protection from sexual and gender-based violence; and the right to sexual and reproductive health services.³⁴⁰

f. Children with disabilities

Children with disabilities in the criminal justice system face age-specific impacts:

- A Malawian study on access to courts by children with disabilities found that there was no legal material in accessible formats or personnel trained to work with children with disabilities. Invariably, acquittals resulted in cases where the primary witness was a victim with an intellectual disability.³⁴¹

[Access2JusticePWD.docx](#), accessed on 22 August 2024.

³³⁶ *Paul Pkiach Anupa and Another v Attorney-General and Another* (Petition 93 of 2011) [2012] KEHC 1081 (KLR), <http://kenyalaw.org/caselaw/cases/view/85079>.

³³⁷ Nyaradzo Shumba and Tshimangadzo Oscar Magadze, "Access to Justice Dynamics for Women and Girls with Disabilities: The Zimbabwean Context" (2022) 9 *Journal of Law, Society and Development*.

³³⁸ Submission by Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International to the CRPD Committee Working Group for South Africa, INT_CRPD_CSS_ZAF_31996_E, 31 July 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FZAF%2F31996&Lang=en#:~:text=INT_CRPD_CSS_ZAF_31996_E.docx%2C%20INT/CRPD/CSS/ZAF/31996%2C%20en%2C%20SP%2C%20CRPD%2C%20ZAF%2C%20English%2C,that%20reports%20from%20civil%20society%20organizations%20are.

³³⁹ Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, A/HRC/40/62/Add.3, 2019, 82-84, <https://www.ohchr.org/en/documents/country-reports/ahrc4062add3-visit-kenya-report-independent-expert-enjoyment-human-rights>.

³⁴⁰ Kenya, Persons with Disabilities Act 2025 of Kenya, s10.

³⁴¹ **Bernadette** Malunga, Ngeyi Kanyongolo and **Ngcimezile** Mbano-Mweso, "Access to Justice of Children with Disabilities in Defilement Cases: A Myth or Reality?" (2017) 5 *African Disability Rights Yearbook*, 25-39.

- South Africa has legislated specific accommodations for children with disabilities in a few instances.³⁴² For example, Section 42(8)(d) of the Children’s Act requires proceedings involving children to be held in a room that is “accessible to disabled persons and persons with special needs”.³⁴³ Section 161(2) of the Criminal Procedure Act requires witnesses to testify orally, which in the case of a “deaf and dumb” witness is deemed to include gestures.³⁴⁴
- Kenya’s Children Act provides that the court room or premises be suitably designated and equipped including “the provision of such services as may be required to meet the special needs of children in need of care, including children with disabilities”.³⁴⁵ The Sexual Offences Act also comes close to securing the right of child witnesses where they are declared “vulnerable witnesses” in sexual offence cases on account of their age or/and disability.³⁴⁶ A declaration that a witness is vulnerable would entitle court to allow measures such as giving evidence “under the protective cover of a witness protection box” or “directing that the witness shall give evidence through an intermediary”. The Persons with Disabilities Act 2025, does not specifically address the issue of access to justice for children with disabilities. The relevant provision secures the rights of children with disability in general terms.³⁴⁷ The Act then stipulates that in “the best interest of the child shall be the primary consideration and shall be of paramount importance” in all actions concerning children with disabilities.

g. Persons with intellectual and psychosocial disabilities

Persons with intellectual disabilities and those with psychosocial disabilities face peculiar, disability-specific barriers when they seek to access justice:

- A **Kenyan** study found that persons with intellectual disabilities had limited procedural and other accommodations to enable them to participate equally in criminal justice processes as victims of crime. Police officers and court officials often asked questions in complex and technical language, without making adjustments or adaptations to communicate notions such as time, quantity, date or place. Justice personnel reportedly held negative attitudes and assumptions that viewed persons with intellectual disabilities as unreliable, lacking credibility and as incapable of giving evidence or otherwise participating in criminal justice proceedings.³⁴⁸
- A **South African** study showed that ableist notions of the inadequacies of persons with intellectual disabilities to be parents, amounting to unfair discrimination under Article 9 of the Constitution, were manifest in the often-subconscious bias in determinations by social workers and even judicial officers on what was in the best interest of the children of such parents. Social workers prepared assessments that presumed mothers with intellectual disabilities were incompetent parents, and interventions in the home were found to be premised on the parents’ disabilities where child abuse was not evident.³⁴⁹ One generalization advancing stereotypes in reports of social workers about parents with intellectual disabilities resulted in a focus on the mother’s supposed lack of capacity to change, such as being “unable to learn new skills” required to be a good enough parent and

³⁴² Robyn White and Dianah Msipa, “Implementing Article 13 of the Convention on the Rights of Persons with Disabilities in South Africa: Reasonable Accommodations for Persons with Communication Disabilities” (2018) 6 *African Disability Rights Yearbook* 99-120.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Kenya, Children Act, s93(3).

³⁴⁶ Kenya, Sexual Offences Act, s31.

³⁴⁷ Kenya, Persons with Disabilities Act 2025, s 11. Such rights include right to “(a) a name and registration immediately after birth; (b) evolving capacities, identities and to enjoy a full and decent life, in conditions which promote and ensure dignity, self-reliance, and independence; (c) freedom to express his or her views on all matters affecting him or her; (d) age and gender appropriate assistance to realize his or her rights; (e) living with his or her family for as long as is necessary; (f) accessing quality and inclusive education; (g) accessing appropriate health care services; and (h) protection from abuse, exploitation and harmful practices.”

³⁴⁸ Kenya Association for the Intellectually Handicapped, “Access to the Criminal Justice System by Persons with Intellectual Disabilities as Victims of Crime: Barriers and Opportunities,” 2017 (on file with author).

³⁴⁹ Willene Holness, “Adapting Prevention and Early Intervention Measures and Parenting Capacity Assessments in Neglect Cases Involving Parents with Intellectual Disabilities in South African Children’s Courts” (2023) 11 *African Disability Rights Yearbook* 32-53.

therefore “protect the child”. It also found that such individuals were considered to be “not capable of logical reasoning” necessary in providing a child with care.³⁵⁰

- A Kenyan study found it common for persons with psychosocial and/or intellectual disabilities to be charged with petty offences, including loitering; being a disturbance; being indecently exposed; causing public nuisance; urinating or defecating in public; and being drunk and disorderly.³⁵¹ These charges were quite often premised on ableist notions. For example, a person with intellectual or psychosocial disability could be deemed drunk and disorderly when in fact they were disoriented because of medication or non-responsive because of a lack of speech. Similarly, a person on the autism spectrum could be deemed to be causing a public nuisance when, in fact, they were “flapping” or “stimming”.³⁵²

h. Training

The study States do not undertake adequate training for justice officials on how to ensure persons with disabilities have access to justice, sometimes in contravention of statutory requirements. For instance, Uganda’s Persons with Disabilities Act carries an obligation for training judicial and law enforcement officers in matters concerning persons with disabilities.³⁵³ Malawi acknowledged to the CmRPD that officials from its judiciary, police and prisons were not trained specifically to serve persons with disabilities seeking access to justice, and that persons with hearing impairments and deaf-blind persons in particular had difficulties accessing justice as offenders, complainants or witnesses.³⁵⁴

OPDs and other non-state actors in some of the study States have prepared educational/training material on how to ensure access to justice for persons with disabilities. Inclusion Ghana, an NGO, prepared a booklet to enable policymakers and implementers to ensure the right of persons with intellectual disabilities to access to justice,³⁵⁵ for example, by listing relevant accommodations that should be provided. These include:

- increasing the use of verbal over written communication in judicial proceedings for persons with intellectual disabilities;
- producing easy-read materials on judicial processes;
- using communication passports where appropriate;
- allowing additional time to ensure persons with intellectual disabilities understand judicial processes;
- using investigators trained in the area of intellectual disabilities to assist with police investigations;
- using trained facilitators to assist persons with intellectual disabilities to understand the court process and to simplify questions and give support where needed; and
- adapting courtrooms to fit the needs of persons with intellectual disabilities.³⁵⁶

In **Nigeria**, a study concluded that while law clinics were positioned to support access to justice for persons with disabilities, they possessed limited knowledge and appreciation of the CRPD and disability law generally; and they also did not possess appropriate institutional environments, including accessible law schools and provision of reasonable accommodation.³⁵⁷

³⁵⁰ Ibid.

³⁵¹ Article 48 Initiative, Arthur’s Dream Autism Trust and Southern Africa Litigation Centre, “The Interaction between the Criminal Justice System and Persons with Intellectual and Psychosocial Disabilities in Nairobi, Kenya,” 2021.

³⁵² Ibid.

³⁵³ Persons with Disabilities Act of Uganda, s15(2).

³⁵⁴ CRPD/C/MWI/1-2, para 96.

³⁵⁵ Inclusion Ghana, “Opening the Doors of Justice for Persons with Intellectual Disabilities in Ghana,” <https://rodra.co.za/images/countries/ghana/research/OPENING%20THE%20DOOR%20OF%20JUSTICE%20TO%20PERSONS%20OF%20INTELLECTUAL%20DISABILITIES.pdf>.

³⁵⁶ Ibid.

³⁵⁷ Azubike Onuora-Oguno, “Leaving the Woods to See the Trees: Locating and Refocusing the Activities of Non-State Actors Towards the Effective Promotion of Access to Justice of Persons with Disability” (2018) 6 *African Disability Rights Yearbook* 121-138.

iii. Findings and recommendations

The ICJ makes the following findings:

1. The Constitutions of four study States establish general guarantees on access to justice that apply to all persons - Kenya, Malawi, South Africa, and Zimbabwe.
2. The legal aid frameworks of some of the States recognise the importance of availing persons with disabilities with access to legal aid to enable them to litigate or defend cases – Kenya, Sierra Leone, and Zimbabwe. These States have, however, failed to adequately implement such laws in practice to ensure access to legal aid for persons with disabilities.
3. Persons with disabilities often do not file cases on rights violations in courts because litigation is expensive and takes too long to be completed. Rather, for example, in Nigeria and Rwanda, persons with disabilities preferred to settle matters out of court. Comparatively, more persons with disabilities have undertaken litigation in Kenya, South Africa, and, to a lesser extent, Uganda.
4. Persons with disabilities face institutional failings that impede their ability to access justice on an equal basis with others. For example, poor policing compromised the investigation of crimes against persons with albinism in Malawi. In some instances, the justice sector took measures to remedy these institutional weaknesses, such as when the investigation and prosecution of crimes against persons with albinism in Malawi was expedited after the government had designated specific prosecutors to prosecute particular crimes against persons with albinism and after the Chief Justice directed that such cases should be litigated before the professional rather than lay magistracy.
5. Court premises and services across the study States remain relatively inaccessible for persons with disabilities. While newly built court premises tend to be more accessible, older court premises are typically not. Courts in Kenya, South Africa, and Uganda have determined that sitting courtrooms in inaccessible premises violates guarantees of accessibility for persons with disabilities.
6. Courts do not provide procedural accommodations to persons with disabilities on a consistent basis. Information on court services is also not availed to persons with disabilities consistently in accessible formats. Some courts also expect persons with disabilities or their organizations to arrange and pay for Sign Language interpreters where they are required.
7. Lack of barrier-free access to the justice system has particularly adverse impacts for women with disabilities, children with disabilities who faced age-specific impacts, and persons with intellectual and/or psychosocial disabilities.
8. The study States do not undertake adequate training for justice actors, including judges, on how to ensure persons with disabilities have access to justice.

The ICJ therefore makes the following recommendations:

1. States should enact new or amend legislation to include specific guarantees entrenching the right of persons with disabilities to access to justice, including through the provision of necessary supports and accommodations.
2. States should avail free legal aid to persons with disabilities to enable them to litigate or defend cases.
3. Court and other premises where justice sector services are provided must be made barrier-free. States must put in place programmes to adapt existing premises to ensure their accessibility.
4. States should engage with stakeholders with disabilities towards providing them with procedural accommodations. Procedural accommodations must take account of the particular needs of women, children, and persons with intellectual and/or psychosocial disabilities. Courts must not obligate victims, witnesses and other litigants with disabilities to pay for services such as Sign Language interpretation. Criminal cases against persons with disabilities should be dismissed where the responsible public authorities fail to provide the accused with procedural accommodations to ensure the fairness of trials.
5. States should undertake adequate training for justice actors, including judges, on how to ensure persons with disabilities have access to justice. Training should focus on equipping justice

institutions such as the police, prosecutors and judicial officers to understand the rights of persons with disabilities and recognise and address ableism.

VI. Participation in Political and Public Life

The right to participation in political and public life is protected under general international law, including Article 25 of the ICCPR. In respect of the CRPD and ADP, the rights are expressed as follows:

Article 29 of the CRPD: Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

1. To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice; ...

Article 21 of the ADP: Right to participate in political and public life

1. Every person with a disability has the right to participate in political and public life.
2. States Parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:
 - a) Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are availed in accessible formats;
 - b) Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws;
 - c) Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws;
 - d) Realising increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, sub-regional, national and local legislative bodies;
 - e) Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.

This chapter explores the implementation of state obligations to secure the right of persons with disabilities to participate in political and public life. While the scope of this right under international human rights law includes the right to participate in the conduct of public affairs in a variety of contexts,³⁵⁸ this chapter focuses on the extent to which the nine study States retain disability-based voting restrictions in their laws; and whether they have taken effective measures to ensure persons with disabilities have barrier-free access to registration centres, polling stations and other forums where political participation takes place. It also explores whether States have provided voters with disabilities with accessible information and communication material or devices.

³⁵⁸ See, for example, ICCPR, Art 25 and CRPD, Art 29.

i. Legal content and state obligations

The concept of political participation includes the exercise of legislative, executive, and administrative powers, the formulation and implementation of policy at the international, national, regional and local levels, and participation in civil society.³⁵⁹ One of the formal avenues of political participation is in the right to elect and stand as leaders who determine the political agenda,³⁶⁰ including on the rights of persons with disabilities.³⁶¹ Yet, over time, States have barred or restricted persons with disabilities from expressing their political will as voters and as candidates for election on the basis of their disabilities. These exclusions are based, first, on attitudinal barriers, evident in stereotypes or stigma about persons with disabilities. Second, they are based on communication barriers, manifest when formats or methods of sharing information are not accessible. Third, they are based on physical barriers, such as narrow doorways or stairs in registration centres and polling stations, and signage that is inaccessible for people with different disabilities. Finally, institutional barriers exist, entailing laws and policies that are not inclusive of persons with disabilities, such as disability-based voting restrictions that assume that persons with disabilities, and in particular persons with psychosocial and/or intellectual disabilities, do not have the requisite legal capacity to vote.³⁶²

Article 29 of the CRPD and Article 21 of the ADP obligate States to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.³⁶³ This means, among other things, a person may not be barred from voting or seeking elective office on the basis of disability. The right to participate is of immediate application, not subject to any form of budgetary restriction.³⁶⁴

The Convention and the Protocol obligate States to ensure persons with disabilities participate in political and public life on the basis of equality with general reference to four areas.

First, States must ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.³⁶⁵ This means that electoral management bodies must put in place measures to facilitate and expedite voting by persons with disabilities. The Protocol establishes important context in this regard by identifying the need for systematic and comprehensive civic and voter education that is communicated in accessible formats, which is a lynchpin for the full participation of persons with disabilities in democracy.³⁶⁶

Second, States must protect the right of persons with disabilities to vote by secret ballot in elections and public referenda.³⁶⁷ Reasonable accommodation and other support measures for facilitating voting for persons with disabilities must not deviate from the central tenet of voting by secret ballot.³⁶⁸

Third, States must enable a voter with disability who so requests to use an assistant of their choice to

³⁵⁹ Rachele Cera, "Article 29 [Participation in Political and Public Life]" in Valentina Fina, Rachele Cera and Giuseppe Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer International Publishing Switzerland 2017).

³⁶⁰ See, for example, Article 25 of the ICCPR, which guarantees citizens the right and opportunity to take part in the conduct of public affairs, to vote and to be elected at genuine and periodic elections, and to have access to public service. Also see Article 13 of the African Charter.

³⁶¹ CmRPD, General Comment No. 7 on Article 4.3 and 33.3 - the Participation of Persons with Disabilities, including Children with Disabilities, through their Representative Organisations, in the Implementation and Monitoring of the Convention, CRPD/C/GC/7, 9 November 2018, para 88.

³⁶² International Foundation for Electoral Systems, "Election Access Observation Toolkit," 2018, <https://www.ifes.org/publications/election-access-observation-toolkit>, 15 May 2024; Also see Helene Conbrinck, "Everybody Counts: the Right to Vote of Persons with Psychosocial Disabilities in South Africa" (2014) 2 *African Disability Rights Yearbook* 75-100.

³⁶³ CRPD, Art 29 (*chapeau*); ADP, Art 21(1), (2).

³⁶⁴ CmRPD, General Comment No. 7 on Article 4.3 and 33.3 - the Participation of Persons with Disabilities, including Children with Disabilities, through their Representative Organisations, in the Implementation and Monitoring of the Convention, CRPD/C/GC/7, 9 November 2018, para28.

³⁶⁵ CRPD, Art 29(a)(i).

³⁶⁶ ADP, Art 21(2)(a).

³⁶⁷ CRPD, Art 29(a)(ii).

³⁶⁸ ADP, Art 21(2)(c).

vote, subject to the consideration stated above in respect of privacy and secrecy.³⁶⁹

Fourth, States must also protect the right of persons with disabilities to stand as candidates in elections, and to effectively hold office and perform all public functions at all levels of government.³⁷⁰ This obligation is tied to a simultaneous recognition that effectively holding elective or other public office for persons with disabilities may require the deployment of specific support and reasonable accommodation measures.

The ADP provides for additional obligations in respect of the political participation of persons with disabilities. It obligates States to encourage the effective participation of persons with disabilities in political and public life, including as members of political parties, electors and holders of political and public offices in accordance with national laws.³⁷¹ Given the broad range of electoral systems which States across the continent practice, the formulation in the ADP is not overly prescriptive. The Protocol also obligates States to repeal or amend laws that, on the basis of disability, restrict the right of persons with disabilities to vote, stand for or remain in public office.³⁷² This provision holds particular importance for persons with psychosocial and/or intellectual disabilities who are often excluded by law from standing for elective offices and sometimes even from voting.

ii. Implementation

The extent to which the study States have fulfilled their obligations to guarantee that persons with disabilities may participate in political and public life is reflected in the concerns which the CmRPD raised with the study States it reviewed under its Article 35 reporting procedure. These concerns include the following:

- That States used the law to disenfranchise persons with psychosocial and/or intellectual disabilities from voting and standing for elections, premised on their presumed inability or incapacity to make informed decisions;³⁷³
- That persons with disabilities continued to face physical barriers as they sought to register for and participate in elections;³⁷⁴ and
- That persons with disabilities also continued to face information and communication barriers as they sought to register as voters and as they participated in voting,³⁷⁵ and that this was compounded by limitations on the secrecy of the ballot for persons with disabilities.³⁷⁶

This chapter draws its conclusions taking into account the elections listed in Table 9, which were undertaken by the nine States in the period up to April 2024. The analysis does not include, as examples, data from the general elections held in South Africa in June 2024 and Rwanda in July 2024. The analysis draws from various sources of information, including reports issued by African Union Election Observation Missions (AUEOM), European Union Election Observation Missions (EUEOM), and domestic election and observation missions, including reports prepared by OPDs.

³⁶⁹ CRPD, Art 29(a)(iii); ADP, Art 21(2)(c).

³⁷⁰ CRPD, Art 29(a)(ii).

³⁷¹ ADP, Art 21(2)(b).

³⁷² ADP, Art 21(2)(e).

³⁷³ CRPD/C/MWI/CO/1-2, para 59(a); CRPD/C/RWA/CO/1, para 53; CRPD/C/UGA/CO/1, para 56; CRPD/C/KEN/CO/1, para 51.

³⁷⁴ CRPD/C/UGA/CO/1, para 56.

³⁷⁵ CRPD/C/RWA/CO/1, para 53.

³⁷⁶ CRPD/C/UGA/CO/1, para 56; CRPD/C/KEN/CO/1, para 51.

Table 9: Principal election laws and elections sampled for the study

State	Principal electoral statute	Election
Ghana	Presidential Elections Act ³⁷⁷ Presidential and Parliamentary Election Regulations ³⁷⁸	7 December 2020 Presidential and Parliamentary Elections
Kenya	Election Act ³⁷⁹	9 August 2022 General Elections
Malawi	Parliamentary and Presidential Elections Act ³⁸⁰	21 May 2019 Tripartite Elections; and 23 June 2020 Fresh Presidential Elections
Nigeria	Electoral Act ³⁸¹	25 February and 18 March 2023 General Elections
Rwanda	Law Governing Elections ³⁸²	3-4 August 2017 Presidential Election
Sierra Leone	Public Elections Act ³⁸³	24 June 2023 Multi-Tier Elections
South Africa	Electoral Act ³⁸⁴	8 May 2019 National and Provincial Elections
Uganda	Parliamentary Election Act ³⁸⁵	14 January 2021 General Elections
Zimbabwe	Electoral Act ³⁸⁶	23 August 2023 Harmonised Elections

a. Guarantees on voting and standing for elections

The Constitutions of the nine study States guarantee the right to political participation, including the rights to join and form political parties, and to participate in political activities.³⁸⁷ For example, the Constitution of Uganda provides that every Ugandan adult has the right to vote and the duty to register as a voter. Specific to disability, the Constitution of Uganda enjoins the state to make laws to provide for the facilitation of citizens with disabilities to register and vote.³⁸⁸ However, the constitutions of all nine study States treat persons with certain disabilities differentially, by barring persons, variously referred to

³⁷⁷ Ghana, Presidential Elections Act, 1992, <https://ir.parliament.gh/bitstream/handle/123456789/2639/PNDCL%20285%20Rev%20Ed.pdf?sequence=1&isAllowed=y>, accessed on 2 August 2024.

³⁷⁸ Made under various principal election laws, see 'Presidential/Parliamentary Elections Laws', <https://aceproject.org/ero-en/regions/africa/GH/ghana-presidential-and-parliamentary-elections>, accessed on 2 August 2024.

³⁷⁹ Kenya, Election Act, No. 24 of 2011, <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=CAP.%207>.

³⁸⁰ Malawi, Parliamentary and Presidential Elections Act – Chapter 2:01, 2020, <https://media.malawilii.org/files/legislation/akn-mw-act-1993-31-eng-2020-11-03.pdf>, accessed on 6 August 2024.

³⁸¹ Nigeria, Electoral Act, 2022, <https://placng.org/i/wp-content/uploads/2022/02/Electoral-Act-2022.pdf>, accessed on 2 August 2022.

³⁸² Rwanda, Law No. 03/2010/OL of 18/06/2010 Governing Presidential and Legislative Elections, 2010, <https://aceproject.org/ero-en/regions/africa/RW/rwanda-organic-law-nb0-17-2003-of-07-07-2003/view>, accessed on 4 August 2024.

³⁸³ Sierra Leone, Public Elections Act, 2012, <https://www.sierra-leone.org/Laws/2012-04.pdf>, accessed on 28 July 2024.

³⁸⁴ South Africa, Electoral Act 73 of 1998, <https://www.gov.za/documents/electoral-act>, accessed on 28 July 2024.

³⁸⁵ Uganda, Parliamentary Elections Act, 2005, <https://ulii.org/akn/ug/act/2005/17/eng@2015-10-01>, accessed on 28 July 2024.

³⁸⁶ Zimbabwe, Electoral Act, 2018, <https://www.veritaszim.net/node/2424>, accessed on 30 July 2024.

³⁸⁷ Constitution of Ghana, Art 21(3); Constitution of Kenya, Art 38; Constitution of Malawi, s40; Constitution of Nigeria, s40; Constitution of Rwanda, Art 27, 55; Constitution of Sierra Leone, s26; Constitution of South Africa, s19; Constitution of Uganda, Art 38; Constitution of Zimbabwe, s67.

³⁸⁸ Constitution of Uganda, Art 59.

as “of unsound mind” (Kenya, Sierra Leone, South Africa and Uganda),³⁸⁹ “criminal lunatics” (Ghana and Nigeria),³⁹⁰ “persons detained as mentally disordered or intellectually handicapped” (Zimbabwe),³⁹¹ or “mentally incompetent” (Malawi),³⁹² from registering as voters and voting, and from standing in parliamentary or presidential elections.

The nine States also make provisions to facilitate voting for persons with disabilities. They have established specific measures to concretize the inclusion of persons with disabilities in political institutions. Specific measures entail the preferential treatment of persons with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights.³⁹³ They aim to accelerate or achieve substantive equality for persons with disabilities.³⁹⁴ Examples of specific measures are: outreach and support programmes; allocation and/or reallocation of resources; targeted recruitment; hiring and promotion; quota systems; advancement and empowerment measures; and respite care and technological aids.³⁹⁵

While many legislated measures in the nine study States are positive, some of them limit the voting rights of persons with disabilities:

- **Ghana’s** Persons with Disability Act provides that a person with disability shall not be deprived of the right to participate in political activities.³⁹⁶ The country’s Public Election Regulations provide for assisted voting for voters “incapacitated because of blindness or other physical cause” who may be assisted by “a person of his own choice”.³⁹⁷ On the downside, the Regulations provide that a person with a mental illness may not vote.³⁹⁸
- Under the Constitution of **Kenya**, Kenya’s Senate is required to have two senators with disabilities, one woman and one man, and the National Assembly has at least one or more legislators with disabilities.³⁹⁹ The Election Act details the procedure for the election of legislators for the seats. It also requires the Independent Electoral and Boundaries Commission to put in place infrastructure and personnel to facilitate voting by “persons with special needs, including persons with disabilities”.⁴⁰⁰ Section 32 of Kenya’s Persons with Disabilities Act secures the civil and political rights of persons with disabilities on an equal basis with others; the right to vote for and be voted directly or through freely chosen representatives in any public or political office. The Act further requires the electoral body to facilitate persons with disabilities in the exercise of their civic and political rights by, among other things, “providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use”.⁴⁰¹ Importantly, in addition to allowing for persons with disabilities to obtain “assistance of their own choice” while voting, the Act affirms that such a support person must do so “strictly in accordance with the instructions of the voter”.⁴⁰²
- In **Malawi**, the Persons with Disabilities Act provides that a person with disability has the right to participate in political and public life, on an equal basis with other persons, including the right and opportunity to vote and be elected to political office. The Act also requires the Malawi Electoral Commission to provide persons with disabilities with appropriate, accessible and easy to understand and use voting procedures, materials and facilities; to make voter registration centres and polling stations accessible to persons with disabilities; and to provide persons with disabilities with necessary assistive products and services to facilitate the exercise of the right to vote.⁴⁰³

³⁸⁹ Constitution of Kenya, Arts 83(1)(b), 99(2)(e), 193(2)(d); Constitution of Sierra Leone, s31, 76(1)(c), 77(1)(h); Constitution of South Africa, ss47(1)(d), 107(1)(d); Constitution of Uganda, Art 80(2)(a), 102(2)(a).

³⁹⁰ Constitution of Ghana, Arts 94(2)(b)(ii), 42; Constitution of Nigeria, ss66(1)(b), 107(1)(b).

³⁹¹ Constitution of Zimbabwe, Fourth Schedule.

³⁹² Constitution of Malawi, s77(3)(a).

³⁹³ CmRPD, General Comment No. 6, Article 5 on Equality and Non-Discrimination, CRPD/C/GC/6, 24 April 2018, para 26.

³⁹⁴ Ibid, para28.

³⁹⁵ Ibid.

³⁹⁶ Persons with Disability Act of Ghana, s1.

³⁹⁷ Regulation 32 of Public Elections Regulations, 1996.

³⁹⁸ Regulation 7 of Representation of the People Law, 1992.

³⁹⁹ Constitution of Kenya, Arts 98(1)(d), 97(c).

⁴⁰⁰ Kenya, Elections Act, ss36, 104.

⁴⁰¹ Kenya, Persons with Disabilities Act 2025, s32(2).

⁴⁰² Ibid, section 32(2)(c) and s 33.

⁴⁰³ Malawi Disabilities Act, s35.

Despite these progressive provisions, Malawi's Parliamentary and Presidential Elections Act draws from the medical model in its provision on assisted voting. It provides for assisted voting in the following terms:

"A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice, or failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person."⁴⁰⁴

- Under **Nigeria's** Electoral Act, the names of voters in the National Register of Voters should be disaggregated on the basis of disability sub-categories. The Act also provides for assisted voting for persons with visual or other disabilities.⁴⁰⁵
- The Constitution of **Rwanda** provides for Rwanda's Chamber of Deputies to include one deputy with a disability elected by the National Council of Persons with Disabilities.⁴⁰⁶ Rwanda's Law Governing Elections provides the procedure for electing the legislator using an electoral college.⁴⁰⁷
- **Sierra Leone's** Public Elections Act legislates for assisted voting in respect of persons who are blind or who have other physical disabilities.⁴⁰⁸
- **South Africa's** Electoral Act provides for assisted voting under which a "voter who is unable to read" may be assisted by a person over 18 years who they so request. In addition, such a voter may be assisted by a poll official in the presence of an election observer and party agents, if available. Providing that a voter should be assisted in the presence of other persons undermines the secrecy of the ballot, and the Act indeed recognizes this because it requires that the secrecy of voting must be preserved when a voter is being assisted.⁴⁰⁹ The Electoral Act also provides that persons with disabilities may register as special voters, which allows them to vote on a pre-determined day before election day either at the voting station or at their place of residence.⁴¹⁰
- The Constitution of **Uganda** provides that Uganda's parliament must include representatives of persons with disabilities.⁴¹¹ Uganda's Parliamentary Elections Act details the conduct of elections by the electoral college for five parliamentary seats reserved for persons with disabilities, which we shall also revisit later in the chapter. The Act also provides directions on the assistance to be provided to voters who are blind. It also provides that voters with disabilities may vote without queuing.⁴¹²
- **Zimbabwe's** Senate is constitutionally mandated to include two senators to represent persons with disabilities.⁴¹³ The Electoral Act details the procedure to be used for electing the Senate seats reserved for persons with disabilities using an electoral college, and it also requires polling stations to be located in places accessible to persons with disabilities.⁴¹⁴

b. Reasonable accommodation measures and other supports

The study States provide persons with disabilities some level of reasonable accommodation and other support measures to facilitate their voting and their candidacy in elections:

- Several States reported to the CmRPD on their use of tactile ballots and Sign Language during voting. They made available tactile ballots, variously referred to as "tactile ballot jackets",⁴¹⁵ "tactile ballot guides",⁴¹⁶ and "Braille-based universal ballot templates",⁴¹⁷ to persons with visual disabilities to enable them to vote in secrecy as required under Article 29 of the CRPD.

⁴⁰⁴ Malawi Parliamentary and Presidential Elections Act, s71.

⁴⁰⁵ Nigeria, Electoral Act ss9, 54.

⁴⁰⁶ Constitution of Rwanda, Art 75.

⁴⁰⁷ Rwanda, Law No. 03/2010/OL of 18/06/2010 Governing Presidential and Legislative Elections.

⁴⁰⁸ Sierra Leone, Public Elections Act, s74.

⁴⁰⁹ South Africa, Electoral Act, s39.

⁴¹⁰ Ibid, s33.

⁴¹¹ Constitution of Uganda, Art 78(1)(c).

⁴¹² Uganda, Parliamentary Elections Act, ss8, 11, 33.

⁴¹³ Constitution of Zimbabwe, Art 120(1)(d).

⁴¹⁴ Zimbabwe, Electoral Act, ss45A, 51.

⁴¹⁵ CRPD/C/GHA/1, para 470.

⁴¹⁶ CRPD/C/SLE/1, para 372.

- In **Ghana**, electoral observation reports stated that these jackets were available in 91-96 percent of voting centres during the 7 December 2020 Presidential and Parliamentary Elections; but Sign Language interpretation or alternative forms of communication were not available at voting centres to support deaf voters.⁴¹⁸
- Election observers of **Nigeria's** 25 February and 18 March 2023 General Elections found that the public broadcaster used Sign Language on its evening news, which was also used in live broadcasts from results collation centres and during press conferences by the Independent National Election Commission. Yet, the Commission availed braille ballots only for presidential elections, thereby denying voters with visual disabilities the equal opportunity to vote in the other elections.⁴¹⁹
- In **Sierra Leone's** 24 June 2023 Multi-Tier Elections, tactile ballot guides were available in only half of the polling stations visited by an observation mission; and the public broadcaster used Sign Language only during live broadcasts from results collation centres.⁴²⁰ Persons with disabilities were reportedly also given priority and assistance.⁴²¹
- **Rwanda** used Braille ballots and Sign Language interpretation during its 3-4 August 2017 Presidential Election.⁴²²
- During its 21 May 2019 Tripartite Elections, **Malawi** made available to voters with visual impairments tactile ballot guides; and television electoral messaging had Sign Language interpretation for deaf persons.⁴²³
- In **Kenya's** 9 August 2022 General Elections, when Sign Language interpretation was not availed to deaf voters, electoral staff endeavoured to communicate with them in writing.⁴²⁴ Election observers found that persons with disabilities, pregnant women, the sick, nursing mothers, and the elderly were allowed priority voting in 99.4% of polling stations.⁴²⁵ Many political parties provided a discount on the fees charged to individuals applying for nomination as election candidates.⁴²⁶ However, persons with disabilities faced electoral hurdles such as limited resources, limited access to information, stigmatization, limited access to national identification documents, and sexual and gender-based violence.⁴²⁷
- AUEOM reported that **Zimbabwe's** 23 August 2023 Harmonised Elections allowed voters with disabilities priority voting,⁴²⁸ although this assessment was contested by another election observation mission which noted that voters with disabilities were not given priority in 50% of the polling stations it monitored.⁴²⁹

⁴¹⁷ CRPD/C/ZAF/1, para 337.

⁴¹⁸ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, 2022, para76.

⁴¹⁹ The European Union Election Observation Mission Nigeria, 2023 Final Report, 25 February and 18 March 2023, (EUEOM Nigeria) https://www.eeas.europa.eu/delegations/nigeria/european-union-election-observation-mission-presents-its-final-report_en?s=114, accessed on 15 May 2024.

⁴²⁰ European Union Election Observation Mission, Sierra Leone 2023 Final Report, General Elections 24 June 2023, (EUEOM Sierra Leone) https://www.eeas.europa.eu/eom-sierra-leone-2023/sierra-leone-2023-final-report-general-elections-june-2023_en?s=410315, accessed on 1 May 2024.

⁴²¹ African Union Election Observation Mission to the 24 June 2023 General Elections in the Republic of Sierra Leone, Preliminary Statement (AUEOM Sierra Leone), 26 June 2023, <https://www.peaceau.org/en/article/african-union-election-observation-mission-to-the-24-june-2023-general-elections-in-the-republic-of-sierra-leone>, accessed on 1 May 2024.

⁴²² Alternative Report to the Initial Report of Rwanda to the CmrPD submitted by the National Union of Disability Organizations in Rwanda, July 2018, <https://www.ecoi.net/en/document/1449533.html>.

⁴²³ African Union Election Observation Mission to the 21 May 2019 Tripartite Elections in the Republic of Malawi: Final Report (AUEOM Malawi), <https://au.int/sites/default/files/documents/38117-doc-report-of-the-african-union-election-observation-mission-to-the-21-may-2019-tripartite-elections-in-the-republic-of-malawi.pdf>, accessed on 1 May 2024.

⁴²⁴ Lawrence Mute, "From Words to More Words? Audit of the 9 August 2022 General Election from a Disability-Inclusion Perspective," United Disabled Persons of Kenya, 2023, <https://www.udpkenya.or.ke/wp-content/uploads/2023/05/Audit-Report-on-Participation-of-Persons-with-disabilities-in-2022-Elections.pdf>, accessed on 20 May 2024.

⁴²⁵ Election Observation Group, "From the Ballot to the Portal: ELOG Observation Report for the 2022 General Elections in Kenya," 2022, <https://elog.or.ke/observation-reports/>, accessed on 14 May 2024.

⁴²⁶ Lawrence Mute, "From Words to More Words? Audit of the 9 August 2022 General Election from a Disability-Inclusion Perspective," United Disabled Persons of Kenya, 2023.

⁴²⁷ African Union and COMESA Election Observation Mission to the 9 August 2022 General Elections in the Republic of Kenya: Statement of Preliminary Findings, 11 August 2022, <https://www.comesa.int/wp-content/uploads/2022/08/AU-COMESA-ELECTION-OBSERVATION-MISSION-TO-KENYA-PRELIMINARY-STATEMENT.pdf>, accessed on 1 May 2024.

⁴²⁸ Africa Election Observation Mission to the 23 August 2023 Harmonised Elections in Zimbabwe, Preliminary Statement (AUEOM Zimbabwe), 25 August 2023, <https://au.int/en/pressreleases/20230828/preliminary-statement-african-union-and-common-market-eastern-and-southern>, accessed on 30 April 2024.

⁴²⁹ Preliminary Statement of the SADC Electoral Observation Mission (SEOM) to the 2023 Harmonised Elections in the Republic of Zimbabwe Held on 23-24 August 2023,

- Although some States legislated for assisted voting,⁴³⁰ a particularly invidious anomaly highlighted in **Zimbabwe** required a presiding officer to observe the casting of ballots of voters with visual impairments, even when they were assisted by support persons of their choice.⁴³¹ This requirement defeats the secrecy of the ballot and hence violates Article 29 of the CRPD.
- In **Malawi's** Tripartite Elections of 21 May 2019, persons with disabilities had express service at voter registration centres; and registration fees for candidates with disabilities were reduced.⁴³²
- In **South Africa's** 8 May 2019 general election, voters with disabilities were provided with special voting arrangements; priority voting; and assisted in voting by support persons of their choice.⁴³³

c. Accessibility

Findings from monitoring missions indicated that polling stations were relatively accessible for voters with disabilities:

- In **Zimbabwe**, 92% of polling stations visited by AUEOM were barrier-free.⁴³⁴
- In **Nigeria**, 84% of polling stations visited by a mission were barrier-free, particularly for persons with mobility disabilities.⁴³⁵
- In **Ghana**, 88.5% of the polling stations visited by the AUEOM were accessible to persons with disabilities.⁴³⁶
- In **Rwanda**, AUEOM found that the majority of polling stations were accessible to persons with disabilities and that Braille ballot papers, and assisted voting were made available.⁴³⁷
- In **Malawi**, 98% of the polling stations visited by AUEOM were accessible to persons with disabilities.⁴³⁸
- In **South Africa**, at least 93% of observed voting stations were accessible to persons with disabilities.⁴³⁹
- In **Sierra Leone**, though, polling centres were accessible in less than half of the polling stations visited by one Mission.⁴⁴⁰

[https://www.sadc.int/file/8429/download?token=dwJvnZT7#:~:text=OBSERVATIONS%20ON%20ELECTION%20DAYS%20\(23%2D24%20AUGUST%202023\)&text=The%20political%20contestants%20have%20continued,was%20relatively%20calm%20and%20peaceful](https://www.sadc.int/file/8429/download?token=dwJvnZT7#:~:text=OBSERVATIONS%20ON%20ELECTION%20DAYS%20(23%2D24%20AUGUST%202023)&text=The%20political%20contestants%20have%20continued,was%20relatively%20calm%20and%20peaceful), accessed on 30 April 2024.

⁴³⁰ Persons with Disabilities Act of Kenya, s29.; Public Elections Act, 2022, s73 <https://www.parliament.go.ke/uploads/acts/THE%20PUBLIC%20ELECTIONS%20ACT,%202022.pdf>, accessed on 27 May 2024.

⁴³¹ See discussion of Zimbabwean situation in Nkosana Maphosa, CG Moyo & B Moyo, "Left in the Periphery: An Analysis of Voting Rights for Persons with Disabilities in Zimbabwe" (2019) 7 *African Disability Rights Yearbook* 112-139.

⁴³² African Union Election Observation Mission to the 21 May 2019 Tripartite Elections in the Republic of Malawi: Final Report, (AUEOM), <https://au.int/sites/default/files/documents/38117-doc-report-of-the-african-union-election-observation-mission-to-the-21-may-2019-tripartite-elections-in-the-republic-of-malawi.pdf>, accessed on 1 May 2024.

⁴³³ African Union Election Observation Mission to the 8 May 2019 National and Provincial Elections in the Republic of South Africa: Report (AUEOM), <https://au.int/sites/default/files/documents/38696-doc-report-of-the-african-union-election-observation-mission-to-the-08-may-2019-national-and-provincial-elections-in-the-republic-of-south-africa.pdf>, accessed on 1 May 2024.

⁴³⁴ Africa Election Observation Mission to the 23 August 2023 Harmonised Elections in Zimbabwe, Preliminary Statement (AUEOM Zimbabwe), 25 August 2023, <https://au.int/en/pressreleases/20230828/preliminary-statement-african-union-and-common-market-eastern-and-southern>, accessed on 30 April 2024.

⁴³⁵ Preliminary Statement: African Union Election Observation Mission to the 25 February 2023 Presidential and National Assembly Elections in the Federal Republic of Nigeria (AUEOM), 27 February 2023, <https://www.peaceau.org/en/article/preliminary-statement-african-union-election-observation-mission-to-the-25-february-2023-presidential-and-national-assembly-elections-in-the-federal-republic-of-nigeria-abuja-27-february-2023>, accessed on 1 May 2024.

⁴³⁶ Report of the African Union Election Observation Mission to Ghana 7th December 2020 Presidential and Parliamentary Elections in the Republic of Ghana, (AUEOM), March 2021, <https://au.int/sites/default/files/documents/40253-doc-report-of-the-african-union-election-observation-mission-to-the-7th-december-2020-presidential-and-parliamentary-elections-in-the-republic-of-ghana.pdf>, accessed on 1 May 2024.

⁴³⁷ African Union Election Observation Mission to the 3-4 August 2017 Presidential Election in the Republic of Rwanda: Statement of Preliminary Findings and Conclusions (AUEOM), 6 August 2017, <https://au.int/en/pressreleases/20170807/press-statement-african-union-election-observation-mission-3-4-august-2017>, accessed on 1 May 2024.

⁴³⁸ African Union Election Observation Mission to the 21 May 2019 Tripartite Elections in the Republic of Malawi: Final Report.

⁴³⁹ African Union Election Observation Mission to the 8 May 2019 National and Provincial Elections in the Republic of South Africa: Report (AUEOM), <https://au.int/sites/default/files/documents/38696-doc-report-of-the-african-union-election-observation-mission-to-the-08-may-2019-national-and-provincial-elections-in-the-republic-of-south-africa.pdf>, accessed on 1 May 2024.

⁴⁴⁰ European Union Election Observation Mission, Sierra Leone 2023 Final Report, General Elections 24 June 2023, (EUEOM Sierra Leone) https://www.eeas.europa.eu/eom-sierra-leone-2023/sierra-leone-2023-final-report-general-elections-june-2023_en?s=410315, accessed on 1 May 2024.

- In **Kenya**, electoral staff made arrangements for persons to vote downstairs where they could not access stations sited on higher floors because of mobility disabilities.⁴⁴¹

Persons with disabilities faced far more substantial limitations in relation to electoral information and communication:

- In **Sierra Leone**, voter education was rarely designed to address persons with disabilities. The principal public broadcaster used Sign Language only during live broadcasts from the results collation centres.⁴⁴²
- In **Nigeria**, the public broadcaster used Sign Language on its evening news, which was also used in live broadcasts from results collation centres and during press conferences by the Independent National Election Commission.⁴⁴³

d. Representation of persons with disabilities

Further barriers in law and practice undermine the actual inclusion of persons with disabilities in elective politics. For example, having observed Nigeria's 2023 general elections, the AUEOM concluded that the first-past-the-post electoral system did not seem to encourage affirmative action for women, youth and persons with disabilities.⁴⁴⁴ Indeed, the inclusion of persons with disabilities in legislatures and governments across the nine study States was very low.

Ghana had no legislators with disabilities, but in recent times, it had one minister with disability,⁴⁴⁵ whose appointment as Minister for Chieftaincy and Traditional Affairs was queried strongly by chiefs who felt a person with disability should not be made the "custodian of the culture" of Ghanaian people.⁴⁴⁶

The ICJ was also informed that political parties in **Nigeria** did not encourage or support persons with disabilities to vie for elective offices in national or state executive or legislative bodies: "within the political parties, it is about how rich you are, it's not about what you have in terms of capacity."⁴⁴⁷ The Governor of Akwa Ibom State who is a person with albinism⁴⁴⁸ reportedly did not self-identify as disabled, and his success was rather framed around his wealth.⁴⁴⁹

The low rates of representation held particularly true for women with disabilities, as the CmRPD noted in its engagements with **Rwanda**.⁴⁵⁰ A study on the inclusion and participation of women with disabilities in local governance in **Zimbabwe** found that elected politicians were amenable to mobilize women with disabilities to vote for them, including by ferrying them to registration centres and polling stations. However, elected officials were not considerate of the needs of women with disabilities.⁴⁵¹ The study also found that the violence that was perennially part of Zimbabwe's elective politics discouraged women with disabilities from seeking elective offices or voting, since they were at risk of violence including sexual and other gender-based and ableist abuses.⁴⁵²

⁴⁴¹ Lawrence Mute, "From Words to More Words? Audit of the 9 August 2022 General Election from a Disability-Inclusion Perspective," United Disabled Persons of Kenya, 2023, <https://www.udpkenya.or.ke/wp-content/uploads/2023/05/Audit-Report-on-Participation-of-Persons-with-disabilities-in-2022-Elections.pdf>, accessed on 20 May 2024.

⁴⁴² European Union Election Observation Mission, Sierra Leone 2023 Final Report.

⁴⁴³ The European Union Election Observation Mission Nigeria, 2023 Final Report, 25 February and 18 March 2023, (EUEOM Nigeria) https://www.eeas.europa.eu/delegations/nigeria/european-union-election-observation-mission-presents-its-final-report_en?s=114, accessed on 15 May 2024.

⁴⁴⁴ Ibid.

⁴⁴⁵ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, para77.

⁴⁴⁶ Joseph Ocran, "Disability, Political Citizenship and the Challenge of Inclusion in National Politics: Analysis of Five Cases from Ghana" (2023)1 *Ghana Social Science Journal* 1–19. A source told the ICJ that: "Some chiefs ... (are not) allowed by their traditions to shake hands with a blind person. Some chiefs do not even look at the face or see a blind person". Key Informant 1.

⁴⁴⁷ Key Informant 4.

⁴⁴⁸ Baba Martins, 'PDP has given Nigeria first Albino governor,' Daily Trust, 5 May 2023, <https://dailytrust.com/pdp-has-given-nigeria-first-albino-governor/>, accessed on 28 July 2024.

⁴⁴⁹ Key Informant 4.

⁴⁵⁰ CRPD/C/RWA/CO/1, para 53.

⁴⁵¹ Deaf Women Included (DWI), "Local Governance in Zimbabwe: Inclusion and Participation of Women with Disabilities," September 2023, https://www.alignplatform.org/sites/default/files/2023-10/zimbabwe_-_dwi.pdf, accessed on 2 May 2024.

⁴⁵² Ibid.

A number of positive indicators can be highlighted on the representation of persons with disabilities in the study States:

- Some candidates with albinism in Malawi's 2019 Tripartite Elections reported discrimination during the party primaries, but on the positive side, one was elected as a civic ward representative.⁴⁵³
- In Rwanda, the election of the designated legislator with disability by the electoral college of persons with disabilities has, in recent times, become extremely competitive, with as many as 13 candidates vying for the one seat in the 2017 elections.⁴⁵⁴
- Sierra Leone's 2018 parliament had three persons with disabilities from two political parties, and it had 11 councillors with disabilities in local councils.⁴⁵⁵ A source told ICJ that a candidate's disabilities are used against them during campaigns for political office.⁴⁵⁶
- In South Africa, political parties such as the African National Congress include persons with disabilities on their proportional election lists.⁴⁵⁷
- Persons with disabilities in Uganda are allocated five parliamentary seats which are filled using an electoral college of voters with disabilities. This model for electing persons with disabilities to parliament is unique and may inform innovation in other States. The Persons with Disabilities Act provides for Ugandans with disabilities to use electoral colleges to elect their representatives to different levels of government, including filling their five-person allocation in parliament.⁴⁵⁸ A concern has been raised that legislators elected by the college are drawn by statute from five sub-categories, namely: physical disability; visual disability; hearing disability; women; and youth. This list excludes other disability categories, including psychosocial and/or intellectual disabilities.⁴⁵⁹
- In Zimbabwe's Ninth Parliament, the Senate had two senators who filled the seats reserved for persons with disabilities, while the National Assembly had two directly elected legislators who were persons with disabilities.⁴⁶⁰ Alongside OPDs, these two senators successfully lobbied for the introduction of lower voting booths for voters using wheelchairs, and for the adoption of the Disability Policy in 2021.⁴⁶¹ The Constitution of Zimbabwe, however, does not provide for how these senators may be replaced if they die or are incapacitated in office.⁴⁶² It has also been argued that persons with disabilities would rather have had a quota of representation in the National Assembly which makes key policy and resource allocation decisions.⁴⁶³
- Following Kenya's 2022 general elections, the National Assembly had five legislators who are persons with disabilities, including four elected via the first-past-the-post electoral system, and a legislator elected to fill one of 12 reserved seats for persons with disabilities. Kenya's Senate has two senators who are persons with disabilities, filling the seats reserved for persons with disabilities under the Constitution. Finally, 27 of the country's 47 County Assemblies include legislators who are persons with disabilities.⁴⁶⁴

As a general consideration, persons with disabilities typically recognize the importance of engaging proactively in the political process and not simply being reactive. The desire of some persons with disabilities to participate fully in the political affairs of their communities is encapsulated by a Malawian

⁴⁵³ African Union Election Observation Mission to the 21 May 2019 Tripartite Elections in the Republic of Malawi: Final Report, (AUEOM), <https://au.int/sites/default/files/documents/38117-doc-report-of-the-african-union-election-observation-mission-to-the-21-may-2019-tripartite-elections-in-the-republic-of-malawi.pdf>, accessed on 1 May 2024.

⁴⁵⁴ Key Informant 5.

⁴⁵⁵ CRPD/C/SLE/1, para 377.

⁴⁵⁶ Key informant 6 told the ICJ: "you want to contest for a position, they will use your disability to campaign against you. They will use provocation, mockery..."

⁴⁵⁷ CRPD/C/ZAF/1, para 341.

⁴⁵⁸ Persons with Disabilities Act of Uganda, s43-44.

⁴⁵⁹ Key Informant 7.

⁴⁶⁰ CRPD/C/ZWE/1, para 370.

⁴⁶¹ Cowen Dziva, "Opportunities and Challenges for Persons with Disabilities' Participation in Electoral Processes in Zimbabwe" in Gideon Thou, Lawrence Mhandara and Charles Moyo (eds) *Zimbabwe in Transition: Towards Transformative and Sustainable Public Governance and Management* (University of Zimbabwe Publications 2022) 125.

⁴⁶² Ibid.

⁴⁶³ Deaf Women Included (DWI), "Local Governance in Zimbabwe: Inclusion and Participation of Women with Disabilities," September 2023) 5, https://www.alignplatform.org/sites/default/files/2023-10/zimbabwe_-_dwi.pdf, accessed on 2 May 2024.

⁴⁶⁴ Lawrence Mute, "From Words to More Words? Audit of the 9 August 2022 General Election from a Disability-Inclusion Perspective," United Disabled Persons of Kenya, 2023, <https://www.udpkenya.or.ke/wp-content/uploads/2023/05/Audit-Report-on-Participation-of-Persons-with-disabilities-in-2022-Elections.pdf>, accessed on 20 May 2024..

with an intellectual disability who was quoted in a focus group discussion for a UNDP study, stating:

"I am a person with intellectual disability, and I am married with two kids. I work loading luggage at the bus stand, people have been laughing at me, saying with my condition, I cannot support a family, but I have proved them wrong by working hard. I send my kids to school and am a happy parent. I voted this year, and I intend to be voting as long as am alive."⁴⁶⁵

Assessing the participation of persons with disabilities in political and public life, however, should be tempered by the reality that the general public – irrespective of disability – tends not to be particularly proactive participants in political processes for a range of reasons. In this context, a study on the participation of persons with disabilities in political activities in a Ghanaian metropolis found that:

the majority of participants (75 percent) had never contributed money to a political party or a candidate;

Nine percent contributed money to a political party or a candidate frequently;

just over half (52 percent) of participants had never written or spoken to any elected representatives or officials;

nine percent frequently wrote or spoke to elected representatives or officials;

51 percent of the participants had never attended a political meeting;

10 percent attended political meetings frequently;

53 percent of the participants had never written letters to newspapers on any political issue; and

Nine percent wrote letters frequently to newspapers on political issues.⁴⁶⁶

iii. Findings and recommendations

The ICJ makes the following findings:

1. The nine study States guarantee the right to political participation, including the rights to join and form political parties, and to participate in political activities.
2. The constitutions of the nine study States treat persons with psychosocial disabilities differentially, often by limiting them from registering as voters and voting, and from standing in parliamentary or presidential elections.
3. Some of the study States have established specific measures aimed at enhancing the inclusion of persons with disabilities in their legislatures. These include establishing specific legal frameworks to ensure persons with disabilities have parliamentary representation, such as in Kenya, Rwanda, Uganda and Zimbabwe. Electoral laws, such as in South Africa, also enable persons with disabilities to use the innovation of special voters rolls so that they may vote at a more convenient time, usually before election day either at the voting station or at their place of residence.
4. The nine study States provide persons with disabilities with some reasonable accommodation and other support measures to facilitate their voting and their candidacy in elections. These measures include the use of tactile ballots and Sign Language, priority voting, assisted voting, and reduced registration fees for candidates with disabilities.
5. All nine study States have taken measures towards ensuring that electoral environments, such as registration centres and polling stations, are accessible to persons with disabilities. However, significant barriers remain. While some registration centres and polling stations are accessible to persons with disabilities, this is not the case universally, and voters with disabilities frequently encounter physical barriers when attempting to vote.
6. The nine States have not succeeded in ensuring that electoral material and services are availed to voters with disabilities in accessible formats.

⁴⁶⁵ United Nations Development Programme, 'Political Participation Of Persons With Intellectual Or Psychosocial Disabilities' (2021), <https://www.undp.org/sites/g/files/zskqke326/files/2021-12/UNDP-II-UNPRPD-Political-Participation-of-Persons-with-Intellectual-or-Psychosocial-Disabilities-V2.pdf>, accessed on 28 May 2024.

⁴⁶⁶ Ernest Appiah and Kyei Joslin Dogbe, 'Participation of Persons with Disabilities in Political Activities in Kumasi Metropolis, Ghana' (*Disability CBR & Inclusive Development*, November 2020) <https://dcidj.uog.edu.et/index.php/up-j-dcbrid/article/view/372>, accessed on 2 May 2024.

7. The inclusion of persons with disabilities in parliaments is low. Ghana, Nigeria, and Sierra Leone do not have any parliamentarians with disabilities. The first past-the-post electoral system tends not to be configured to enable the election of individuals from marginalised groups such as persons with disabilities. Candidates with disabilities face stigma from electors who feel they cannot be represented by persons with disabilities.

The ICJ therefore makes the following recommendations:

1. States should enact new laws or amend existing laws to repeal all disability-based voting restrictions.
2. States should take all necessary measures to ensure the inclusion of persons with disabilities in all legislatures whether on national, provincial or local levels. In particular, Ghana, Malawi, Nigeria, and Sierra Leone should expeditiously institute measures for the inclusion of persons with disabilities in their legislatures.
3. States should ensure that persons with disabilities have barrier-free access to registration centres, polling stations and other forums where political participation takes place.
4. States should provide persons with disabilities with information and communication material necessary to participate in elections on an equal basis in accessible formats.

VII. Education

Article 24 of the CRPD: Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning.
2. In realizing this right, States Parties shall ensure that:
 - a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c) Reasonable accommodation of the individual's requirements is provided;
 - d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 16 of the ADP: Right to education

1. Every person with a disability has the right to education.
2. States Parties shall ensure to persons with disabilities the right to education on an equal basis with others.
3. States Parties shall take, reasonable, appropriate and effective measures to ensure that inclusive quality education and skills training for persons with disabilities is realised fully, including by:
 - a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education;
 - b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with

others, including by ensuring the literacy of persons with disabilities above compulsory school age;

- c) Ensuring reasonable accommodation of the individual's requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education;
 - d) Providing reasonable, progressive and effective individualised support measures in environments that maximise academic and social development, consistent with the goal of full inclusion;
 - e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments;
 - f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
 - g) Ensuring that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities;
 - h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs;
 - i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and
 - j) Facilitating respect, recognition, promotion, preservation and development of sign languages.
4. The education of persons with disabilities shall be directed to:
- a) The full development of human potential, sense of dignity and self-worth;
 - b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and
 - d) The preservation and strengthening of positive African values.

This chapter explores the extent to which the nine study States have implemented their obligations to secure the right of persons with disabilities to inclusive education. It focuses on whether and how policies and laws in the nine study States provide for inclusive education, and the extent to which the States support inclusive education programmes.

i. Legal content and state obligations

The right to education is provided for in the ICESCR (article 13), the CRC (article 28) the African Charter (article 17) and the African Charter on the Rights and Welfare of the Child (article 11). While these provisions do not expressly provide for the right to education for persons with disabilities, they do provide that the right must be provided without discrimination on any status grounds, including disability.

Under the CRPD, the right to education for persons with disabilities is understood as the right to inclusive education. According to UNESCO, inclusive education is a process of addressing and responding to the diverse needs of all learners by increasing participation in learning and reducing exclusion within and from education. Its objective is to support education for all, with special emphasis on removing barriers to participation and learning for girls and women, disadvantaged groups, learners with disabilities and out-of-school children.⁴⁶⁷ Commitment to inclusive education implies that States undertake or facilitate systemic changes and modifications in content, teaching methods, approaches, structures and strategies in education to ensure that all students have an equitable and participatory

⁴⁶⁷ UNESCO, "Overcoming Exclusion Through Inclusive Approaches in Education: A Challenge and a Vision," 2003, <https://unesdoc.unesco.org/ark:/48223/pf0000134785>, accessed on 20 August 2024.

learning experience and environment that best corresponds to their requirements and preferences.⁴⁶⁸

The importance of the right to education for persons with disabilities cannot be overstated. The World Bank and UNICEF estimate that less than 10% of children with disabilities under the age of 14 in Africa attend school.⁴⁶⁹ A UNICEF study on the education of children with disabilities in nine countries in Central and West Africa, including Ghana and Sierra Leone, found that the percentage of out-of-school children among 5-17-year-olds ranges from 27% for children with no functional difficulties to 33% for children with one functional difficulty, and 38% for children with multiple functional difficulties. The study also found that of children aged 5-17 years with no functional difficulties, 50% are attending school at the appropriate age and level, compared to 44% of children with one functional difficulty and 39% of children with multiple difficulties.⁴⁷⁰ These functional difficulties were assessed in domains such as hearing, vision, communication/comprehension, learning, mobility and emotions.

Article 24 of the CRPD and Article 16 of the ADP require States to implement a number of obligations towards securing the right to education for persons with disabilities.

First, States must ensure that persons with disabilities are not discriminated against by being excluded from the general education system on the basis of disability,⁴⁷¹ and hence that they enjoy that right on an equal basis with others.⁴⁷²

Second, States must ensure that persons with disabilities have access to an inclusive, quality and free primary and secondary education in the communities in which they live.⁴⁷³ Significantly for African States, unlike the CRPD, the ADP requires that even secondary education be free for persons with disabilities.⁴⁷⁴ States must replace segregated and integrated educational systems with inclusive education systems.⁴⁷⁵ The education system must bear the fourfold features of availability, accessibility, acceptability and adaptability.⁴⁷⁶

Third, States must provide reasonable accommodation to persons with disabilities.⁴⁷⁷ The denial of reasonable accommodation constitutes discrimination, and the duty to provide reasonable accommodation is immediate and not subject to progressive realisation.⁴⁷⁸ The ADP requires States to ensure that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities.⁴⁷⁹

Fourth, States must avail to persons with disabilities the support they need within the general education system to facilitate their education.⁴⁸⁰ Creating an additional obligation that goes beyond even the reasonable obligation requirement, States are required to provide persons with disabilities with effective individualised support measures in environments that maximize academic and social development,

⁴⁶⁸ CmRPD, General Comment No. 4 on Article 24: The Right to Inclusive Education, CRPD/C/GC/4, 26 August 2016, para11, <https://documents.un.org/doc/undoc/gen/g16/263/00/pdf/g1626300.pdf?token=gclzNhLIi9wgiT1XSw&fe=true>, accessed on 8 May 2024.

⁴⁶⁹ World Bank Group, 'Disability Inclusive Education in Africa Program, 30 November 2018, <https://www.worldbank.org/en/topic/disability/brief/disability-inclusive-education-in-africa-program>, accessed on 20 July 2024; UNICEF, 'Children with Disabilities in Eastern and Southern Africa: A Statistical Overview of their Well-Being, 21 July 2023, <https://data.unicef.org/resources/children-with-disabilities-in-eastern-and-southern-africa-a-statistical-overview-of-their-well-being/>, accessed on 20 July 2024.

⁴⁷⁰ UNICEF, "In pursuit of education for All in West and Central Africa: What do the data tell us about children with disabilities?" 2022, pp 14, 52 <https://www.unicef.org/wca/media/8151/file/In-pursuit-of-education-for-all-full-report-EN.pdf>, accessed on 25 August 2024.

⁴⁷¹ CRPD, Art 24(2)(a).

⁴⁷² ADP, Art 16(2).

⁴⁷³ CRPD, Art 24(2)(b); ADP, Art 16(3)(a).

⁴⁷⁴ Japhet Biegona, "The Scope of Recognition and Protection of the Right to Inclusive Education in the African Human Rights System" in Gauthier de Beco, Shivaun Quinlivan and Janet E. Lord (eds) *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019).

⁴⁷⁵ CmRPD, General Comment No. 4 on Article 24: The Right to Inclusive Education, CRPD/C/GC/4, 26 August 2016, para 11.

⁴⁷⁶ Ibid, paras 20-25.

⁴⁷⁷ CRPD, Art 24(2)(c); ADP, Art 16(3)(c).

⁴⁷⁸ CmRPD, General Comment No. 4 on Article 24: The Right to Inclusive Education, CRPD/C/GC/4, 26 August 2016, para 30.

⁴⁷⁹ ADP, Art 16(3)(g).

⁴⁸⁰ CRPD, Art 24(2)(d); ADP, Art 16(3)(c).

consistent with the goal of full inclusion.⁴⁸¹ Support measures may include the provision of a teacher's aide or assistant, or individualised support involving the provision of an assistive device or support person.⁴⁸²

Unlike the CRPD, the ADP establishes the express obligation for States to ensure the availability of appropriate schooling choices "to persons with disabilities who may prefer to learn in particular environments".⁴⁸³ This provision may be relevant in addressing, for example, disagreements about whether deaf learners should learn in inclusive education settings or whether they should learn on their own in specialised settings.

In this regard, it has been argued by some, for example, that educating deaf learners separately from hearing learners does not necessarily amount to discrimination, and that, in fact, deaf learners may be better accommodated in separate rather than regular schools.⁴⁸⁴ In other words, a case has been made for an understanding of inclusion that ensures that deaf pupils can acquire knowledge using sign language in contexts of inclusive education regardless of location (i.e., special schools or regular schools).⁴⁸⁵ Ensuring inclusive education for learners with disabilities in Africa may entail moving beyond the nomenclature of special or inclusive education in preference to guaranteeing quality education for learners with disabilities. In that sense, inclusive education could be understood as a philosophy of education that ensures learners receive quality education, whether that is delivered in what are typically labelled as inclusive or special school settings, respectively.⁴⁸⁶

Alternatively, it is plausible to argue that, read together, the ADP and the CRPD produce no inconsistency, as both prioritize inclusive education for learners with disabilities, and in most cases, this would require schooling of children with disabilities in community settings that special schools cannot provide.⁴⁸⁷ Understood in this way, the ADP may be interpreted to simply be providing emphasis on the autonomy of learners with disabilities, a principle which ultimately undergirds the CRPD too, including Article 24 on inclusive education.⁴⁸⁸ At a minimum, however, it is clear that the CRPD Committee's understanding of inclusive education tilts substantially towards education in inclusive, community settings.⁴⁸⁹ Indeed, the Committee has indicated in its Guidelines on Deinstitutionalization that the compelled placement of learners with disabilities in special schools might amount to a form of institutionalisation, contrary to the CRPD.⁴⁹⁰

Other state obligations on the right to education established by the CRPD and the ADP cover the need to make provision for deaf, blind or deaf-blind learners, adequate training of teachers, and higher education.⁴⁹¹ Finally, the ADP is also peculiar in its requirement that education should promote "positive African values".⁴⁹² It has been argued that this provision obligates States to, for example, address

⁴⁸¹ CRPD, Art 24(2)(e); ADP, Art 16(3)(d).

⁴⁸² Valentina Fina, "Article 24 [Education]" in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer International Publishing Switzerland 2017).

⁴⁸³ ADP, Art 16(3)(e).

⁴⁸⁴ Ngozi Umeh, "Progress Towards Inclusive Primary Education in Selected West African Countries" (2018) 6 *African Disability Rights Yearbook* 263-276; Also see Willene Holness, "The Development and Use of Sign Language in South African Schools: The Denial of Inclusive Education" (2016) 4 *African Disability Rights Yearbook* 141-190.

⁴⁸⁵ Martin Musengi and Barbra Nyangairi, "Educating Deaf Children in Mainstream and Special Secondary School Settings: Inclusive Mirage or Reality?" in Tsitsi Chataika (ed) *The Routledge Handbook of Disability in Southern Africa* (Routledge 2019) 105.

⁴⁸⁶ A. C. Onuora-Oguno, *Development and the Right to Education in Africa* (Springer 2018), chapter 4.

⁴⁸⁷ CmRPD, General Comment No. 4 on Article 24: The Right to Inclusive Education, CRPD/C/GC/4, 26 August 2016, paras 19, 26, 50, 52. Paragraph 26, for example, is clear that "Paragraph 2(b) also requires that persons with disabilities are able to attend primary and secondary schools within the communities where they live. Students should not be sent away from home."

⁴⁸⁸ CmRPD, General Comment No. 4 on Article 24: The Right to Inclusive Education, CRPD/C/GC/4, 26 August 2016, para 10 (b).

⁴⁸⁹ Ibid, para 40 indicates that inclusive education "is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system".

⁴⁹⁰ CRPD/C/5: Guidelines on deinstitutionalization, including in emergencies, 9 September 2022, paras 15, 50.

⁴⁹¹ CRPD, Art 24; ADP, Art 16. Also see Gauthier de Beco, "Comprehensive Legal Analysis of Article 24 of the Convention on the Rights of Persons with Disabilities" in Beco, Quinlivan and Lord (eds) *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press, 2019).

⁴⁹² ADP, Art 16(4)(d).

harmful cultural and traditional practices to deal with disability injustices in the educational context.⁴⁹³

ii. Implementation

The extent to which the study States are realising their obligations to guarantee the right to inclusive education for persons with disabilities is reflected in the concerns which the CmRPD raised with the States it reviewed under its Article 35 reporting procedure. These concerns include the following:

- That while some persons with disabilities learned in inclusive educational settings, others continued to be taught in special schools, and States had not established clear timelines for transitioning from segregated education to inclusive education;⁴⁹⁴ and
- That States had not put in place effective measures to facilitate inclusive education for learners with disabilities, including by ensuring accessibility; providing reasonable accommodation; and availing other necessary support.⁴⁹⁵

The assessments made in this chapter draw from the constitutional and statutory provisions on education for persons with disabilities in the nine study States. These provisions are located in the national constitutions of the States. They are also located in the disability statutes set out in Table 6. Besides, the States include some disability-specific provisions in general legislation on education. Table 10 below lists the key statutes on education in the study States.

Table 10: Primary legislation on education

State	Statute	Enacted
Ghana	Education Act ⁴⁹⁶	2008
Kenya	Basic Education Act ⁴⁹⁷	2013
Malawi	Education Act ⁴⁹⁸	2013
Nigeria	Compulsory, Free Universal Basic Education Act ⁴⁹⁹	2004
Rwanda	Law Determining the Organisation of Education ⁵⁰⁰	2021
Sierra Leone	Basic and Senior Secondary Education Act ⁵⁰¹	2023
South Africa	South African Schools Act ⁵⁰²	1996

⁴⁹³ Oche Onazi, *An African Path to Disability Justice: Community, Relationships and Obligations* (Springer 2020), chapter 3.

⁴⁹⁴ CRPD/C/KEN/CO/1, para 43(a); CRPD/C/MWI/CO/1-2, para 49(a); CRPD/C/ZAF/CO/1, para 40(a); CRPD/C/UGA/CO/1, para 48(a).

⁴⁹⁵ CRPD/C/MWI/CO/1-2, para 49(b); CRPD/C/RWA/CO/1, para 43; CRPD/C/ZAF/CO/1, para 40(b), (d); CRPD/C/UGA/CO/1, para 48(b), (c).

⁴⁹⁶ Ghana, Education Act, 2008 (ACT 778), [https://ir.parliament.gh/bitstream/handle/123456789/1809/EDUCATION%20ACT.%202008%20\(ACT%20778\).pdf](https://ir.parliament.gh/bitstream/handle/123456789/1809/EDUCATION%20ACT.%202008%20(ACT%20778).pdf), accessed on 6 May 2024.

⁴⁹⁷ Kenya, Basic Education Act, 2013, http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20211#part_I, accessed on 7 May 2024.

⁴⁹⁸ Malawi, Education Act, 2013, <https://www.education.gov.mw/index.php/edu-resources/acts-policies-guidelines>, accessed on 16 July 2024.

⁴⁹⁹ Nigeria, Compulsory, Free Universal Basic Education Act, 2004, <https://education.gov.ng/wp-content/uploads/2022/04/Compendium-Of-Education-Sector-Laws-In-Nigeria-Third-Edition-Vol.1.pdf>, accessed on 16 July 2024.

⁵⁰⁰ Rwanda, Law Determining the Organisation of Education, 2021, <https://rwandalii.org/akn/rw/act/law/2021/10/enq@2021-02-18#:~:text=6%20years%20old,-Article%2057%20%E2%80%93%20Right%20to%20primary%20education,public%20and%20Government%20Dsubsidised%20schools>, accessed on 16 July 2024.

⁵⁰¹ Sierra Leone, Basic and Senior Secondary Education Act, 2023, <https://mbsse.gov.sl/wp-content/uploads/2023/06/Basic-and-Senior-Secondary-Education-Act-2023-.pdf>, accessed on 7 May 2024.

⁵⁰² South African Schools Act, 1996, https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf, accessed on 16 July 2024.

Uganda	Education (Pre-Primary, Primary and Post-Primary) Act ⁵⁰³	2008
Zimbabwe	Education Act ⁵⁰⁴	1987, 2019

a. Guarantees on the right to education

Constitutional provisions on the right to education in some of the study States are quite generic and only directive, while provisions in other constitutions are detailed and directly enforceable before courts.

The Constitutions of Nigeria and Sierra Leone frame their provisions on education as fundamental principles of State policy which, as already pointed out in chapter two of this study, are not directly enforceable before courts.⁵⁰⁵ The Constitution of Nigeria requires Nigeria to ensure everyone has equal and adequate educational opportunities at all levels; and to provide, whenever practicable, free, compulsory and universal primary education, and free secondary, university and adult education.⁵⁰⁶ The Constitution of Sierra Leone includes an aspiration for Sierra Leone to achieve free compulsory basic education at primary and junior secondary school levels, and free senior secondary education as and when practicable.⁵⁰⁷ It also requires the State to take measures "safeguarding the rights of vulnerable groups, such as children, women and the disabled" in "securing educational facilities".⁵⁰⁸

The Constitutions of all other study States establish specific guarantees on the right to education:

- Under the Constitution of Ghana, all persons have the right to equal educational opportunities and facilities, including compulsory basic education, secondary education and higher education. Primary education is compulsory and free, while secondary and higher education are to be made free progressively. Schools at all levels are required to have adequate facilities. The Constitution also prohibits the denial of education to children on the basis of religious or other beliefs.⁵⁰⁹
- The Constitution of Kenya guarantees everyone the right to education; and children have the right to free and compulsory basic education.⁵¹⁰ It entitles persons with disabilities "to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person".⁵¹¹
- The Constitution of Malawi entitles all persons to education.⁵¹²
- The Constitution of Rwanda guarantees every Rwandan the right to education. Primary education is compulsory and free in public schools. The Constitution also requires Rwanda to establish special measures facilitating the education of persons with disabilities.⁵¹³
- The Constitution of South Africa establishes everyone's right to basic education, and to further education made progressively available and accessible by the State.⁵¹⁴
- The Constitution of Uganda establishes every person's right to education, and basic education is free and compulsory.⁵¹⁵
- The Constitution of Zimbabwe guarantees basic State-funded education to Zimbabweans and permanent residents. It also obligates the State to take steps, subject to available resources, to

⁵⁰³ Uganda, Education (Pre-Primary, Primary and Post-Primary) Act, 2008, <https://ulii.org/akn/ug/act/2008/13/eng@2008-08-29#:~:text=The%20objectives%20of%20the%20Act,full%20effect%20to%20the%20Universal>, accessed on 1 June 2024.

⁵⁰⁴ Zimbabwe, Education Act (1987, 2019), <https://zimlil.org/akn/zw/act/1987/5/eng@2020-03-06/source>, accessed on 16 July 2024.

⁵⁰⁵ Ngozi Umeh, "Progress Towards Inclusive Primary Education in Selected West African Countries" (2018) 6 *African Disability Rights Yearbook* 6.

⁵⁰⁶ Constitution of Nigeria, s18.

⁵⁰⁷ Constitution of Sierra Leone, s9(2).

⁵⁰⁸ Ibid, s9(1)(b).

⁵⁰⁹ Constitution of Ghana, Art 25, Art 28(4).

⁵¹⁰ Constitution of Kenya, Arts 43(1)(f), 53(1)(b).

⁵¹¹ Ibid, Art 54(1)(b).

⁵¹² Constitution of Malawi, s25.

⁵¹³ Constitution of Rwanda, Arts 20, 51.

⁵¹⁴ Constitution of South Africa, s29.

⁵¹⁵ Constitution of Uganda, Arts 30, 34(2), XVIII.

provide persons with disabilities “special facilities for their education”, and to provide them with State-funded education and training “where they need it”.⁵¹⁶

The Constitutions of Kenya, Rwanda and Zimbabwe establish specific educational entitlements for persons with disabilities. These provisions are, however, not anchored in the human rights model of disability and seem to prioritise special, segregated education. For example, the Constitution of Zimbabwe’s direction that learners with disabilities be provided “special facilities” is rooted in the medical model of disability and allows the continuation of special schools while failing to embrace inclusive education.⁵¹⁷

b. Bridging inclusive education and segregated education

Although the study States have adopted policies or enacted laws with provisions on inclusive education, their education policies and laws retain significant contrary provisions on segregated education.

Ghana’s Inclusive Education Policy, on its face, follows the approach established by the CRPD. It presents inclusive education as a process of increasing access to and the participation of all students in schools, including children with disabilities. It further provides a checklist for identifying barriers to inclusion in schools.⁵¹⁸ Yet, the State’s understanding of inclusive education is geared towards the establishment of region-based schools that are equipped with facilities and services to support the education of learners with disabilities – essentially a special school system.

In line with the Policy, the Education Act of Ghana defines inclusive education as: “the value system which holds that all persons who attend an educational institution are entitled to equal access to learning, achievement and the pursuit of excellence in all aspects of their education, and which transcends the idea of physical location but incorporates the basic values that promote participation, friendship and interaction”.⁵¹⁹ This approach implies that persons with disabilities still have to learn in separate schools away from their local communities. The Education Act requires district assemblies and heads of institutions to ensure that designs for schools are user-friendly for children with special needs. The Act also requires the improvement of infrastructure and the provision of additional facilities in institutions where children with special needs learn.⁵²⁰ Parents and guardians are criminally liable under the Persons with Disability Act if they fail to enrol a child with disability into school.⁵²¹ Similarly, an official who refuses to admit a person to school on the basis of disability commits an offence.⁵²² Yet, the Act also allows persons with disabilities to be denied admission into learning institutions where assessment tests find them unsuitable to enter into regular schools. It also requires Ghana to establish special schools “for persons with disability who, by reason of their disability, cannot be enrolled in formal schools”.⁵²³ Hence, the Persons with Disability Act does not comply with Article 24 of the CRPD.⁵²⁴

In Kenya, the Sector Policy for Learners and Trainees with Disabilities as well as the Persons with Disabilities National Policy(2024) describes inclusive education as “An approach where learners and trainees with disabilities are provided with appropriate educational interventions within regular institutions of learning with reasonable accommodations and support”.⁵²⁵ The Policy recognises that

⁵¹⁶ Constitution of Zimbabwe, Arts 75, 83.

⁵¹⁷ Esau Mandipa, “A Critical Appraisal of the Right to Inclusive Education for Children with Disabilities in Zimbabwe” (2015) 4 *Afro Asian Journal of Social Sciences* 9.

⁵¹⁸ Ministry of Education, “Inclusive Education Policy Ghana,” <https://sapghana.com/data/documents/Inclusive-Education-Policy-official-document.pdf>, accessed on 1 June 2024.

⁵¹⁹ Ghana, Education Act, s5.

⁵²⁰ Ibid, s5

⁵²¹ Persons with Disability Act of Ghana, s16.

⁵²² Ibid, s20.

⁵²³ Persons with Disability Act of Ghana, ss18, 20.

⁵²⁴ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, 2022, para 60.

⁵²⁵ Ministry of Education, “Sector Policy for Learners and Trainees with Disabilities,” 2018, <https://repository.kippira.or.ke/handle/123456789/555#:~:text=Though%20the%20policy%20recognizes%20all,palsy%2C%20speech%20and%20language%20difficulties%2C>, accessed on 22 July 2024.

Kenya should move from segregated to inclusive education where learners with disabilities are enrolled in regular classrooms together with their non-disabled peers. The policy, however, also stresses the importance of special institutions of learning, special units in regular institutions of learning, and home-based education “in providing education and training specifically for learners and trainees with severe disabilities and under vulnerable circumstances”.⁵²⁶ The Policy also States that special schools should be maintained while the country strives to transition towards inclusive education.⁵²⁷

Kenya’s Basic Education Act reflects the above conflicted policy approach.⁵²⁸ On one hand, the Basic Education Act prohibits the discrimination of a child with disability seeking admission into a learning institution. Public schools may administer tests only to determine the education level where a newly admitted learner should be placed.⁵²⁹ However, the Act provides for the establishment of special and integrated schools for learners with disabilities.⁵³⁰ Special needs education is provided in public special schools, covering, in the words of the Act, “intellectually, mentally, physically, visually, emotionally challenged or hearing impaired learners”, and “pupils with multiple disabilities”.⁵³¹ The Basic Education Act understands special needs education to include “education for ... learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners”.⁵³² The Basic Education Act establishes an ableist framework under which decision-making on the education of children with special needs is transferred from learners with special needs and their parents to County Education Boards. These Boards determine whether the child would benefit from further school education and how and where such education should take place.⁵³³

The Persons with Disabilities Act guarantees the right to education.⁵³⁴ Every person with disability has the right to “admission to any institution of learning and access to an inclusive, quality education on an equal basis with others”. The Act obligates authorities to “ensure that persons with disabilities have access to inclusive education, without discrimination and on an equal basis at all levels”.⁵³⁵ The Act adopts the definition of inclusive education contained in the policies above, favouring placement of all children within “regular institutions of learning” with appropriate support and reasonable accommodations.⁵³⁶ Any person who denies a person with disability admission on the basis of disability commits an offence.⁵³⁷ The Act is explicit, in respect to inclusive education that “every person with disabilities is entitled to receive the support services required, within the general education system, to facilitate his or her effective inclusive education”.⁵³⁸ This strong statement in favour of placement of children with disabilities “within the general education system”, and presumably in “regular” community schools, stands in stark contrast with the Basic Education Act.

Malawian legislation provides specifically for inclusive education. The Education Act requires the minister responsible for education to promote education for all people in Malawi, irrespective of race, ethnicity, gender, religion, disability or any other discriminatory characteristics.⁵³⁹ The Persons with Disabilities Act requires Malawi to ensure equal opportunities and inclusive education for persons with disabilities. The Act prohibits educational institutions from denying admission to or expelling a person from an education

⁵²⁶ Ministry of Education, Sector Policy for Learners and Trainees with Disabilities, 2018, p 5.

⁵²⁷ Ibid.

⁵²⁸ For a perspective on the Basic Education Act, see Elizabeth Kamundia, “Legislating Inclusive Education in the Era of the CRPD: The Case of Kenya” in Beco, Quinlivan and Lord (eds) *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press, 2019).

⁵²⁹ Kenya, Basic Education Act s34.

⁵³⁰ Ibid, s28(2)(d).

⁵³¹ Ibid, s44.

⁵³² Ibid, s2.

⁵³³ Ibid, s47. Also see William Aseka and Arlene S Kanter, “The Basic Education Act of 2013: Why it is One Step Forward and Two Steps Back for Children with Disabilities in Kenya” (2014) 2 *African Disability Rights Yearbook* 33-50.

⁵³⁴ Kenya, Persons with Disabilities Act 2025, s20.

⁵³⁵ Kenya, Persons with Disabilities Act 2025, s20(4).

⁵³⁶ Kenya, Persons with Disabilities Act 2025, s2.

⁵³⁷ Kenya, Persons with Disabilities Act 2025, s20(11).

⁵³⁸ Ibid, s 20(14).

⁵³⁹ Malawi, Education Act, s4.

institution on the basis of a disability. Such institutions also may not discipline, segregate or deny the person participation in any event or activity, or deny any benefits or services to the person, on the basis of a disability.⁵⁴⁰ The Persons with Disabilities Act defines inclusive education as “... an education system which takes into account the diversity of needs of learners and promotes effective participation of learners with disabilities”.⁵⁴¹ Despite this, the CmRPD has raised concerns that the Malawian “national inclusive education policy does not cover all types of disabilities” and that “segregated education for children with disabilities continues to be provided alongside inclusive education, in the absence of a time frame for full transition”.⁵⁴² It also identifies, among other problems, “discriminatory attitudes towards children with disabilities that prevent them from enrolling in education”.⁵⁴³

Nigeria’s National Policy on Disability anticipates that persons with special needs will be provided with inclusive education services in regular schools. The Policy, then, provides for persons who cannot benefit from inclusive education to remain in special schools where they will receive quality education similar to that available in the other settings.⁵⁴⁴ In the same vein, Nigeria’s National Policy on Special Needs Education asserts that the main thrust of inclusive education is ensuring access to appropriate education for persons with special needs. Hence, States the Policy, inclusive education should not be misconstrued to mean integration or mainstreaming, and guidelines for inclusive practices for special needs education should be spelt out.⁵⁴⁵

Nigeria’s federal law on education, the Compulsory, Free Universal Basic Education Act, requires every state government to provide free, compulsory and universal basic education for every child of primary and junior secondary school age, and it requires parents to ensure their children attend and complete primary and junior secondary school education.⁵⁴⁶ More specific to disability, the Discrimination Against Persons With Disabilities (Prohibition) Act provides that persons with disabilities have an unfettered right to education “without discrimination or segregation in any form”, and that they are entitled to free primary and secondary education. The Act also requires all public schools to be accessible to and inclusive of persons with disabilities.⁵⁴⁷

Rwanda’s National Policy of Persons with Disabilities understands inclusive education as “... the process of addressing all learners’ educational needs in a mainstream education setting”. It is based on the principle that “all learners are different and learn and develop differently, and so the education system should be flexible and adapted to accommodate learners’ needs”. In Rwanda, this is often interpreted as requiring “non-exclusionary education”.⁵⁴⁸

Rwanda’s Law Determining the Organisation of Education establishes special education institutions⁵⁴⁹ to educate learners with disabilities who require special education before studying with other learners, and learners whose disabilities require them to study alone.⁵⁵⁰ The Act provides that special education curricula be developed on the basis of the nature of disability.⁵⁵¹ The Act also provides that learners in pre-primary and primary education institutions should be day scholars, but that learners with disabilities who cannot learn in day schools may be placed in boarding institutions.⁵⁵² The Law Relating to Protection of Disabled Persons in General links the right to education for a person with a disability with

⁵⁴⁰ Malawi Disabilities Act, s26.

⁵⁴¹ Ibid, s26.

⁵⁴² CRPD/C/MWI/CO/1-2, para 49(a).

⁵⁴³ Ibid, para 49(c).

⁵⁴⁴ Federal Republic of Nigeria, National Policy on Education (2013), Sixth Edition 2013, <https://educatetolead.wordpress.com/wp-content/uploads/2016/02/national-education-policy-2013.pdf>, accessed on 27 May 2024. Also see Julia Biermann, *Translating Human Rights in Education: The Influence of Article 24 UN CRPD in Nigeria and Germany* (University of Michigan Press 2022).

⁵⁴⁵ National Policy on Special Needs Education in Nigeria (Federal Ministry of Education, 2015, <https://www.studocu.com/row/document/university-of-nigeria-nsukka/agriculture/nigeria-special-needs-policy/67931724>, accessed on 27 May 2024.

⁵⁴⁶ Nigeria, Compulsory, Free Universal Basic Education Act, s2.

⁵⁴⁷ Nigeria, Discrimination Against Persons with Disabilities (Prohibition) Act, s17, s18.

⁵⁴⁸ National Policy of Persons with Disabilities and Four Years Strategic Plan (2021-2024), 2022.

⁵⁴⁹ Rwanda, Law Determining the Organisation of Education, Art 118.

⁵⁵⁰ Ibid, Art 119.

⁵⁵¹ Rwanda, Law Determining the Organisation of Education, Art 121.

⁵⁵² Ibid, Art 51.

the nature of their disability. It provides for special schools to cater for persons with disabilities deemed unable to study with others.⁵⁵³

In Sierra Leone, the Disabled Persons Act requires that educational institutions be accessible to persons with disabilities, and that they have learning facilities. It protects persons from denial of admission or from being expelled on the basis of disability.⁵⁵⁴ Sierra Leone, however, seems to conceive inclusive education narrowly to mean the accessibility of the built environment, as evidenced by the Education Sector Plan (2018-2020) which sought to ensure that by 2020 at least 15% of existing schools had ramps for students with disabilities.⁵⁵⁵

In 2023, Sierra Leone enacted the Basic and Senior Secondary Education Act, which is presented as innovative and right-based: its short title explains that the Act aims to ensure that the education system is “free, accessible, compulsory, relevant, all-inclusive and right-based”.⁵⁵⁶ Yet, the Act still stereotypes the capacities and needs of persons with disabilities. For example, it requires all schools, including private ones, to be inclusive and disability friendly, and to ensure classrooms and other facilities are accessible to all categories of learners. Yet, it also provides for separate arrangements to access education for pupils with various psychosocial and intellectual disabilities specifically and it still provides for special needs education.⁵⁵⁷ Hence, Sierra Leone, like the other study States, continues to struggle with the question of whether special needs education is compatible with inclusive education. In this regard, the Act defines inclusive education as “... giving every child the right to quality education and learning regardless of their circumstances, gender, place of residence, ethnicity, etc.”.⁵⁵⁸ It defines special needs education as “... the kind of education that accommodates the individual differences, disabilities, and special circumstances of certain pupils”.⁵⁵⁹

The South African Schools Act provides that public schools must admit learners without unfairly discriminating against them.⁵⁶⁰ The Act, however, provides that public schools may be designated either as ordinary public schools, or as public schools for learners with special education needs.⁵⁶¹ Where reasonably practical, learners with special education needs are required to be educated at ordinary public schools where they should receive relevant educational support services.⁵⁶² The Act also requires designated authorities to take reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.⁵⁶³ In another scheme that differentiates learners with special education needs from their peers, the Act empowers the relevant minister to determine the ages of compulsory school attendance for learners with special education needs.⁵⁶⁴ This implies that such learners may not attend school compulsorily from the age of seven years, as is the case for all other children.⁵⁶⁵ The Act also empowers designated authorities to exempt public schools for learners with special educational needs from establishing representative councils of learners enrolled from grade eight “if it is not practically possible for a representative council of learners to be established at the school”.⁵⁶⁶ In the same vein, the Act provides that learners attending the eighth or higher grade must be represented on the governing body for a public school for learners with special education needs, but only “if reasonably practical”.⁵⁶⁷ These limitations on the establishment of representative councils for learners with disabilities and their representation on the governing bodies of public schools undermine their right

⁵⁵³ Ibid, Art 11.

⁵⁵⁴ Sierra Leone, Disabled Persons Act, ss14, 15.

⁵⁵⁵ Ngozi Umeh, “Progress Towards Inclusive Primary Education in Selected West African Countries” 2018) 6 *African Disability Rights Yearbook* 6.

⁵⁵⁶ Sierra Leone, Basic and Senior Secondary Education Act.

⁵⁵⁷ Ibid, ss19, 21.

⁵⁵⁸ Basic and Senior Secondary Education Act-Sierra Leone s1.

⁵⁵⁹ Ibid.

⁵⁶⁰ South African Schools Act, s5.

⁵⁶¹ Ibid, s12(3).

⁵⁶² South African Schools Act, s12(4).

⁵⁶³ Ibid, s12(5).

⁵⁶⁴ South African Schools Act, s3(1)(2).

⁵⁶⁵ Ibid.

⁵⁶⁶ South African Schools Act, s11.

⁵⁶⁷ Ibid, s24.

to participation, in violation of the State's obligations under the CRPD.

South Africa introduced full-service schools as a means of supporting and enhancing inclusive education. These schools would provide support, resources and expertise to learners with disabilities who require support. It was envisaged that regular schools would in due course be transformed into full-service schools.⁵⁶⁸ South Africa reported to the CmRPD that despite its policy on inclusive primary and secondary education, new special schools continued to be built at the provincial level; but these institutions would in the long term serve students with high support needs and also become resource centres.⁵⁶⁹ Moreover, it is widely reported that large numbers of children with disabilities in South Africa are not in schools at all.⁵⁷⁰ Issues of inaccessibility remain in special schools, which many children with disabilities continue to attend, and full-service schools also often provide minimal resources to children with disabilities to ensure they can benefit equally and fully from the education they receive.⁵⁷¹

In Uganda, the Disabled Persons Act prohibits institutions of learning from discriminating against learners on the basis of disability. Such institutions may not refuse to admit a learner with disability otherwise qualified to join the institution. Institutions may also not limit learners with disabilities from accessing learning facilities and services, expel learners or subject them to unfair treatment.⁵⁷² The Act requires learning institutions to use the inclusive education system, defined as "a system where a learner with a disability is taught together with the other learners, in the same environment, and where, ... extra support is given to the learner with a disability".⁵⁷³ Under the Education (Pre-Primary, Primary and Post-Primary) Act, one of the duties of the head teacher of a school is to "make the school pupil friendly and especially to the girl-child and pupils with disabilities".⁵⁷⁴ Uganda reported to the CmRPD that it enforced the twin-track approach where it provided both for inclusive education as well as for special schools. Its premise was that special schools were required for what it referred to as "learners with confounding disabilities".⁵⁷⁵

Zimbabwe's National Disability Policy, which was adopted in 2021, establishes standards for inclusive education in the country. Although it is not clear whether these standards are being enforced, the following components conform to Article 24 of the CRPD:

- Persons with disabilities must be exempted from paying fees and levies at all public learning institutions;
- An inclusive education system of appropriate standards, at all levels, as well as lifelong learning for persons with disabilities of all gender affiliations, must be ensured;
- Learners with disabilities, like all others, should have an individual education plan including assessments that are shared with parents and guardians; and
- Reasonable accommodation of each individual's requirements must be provided including in relation to preferred language, physical infrastructure, schedules, staffing, assistive technology, teaching and learning methods, information and materials.⁵⁷⁶

On the contrary, the Education Act of Zimbabwe, which was enacted over three decades ago, legislates

⁵⁶⁸ Anna Hugo and Nafiza Mobara, "The Voice of a Group of Teachers in Full-Service Schools in South Africa" (2024) *African Journal of Disability*).

⁵⁶⁹ CRPD/C/ZAF/1, para 213.

⁵⁷⁰ Human Rights Watch, "Complicity in Exclusion": South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities, 18 August 2015, <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>, accessed on 29 July 2024.

⁵⁷¹ SECTION27 "Left in the Dark: Failure to Provide Access to Quality Education to Blind and Partially Sighted Learners in South Africa" (2015), available: <https://section27.org.za/2015/11/left-in-the-dark/>; SECTION27 "Too Many Children Left Behind: Exclusion in the South African Inclusive Education System" (2016), available: <https://section27.org.za/wp-content/uploads/2017/01/umkhanyakude-2016-ENG-web.pdf>; R Beere & TF Hodgson "The Right to Basic Education for Children With Disabilities" (2022), available: <https://section27.org.za/basic-education-rights/Basic%20Education%20Handbook%20-%20Chapter%206.pdf>.

⁵⁷² Uganda, Disabled Persons Act, s6.

⁵⁷³ Ibid.

⁵⁷⁴ Uganda, Education (Pre-Primary, Primary and Post-Primary) Act, 2008.

⁵⁷⁵ CRPD/C/UGA/1, para 167.

⁵⁷⁶ National Disability Policy [Zimbabwe], June 2021, <https://veritaswomen.net/wp-content/uploads/2021/09/National-Disability-Policy-June-20211.pdf>, accessed on 22 July 2024.

for special needs education, which it defines as "... specially designed instructional arrangements which are designed to meet the unique needs of pupils with disability".⁵⁷⁷ It prohibits the discrimination of children on the basis of disability through the imposition of onerous terms and conditions for admission to, suspension from, exclusion or expulsion from learning institutions.⁵⁷⁸ The Act requires registered schools to provide infrastructure "suitable for use by pupils with disabilities", although it subjects that requirement to the availability of resources.⁵⁷⁹ It designates officials to monitor and enter the premises of registered schools to ascertain that the schools take account of the rights of pupils with disabilities during teaching and learning.⁵⁸⁰

c. Measures to facilitate inclusive education

The nine study States have not put in place sufficient effective measures to facilitate inclusive education for learners with disabilities, including by ensuring accessibility, providing reasonable accommodation, and availing other necessary support. Barriers include denial of admission, inaccessible school premises, inadequate curricula and teaching material, limited staff trained on inclusive education, dearth of expertise on Sign Language, Braille, Easy-Read, and negative social attitudes on the attendance of learners with disabilities in regular, community schools.

Availability of financial and technical resources

A survey on inclusive education in Ghana, Nigeria and Sierra Leone found that their laws and policies subject the entitlement of education for persons with disabilities to conditions such as the availability of resources. These laws and policies also do not provide explicit guarantees on the provision of reasonable accommodation which rather is construed from vague phrases such as "easy access to quality education", and "user-friendly" schools.⁵⁸¹

In a Kenyan study, parents pointed out that they considered inclusive education to be impractical since teachers in regular schools had limited training on inclusive education. A parent noted that they would send their child to a special school if they could afford it, since teachers in regular schools concentrated on pupils without disabilities.⁵⁸²

Rwanda has acknowledged the existence of a gap between its legal and policy commitments and its practices in respect of inclusion. This gap is evident in regard to the enrolment of students with disabilities into schools, providing them with meaningful learning, and ensuring they progress to standards comparable with other students.⁵⁸³ The obstacles to inclusive education that OPDs in Rwanda have identified include: Few trained personnel; inaccessible learning material; and exclusion of persons with certain categories of disabilities from university education.⁵⁸⁴

A Ugandan study on the implementation of inclusive education found that while some schools had developed meaningful approaches for including learners with disabilities, many challenges remained. The study highlighted a paradox whereby so-called or designated "inclusive schools" practiced exclusion, for example, by declining to admit students with visual and hearing impairments; maintaining inaccessible physical environments; having inadequate funding; and separating students according to

⁵⁷⁷ Zimbabwe, Education Act, s2.

⁵⁷⁸ Ibid, s4.

⁵⁷⁹ Ibid, s68B.

⁵⁸⁰ Ibid.

⁵⁸¹ Ngozi Chuma, "Progress Towards Inclusive Primary Education in Selected West African Countries" (2018) 6 *African Disability Rights Yearbook* 6.

⁵⁸² Mary Wickendena, Josephine Njungib and Brigitte Rohwerdera, "Inclusive Early Childhood Development and Education in Kenya: What do Parents, Teachers and Children Understand, Perceive and Experience?" (2023) 10 *Disability and the Global South* 2242.

⁵⁸³ CRPD/C/RWA/1, para 137.

⁵⁸⁴ Rwanda Alternative Report on the Implementation of the Convention on the Rights of Persons with disabilities, July 2018, <https://www.ecoi.net/en/document/1449533.html>, accessed on 1 June 2024.

(dis)abilities.⁵⁸⁵ Another Ugandan study, on how education practitioners understood inclusive education, made several findings: The practitioners saw inclusive education as a casual, daily practice rather than a pathway for reflective, inclusive pedagogical engagement. They understood inclusive education as applying to sensory disabilities. Teachers were prepared for inclusive education by being trained on skills such as Sign Language and Braille, and how to address physical accessibility, such as with the construction of ramps.⁵⁸⁶

Malawi reported to the CmRPD that while it was working to implement inclusive education, this was stymied by realities such as a lack of facilities which caused pupils to be transferred from regular schools. The government expressed to the Committee its intention to establish more resource centres in regular schools to facilitate inclusive education.⁵⁸⁷ Despite this, for example, students with disabilities continued to be denied reasonable accommodation, including when writing exams.⁵⁸⁸

Advantages and disadvantages of inclusive schools for learners

Studies in some of the nine States illustrate the advantages and disadvantages of inclusive schools in the manner in which they are currently construed and implemented:

- A study on the experiences of children with intellectual disabilities in inclusive schools in Ghana found, on the positive side, that children with intellectual disabilities benefited from peer relations and received support with classroom assignments and travelling to and from school. On the downside, learners with intellectual disabilities were subjected to verbal and physical abuse by peers without disabilities during and after school hours. The study also reported the use of corporal punishment. Teachers caned learners with intellectual disabilities for not satisfying academic expectations, and/or engaging in what they considered to be undisciplined acts.⁵⁸⁹
- A South African study found that the inclusion of learners with disabilities in regular classrooms was impeded by overcrowding and time constraints. Classes had as many as 50 learners, making it difficult for teachers to implement individualised education programmes for specific learners. Teachers also found preparation for individualised support time-consuming, which was exacerbated by demands made on them to meet pass and other targets.⁵⁹⁰ Another South African study showed that some teachers remained sceptical about inclusive education for a range of reasons including: it amounted to extra work; the overly large class sizes (as many as 50 learners instead of the recommended ratio of 30 learners to one teacher); and their disdain for learners, who for example, could not read. Other teachers, however, noted that full-service schools enabled learners with disabilities to stay in their communities rather than go to hostels, and they even helped to change the mind-sets of some members of the community and their fellow classmates.⁵⁹¹
- A study found that Zimbabwean sign language is not taught as a school subject in Zimbabwe because of the apparent assumption that the first language of deaf learners must be one of the spoken languages (such as English, Shona and Ndebele).⁵⁹²
- The Independent Expert on the Enjoyment of Human Rights by Persons with Albinism reported that learners with albinism in Kenya tended to receive better reasonable accommodation and other specific support measures in special rather than regular schools. She noted that many children with albinism therefore preferred to attend special schools where they often felt a better sense of

⁵⁸⁵ Elijah Musenyente, Marie Han and Michel Knigge, "Implementation of UN Convention on the Rights of Persons with Disabilities in Public and Private Schools in Three Districts of Uganda" (2022) *African Journal of Disability*, 9.

⁵⁸⁶ Proscovia Nantongo, "Framing Heuristics in Inclusive Education: The Case of Uganda's Pre-service Teacher Education Programme" (2019) 8 *African Journal of Disability*.

⁵⁸⁷ CRPD/C/MWI/1-2, para 172.

⁵⁸⁸ Committee on Economic, Social and Cultural Rights, 72nd Pre-Sessional Working Group, Alternative Report Submitted for Adoption of List of Issues for Malawi, submitted by Women in Africa, 15 January 2022, para 70.

⁵⁸⁹ Christiana Okyere, Heather Aldersey and Rosemary Lysaght, "The Experiences of Children with Intellectual and Developmental Disabilities in Inclusive Schools in Accra, Ghana" (2019) *African Journal of Disability*.

⁵⁹⁰ Nilford Hove and Nareadi Phasha, "Inclusion of Learners with Learning Disabilities in the Vaal Triangle mainstream classrooms" (2024) *African Journal of Disability*.

⁵⁹¹ Anna Hugo and Mafiza Mobara, "The Voice of a Group of Teachers in Full-Service Schools in South Africa" (2024) *African Journal of Disability*.

⁵⁹² Martin Musengi, "The Place of Sign Language in the Inclusive Education of Deaf Learners in Zimbabwe Amid CRPD (Mis)Interpretation" (2019) 7 *African Disability Rights Yearbook* 96-111.

acceptance and understanding by staff and other students, and where they received reasonable accommodation such as: being permitted to sit near the blackboard; receiving handouts in large print; and getting extra time to do exams. Residential schools also reportedly reduced the risk of children with albinism being attacked and kidnapped.⁵⁹³

- A Kenyan study found that girls with disabilities in inclusive education settings obtained comparatively higher English, Kiswahili and numeracy test scores, suggesting the value of inclusive education even in resource-scarce settings.⁵⁹⁴

Compounded marginalisation of learners

Girls with disabilities in school face particular challenges:

- A study found that girls with disabilities in Malawi faced a range of gender-specific challenges while accessing schooling: they often failed to attend classes for up to a week each month since they did not have menstruation hygiene management products; sanitation facilities took no account of their specific needs; they faced sexual violence and sexual harassment, and extensive teasing.⁵⁹⁵
- A South African study reported that girls with disabilities experienced school-based sexual violence and threats of violence by male learners for refusing sexual advances.⁵⁹⁶

The COVID-19 pandemic highlighted the compounded marginalisation that people with disabilities face in exercising their right to education in situations of risk:

- A study undertaken by the Commission on Human Rights and Administrative Justice in Ghana reported that online learning for persons with various disabilities was constrained by limitations of teaching aids, poor access to internet and learning platforms, and the requirement of social/physical distancing for those who needed in-person support.⁵⁹⁷
- In South Africa, the closure of schools, colleges and universities during the COVID-19 pandemic impacted learners with disabilities disproportionately. Their access to remote learning was undermined because online learning was not adapted and accessible to them.⁵⁹⁸ When the government started to reopen schools, it failed to take adequate account of the needs of learners with disabilities in special schools, boarding schools for students with disabilities, and therapy and rehabilitation centres.⁵⁹⁹

iii. Findings and recommendations

This ICJ makes the following findings:

- Constitutional provisions on the right to education in some of the study States (Nigeria and Sierra Leone) are framed as fundamental principles of state policy which, therefore, are not directly enforceable in the courts. The constitutions of the other study States establish guarantees on the right to education which may be enforced directly in the courts.

⁵⁹³ A/HRC/40/62/Add.3: Visit to Kenya – Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, 22 January 2019, 75.

⁵⁹⁴ Mark Carew, *et al.*, "The Impact of an Inclusive Education Intervention on Learning Outcomes for Girls with Disabilities within a Resource-Poor Setting" (2020) *African Journal of Disability*.

⁵⁹⁵ Disabled Women in Africa, Alternative Report Submitted to the Committee Towards Malawi's CRPD Review, July 2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FMWI%2F53299&Lang=en, accessed on 6 May 2024.

⁵⁹⁶ Submission by Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International to the CRPD Committee Working Group for South Africa, 31 July 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FZAF%2F31996&Lang=en.

⁵⁹⁷ Commission on Human Rights and Administrative Justice, Impact of COVID-19 on Economic Social and Cultural Rights in Ghana, 2020, <https://chraj.gov.gh/chraj-special-reports-2/>, accessed on 28 May 2024.

⁵⁹⁸ Mary Wickenden, *et al.*, "How did South Africans with Disabilities Experience COVID-19? Results of an Online Survey" (2024) 12 *African Journal of Disability*.

⁵⁹⁹ Human Rights Watch, Submission to the Universal Periodic Review of South Africa, March 2022, <https://www.hrw.org/news/2022/04/04/submission-universal-periodic-review-south-africa>, accessed on 20 May 2024.

- All the study States have enacted laws or adopted policies that recognise inclusive education for learners with disabilities, and some States have endeavoured to ensure that learners with certain categories of disabilities learn in regular, community schools.
- All the study States continue to face significant difficulties in implementing inclusive education, including transitioning from segregated education to inclusive education. Education for children with disabilities remains dominated by segregated schools, special needs education, and inaccessible and ill-equipped regular schools.
- The study States have not put in place effective measures to facilitate inclusive education for learners with disabilities, including by ensuring accessibility, providing reasonable accommodation, and availing other necessary support measures. Barriers to access to inclusive education include: denials of admission; inaccessible school premises; inadequate curricula and teaching material; limited staff trained on inclusive education; limited expertise on Sign Language, Braille, Easy-Read and other communication formats and negative social attitudes on the attendance of learners with disabilities in regular schools.
- The marginalisation of learners with disabilities is compounded by gender-related factors, such as when girls are unable to attend classes for up to a week because they do not have adequate access to menstrual hygiene products and services...
- Inclusive education in the study States also faces resistance from society and communities in the study States, which is driven by negative attitudes about the value and practicality of inclusive education for learners with disabilities.

The ICJ therefore makes the following recommendations:

1. States should enact new laws or amend existing laws to include rights to education which are fully enforceable.
2. States should legislate that the right to education includes a right to inclusive education for all learners with disabilities.
3. States should clarify in law and policy their understanding of inclusive education, and they should establish timebound plans for transitioning to inclusive education. This understanding and planning must be based on the goal of ensuring learners with different categories of disabilities attain quality education in their communities and are not compelled to access education through segregated special schools.
4. States should put in place effective measures to facilitate inclusive education for learners with disabilities, by ensuring accessibility, providing reasonable accommodation, and availing all other necessary support.
5. States should establish specific interventions to ensure girls with disabilities attend school, including by providing them with menstrual hygiene management products and services and ensuring that they are not exposed to the risk of sexual violence at schools.
6. States should undertake awareness-raising in communities to combat negative attitudes on the value and practicality of inclusive education for learners with disabilities.

VIII. Work

Article 27 of the CRPD: Work and employment

1. States Parties recognize the right of persons with disabilities to work on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - g) Employ persons with disabilities in the public sector;
 - h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 19 of the ADP: Right to work

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour.
2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others, including by:
 - a) Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy working conditions;

- b) Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
 - c) Promoting opportunities for persons with disabilities to initiate self-employment, entrepreneurship and to access financial services;
 - d) Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job-quotas for employees with disabilities;
 - e) Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
 - f) Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
 - g) Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States Parties shall take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.
 4. States Parties shall take appropriate measures to recognise the social and cultural value of the work of persons with disabilities.

This chapter explores the extent to which the nine study States have implemented their obligations to secure the right of persons with disabilities to work. The chapter's principal focus is the extent to which persons with disabilities have equal opportunities of work in the open labour market in the public and private sectors.

i. Legal content and state obligations

Work as a right under international human rights law covers the right to work, rights at work, and the collective dimension of work.⁶⁰⁰ The right to work includes the right of everyone, including persons with disabilities, to the opportunity to gain a living through work which is chosen or accepted freely. Rights at work cover the right of everyone, including persons with disabilities, to enjoy just and favourable conditions of work, including in relation to safe and equal working conditions, including remuneration, and equal opportunities to be employed and promoted. The collective dimension of the right to work includes the rights to form or join a trade union and the right to strike.⁶⁰¹

Far too often, persons with disabilities do not have meaningful work because of social prejudice, inequality and discrimination against them.⁶⁰² While specific data on the employment of persons with disabilities in Africa is limited,⁶⁰³ rates of unemployment and underemployment are substantially greater for persons with disabilities than their non-disabled peers. In addition, as examples, in Ghana and Nigeria, employees with disabilities earn lesser monthly remuneration than workers without disabilities (as low as 50% and 49% respectively).⁶⁰⁴

Article 27 of the CRPD and Article 19 of the ADP require States to safeguard and promote the realization of the right to work for persons with disabilities, on an equal basis with others, in an open, inclusive and accessible labour market and work environment.⁶⁰⁵ States are required to prohibit discrimination in employment on the basis of disability,⁶⁰⁶ and ensure the provision of reasonable accommodation to

⁶⁰⁰ ICESCR, Arts 6, 7 and 8. Also see The African Charter, Art 15.

⁶⁰¹ Ibid.

⁶⁰² CmRPD, General Comment No 8 (2022) on the Right of Persons with Disabilities to Work and Employment, CRPD/C/GC/8, 7 October 2022, para 3.

⁶⁰³ International Labour Organization, 'ILO data highlights need for disability disaggregated labour force surveys and investment in data systems,' 21 April 2023, <https://ilostat.ilo.org/blog/ilo-data-highlights-need-for-disability-disaggregated-labour-force-surveys-and-investment-in-data-systems/>, accessed on 22 July 2024.

⁶⁰⁴ Ibid.

⁶⁰⁵ CRPD, Art 27(1); ADP, Art 19(1).

⁶⁰⁶ CRPD, Art 27(1)(a); ADP, Art 19(2)(a).

employees with disabilities.⁶⁰⁷ States must protect the rights of persons with disabilities to just and favourable conditions of work.⁶⁰⁸ Protected conditions of work include equal opportunities and equal remuneration for work of equal value; safe and healthy working conditions; and the redress of grievances.⁶⁰⁹ States must ensure that persons with disabilities are able to exercise collective aspects of these rights, including by forming and joining trade unions and engaging in strikes.⁶¹⁰ The Convention and the Protocol place further obligations on States in relation to matters such as self-employment and entrepreneurship;⁶¹¹ the employment of persons with disabilities in the public sector; and state measures to facilitate the employment of persons with disabilities in the private sector.⁶¹²

The ADP specifies that States should reserve and enforce minimum job-quotas for employees with disabilities in the public sector, and that they should also use specific measures such as tax incentives to promote the employment of persons with disabilities in the private sector.⁶¹³ The ADP also requires States to take measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.⁶¹⁴ States are also required to take measures to "... recognise the social and cultural value of the work of persons with disabilities."⁶¹⁵ Finally, the ADP requires States to ensure the right to work and employment in respect of women's access to employment and to professional and vocational training,⁶¹⁶ and, in respect of women and youth, the removal of systemic barriers in the labour market, and access to income generating opportunities and credit facilities.⁶¹⁷

ii. Implementation

The extent to which the nine study States are realising the right to work for persons with disabilities is reflected in the concerns which the CmRPD raised with the States it reviewed under its Article 35 reporting procedure. These concerns include the following:

- That legislation on the employment of persons with disabilities was inadequate both in its scope and implementation;⁶¹⁸
- That there were low rates of employment for persons with disabilities,⁶¹⁹ which was exacerbated by prevailing negative attitudes among employers on the rights, capabilities and potential of persons with disabilities;⁶²⁰
- That employees with disabilities faced systematic barriers in the workplace, including inaccessible workplaces, and failures to provide reasonable accommodation;⁶²¹
- That there was insufficient education and vocational training for persons with disabilities;⁶²² and
- That there was a dearth of statistical data on employees with disabilities, disaggregated by age, gender, type of impairment and geographical location.⁶²³

The assessments made in this chapter draw from the constitutional and statutory provisions on work for persons with disabilities in the nine study States. Such provisions are also entrenched in the disability statutes set out in Table 6 of the study. In addition, some of the study States include some disability-specific provisions in general legislation on work and employment. Table 11 lists the key statutes that provide for work.

⁶⁰⁷ CRPD, Art 27(1)(i); ADP, Art 19(2)(f).

⁶⁰⁸ CRPD, Art 27(1)(b); ADP, Art 19(2)(b).

⁶⁰⁹ CmRPD, General comment No8 (2022) on the Right of Persons with Disabilities to Work and Employment, CRPD/C/GC/8, para 24.

⁶¹⁰ CRPD, Art 27(1)(c); ADP, Art 19(2)(b).

⁶¹¹ CRPD, Art 27(1)(f); ADP, Art 19(2)(c).

⁶¹² CRPD, Art 27(1)(g) and (h); ADP, Art 19(2)(d) and (e).

⁶¹³ ADP, Art 19(2)(d) and (e).

⁶¹⁴ ADP, Art 19(3).

⁶¹⁵ ADP, Art 19(4).

⁶¹⁶ ADP, Art 27(f).

⁶¹⁷ ADP, Arts 27(g) and (h), 29(2)(e) and (f).

⁶¹⁸ CRPD/C/MWI/CO/1-2, para 55(a).

⁶¹⁹ CRPD/C/RWA/CO/1, para 49(a); CRPD/C/ZAF/CO/1, para 44(a); CRPD/C/UGA/CO/1, para 52; CRPD/C/KEN/CO/1, para 47.

⁶²⁰ CRPD/C/MWI/CO/1-2, para 55(d); CRPD/C/RWA/CO/1, para 49(a).

⁶²¹ CRPD/C/RWA/CO/1, para 49(b); CRPD/C/ZAF/CO/1, para 44(b); CRPD/C/UGA/CO/1, para 52.

⁶²² CRPD/C/MWI/CO/1-2, para 55(e); CRPD/C/RWA/CO/1, para 49(c); CRPD/C/KEN/CO/1, para 47.

⁶²³ CRPD/C/MWI/CO/1-2, para 55(f); CRPD/C/ZAF/CO/1, para 44(d).

Table 11: Primary legislation on work and employment

State	Statute	Enacted
Ghana	Labour Act ⁶²⁴	2003
Kenya	Employment Act ⁶²⁵	2007
Malawi	Employment Act ⁶²⁶	2013
Nigeria	Labour Act ⁶²⁷	2004
Rwanda	Law Regulating Labour in Rwanda ⁶²⁸	2018
Sierra Leone	Employment Act ⁶²⁹	2023
South Africa	Labour Relations Act ⁶³⁰	1995
	Basic Conditions of Employment Act ⁶³¹	1997
	Employment Equity Act ⁶³²	1998
Uganda	Employment Act ⁶³³	2006
Zimbabwe	Labour Act ⁶³⁴	1985, 2023

a. Guarantees on the right to work

The nine study States have constitutional provisions on work. The provisions in some constitutions are directive, i.e., they are not directly enforceable by the courts, while provisions in other constitutions are detailed and directly enforceable in courts.

The Constitutions of Nigeria and Sierra Leone frame their provisions on work as directive principles of state policy. The Constitution of Nigeria requires Nigeria to direct its social policy to ensure all citizens, without discrimination of any group whatsoever: have adequate opportunity to secure suitable employment; that they enjoy just and humane conditions of work; that their health, safety and welfare is safeguarded; and that they have equal pay for equal work.⁶³⁵ The directive principles on work in the Constitution of Sierra Leone are strikingly similar to those in its Nigerian counterpart, though it includes

⁶²⁴ Ghana, Labour Act, 2003 (Act 651), <https://ir.parliament.gh/bitstream/handle/123456789/1874/ACT%20651.pdf?sequence=3&isAllowed=y>, accessed on 18 July 2024.

⁶²⁵ Kenya, Employment Act, 2007 (CAP 226), http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20226#part_V, accessed on 18 July 2024.

⁶²⁶ Malawi, Employment Act, Chapter 55:01 (2013), <https://media.malawilii.org/files/legislation/akn-mw-act-2000-6-eng-2014-12-31.pdf>, accessed on 18 July 2024.

⁶²⁷ Nigeria, Labour Act, 2004, <https://lawsofnigeria.placng.org/laws/L1.pdf>, accessed on 18 July 2024.

⁶²⁸ Rwanda, N° 66/2018 du 30/08/2018, Law Regulating Labour in Rwanda, https://www.dataguidance.com/sites/default/files/new_labour_law_2018.pdf, accessed on 18 July 2024.

⁶²⁹ Sierra Leone, Employment Act, 2023, <https://commons.laws.africa/akn/sl/act/2023/15/media/publication/sl-act-2023-15-publication-document.pdf>, accessed on 18 July 2024.

⁶³⁰ South Africa, Labour Relations Act 66 of 1995, <https://www.gov.za/documents/labour-relations-act>, accessed on 2 August 2024.

⁶³¹ South Africa, Basic Conditions of Employment Act (1997) https://www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf accessed 2 August 2024.

⁶³² South Africa, Employment Equity Act 55 of 1998, ss5-6, <https://www.gov.za/documents/employment-equity-act>, accessed on 6 June 2024.

⁶³³ Uganda, Employment act, 2006, [https://bills.parliament.ug/attachments/Laws%20of%20Uganda%20\(Acts\)%20-%20THE%20EMPLOYMENT%20ACT,%202006.pdf](https://bills.parliament.ug/attachments/Laws%20of%20Uganda%20(Acts)%20-%20THE%20EMPLOYMENT%20ACT,%202006.pdf), accessed on 18 July 2024.

⁶³⁴ Zimbabwe, Labour Act [Chapter 28:01], 1985, 2023, <https://www.veritaszim.net/node/3842>, accessed on 18 July 2024.

⁶³⁵ Constitution of Nigeria, s17.

a provision indicating that “the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded”.⁶³⁶

Some of the constitutions of the study States contain provisions expressly on rights to and/or at work, while others do not. Under the Constitution of Ghana, every person has the right to: work under satisfactory, safe and healthy conditions; to receive equal pay for equal work without distinction of any kind; to rest, leisure and reasonable limitation of working hours and periods of holidays with pay; and to form or join a trade union.⁶³⁷ Comparable provisions on rights to and at work are legislated in Malawi, Rwanda, Uganda and Zimbabwe.⁶³⁸ The South African and Kenyan Constitutions notably include a provision relating to “fair labour practices”, therefore comprehensively protecting rights at work but not the right to work.⁶³⁹ The Constitution of Uganda requires legislation to be adopted in respect of the rights at work but not the right to work.⁶⁴⁰ The Constitution of Zimbabwe requires the government and all government institutions and agencies to develop what it refers to as “work programmes” for persons with disabilities.⁶⁴¹

Persons with disabilities in a few of the study States have successfully sought judicial interventions for the violation of their constitutional rights to and at work by state or non-state actors:

- The High Court of Zimbabwe determined it was discriminatory and unconstitutional for ZIMSTAT to exclude persons with visual disabilities from recruitment as enumerators and supervisors for the conduct of the population census. The Court ordered ZIMSTAT and the Minister of Finance to put specific measures in place to enable persons with disabilities to participate in the census as enumerators and supervisors.⁶⁴²
- In a suit where a petitioner with visual disability had been shortlisted to be interviewed for a job by Safaricom PLC,⁶⁴³ Kenya’s High Court determined that the respondent had not discriminated the petitioner when it failed to avail the necessary software to enable him to complete the technical component of the interview. The Court used the “special facilities or modifications” exception in section 15 of the Persons with Disabilities Act to determine that providing the software to the petitioner would place an undue burden on Safaricom. Section 15(2) of the Act provides that: “an employer shall be deemed not to have discriminated against a person with a disability if— ... (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the workplace to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.” As one analysis concludes, the Court did not explain how it determined that the respondent had budgetary constraints, particularly in view of Safaricom’s size, being one of the most profitable companies in the East and Central Africa region.⁶⁴⁴
- In an earlier case, in a claim where the employer declined to allow an employee with visual disability the use of assistive technology, Kenya’s Employment and Labour Court developed progressive jurisprudence on the meaning and application of reasonable accommodation measures. The Court affirmed in line with Article 5 of the CRPD that denial of reasonable accommodation for an employee with disability amounts to discrimination. It explained that the achievement of reasonable accommodation entailed modification or adaptation of the general employer’s

⁶³⁶ Constitution of Sierra Leone, s8.

⁶³⁷ Constitution of Ghana, Art 24.

⁶³⁸ Constitution of Malawi, s31; Constitution of Rwanda, Art 31; Constitution of Zimbabwe, s65.

⁶³⁹ Constitution of South Africa, s23(2); Constitution of Kenya, Art 41(2).

⁶⁴⁰ Constitution of Uganda, Art 40.

⁶⁴¹ Constitution of Zimbabwe, Art 22(3)(a).

⁶⁴² *Zimbabwe National League of the Blind v Zimbabwe National Statistics Agency (ZIMSTAT) and others*, High Court of Zimbabwe, Case no 1326/15. For an assessment of that decision, see Serges Kamga, “The Protection of the Right to Employment of Persons with Disabilities in Africa: Lessons from Zimbabwe” (2017) *Zimbabwe Rule of Law Journal* 92.

⁶⁴³ *Wilson Macharia v Safaricom PLC* [2021] KEHC 462 (KLR), <https://kenyalaw.org/caselaw/cases/view/215679>, accessed on 3 June 2024.

⁶⁴⁴ Shirley Genga and Meryl du Plessis, “A Critical Analysis of the Duty to Provide Reasonable Accommodation for Employees with Psychosocial Conditions as an Employment Anti-discrimination Obligation: A Case Study of Kenya’s Legal Framework” (2022) 10 *African Disability Rights Yearbook* 17-40.

operational requirements, systems and policies, over and above the adaptation of the devices, tools, equipment and other physical infrastructure of the work environment.⁶⁴⁵

b. Prohibition of discrimination and provision of reasonable accommodation

Laws in the nine study States prohibit the discrimination of persons with disabilities in the workplace, and statutes in some States provide guidance on the reasonable accommodation measures that employers should provide.

In **Ghana**, the Labour Act prohibits an employer, an employers' organisation and a trade union from discriminating against a person on the basis of disability.⁶⁴⁶ This provision is, however, watered down by the Persons with Disability Act which qualifies the prohibition of discrimination against employees with disabilities. The Persons with Disability Act prohibits an employer from discriminating against a prospective employee or an employee on grounds of disability "unless the disability is in respect of the relevant employment",⁶⁴⁷ a phrase whose meaning is unclear, although possibly intended to refer to the relevance of the disability to the particular tasks to be performed. The concept of reasonable accommodation measures is not mentioned in the Persons with Disability Act, and disability based discrimination is therefore not defined to include failure to provide reasonable accommodation as required by the CRPD.⁶⁴⁸ Still, the Act requires employers to provide employees with disabilities with "the relevant working tools" and "appropriate facilities" required by such a person for the "efficient performance of the functions required by the employment".⁶⁴⁹ It also prohibits employers from posting or transferring employees with disabilities to parts of their workplaces "not suited for the person".⁶⁵⁰ However, the Persons with Disability Act assumes that a newly disabled employee must be retrained and redeployed,⁶⁵¹ and the primary focus of the employer should be to provide the employee with reasonable accommodation in their existing position.

In **Kenya**, the Employment Act prohibits an employer from directly or indirectly discriminating against or harassing an employee or prospective employee on the grounds of disability.⁶⁵² The Act also provides that "affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace" does not amount to discrimination.⁶⁵³ Like the Persons with Disability Act of Ghana, Kenya's (now repealed) Persons with Disabilities Act uses qualifiers that prejudiced the capacities and abilities of persons with disabilities. In particular, the Act provided that persons with disabilities must not be denied access to opportunities for what it refers to as "suitable employment".⁶⁵⁴ The phrasing on "suitable" employment, which is also found in Sierra Leone's statute on disability,⁶⁵⁵ is striking because of the implicit ableism entrenched therein, by which it is not expected that persons with disabilities should be qualified/suited to undertake whole categories of employment. While persons with disabilities may indeed find it more difficult to qualify for employment due to their limited education and training opportunities, laws and policies should not pre-emptively discriminate or guide employers towards justification for potential discrimination.

Kenya's newly enacted Persons with Disabilities Act takes a different approach, providing detailed provisions on the right to work and employment for persons with disabilities. Employers are forbidden from discriminating against a person with disability in job application procedures, hiring, advancement

⁶⁴⁵ *Juliet Mwangeli Muema v Smollan Kenya Limited* [2019] eKLR, <http://kenyalaw.org/caselaw/cases/view/185475>, accessed on 1 August 2024.

⁶⁴⁶ Ghana, Labour Act (2003) s14, s87.

⁶⁴⁷ Persons with Disability Act of Ghana, s4.

⁶⁴⁸ Abedi Asante and Alexander Sasu, "The Persons with Disability Act, 2006 (Act 715) of the Republic of Ghana: The Law, Omissions and Recommendations" (2015) 36 *Journal of Law, Policy and Globalization*.

⁶⁴⁹ Ghana, Persons with Disability Act, s11.

⁶⁵⁰ Ghana, Persons with Disability Act, s12. Also see Persons with Disabilities Act of Kenya, s15.

⁶⁵¹ Ghana, Persons with Disability Act, s12.

⁶⁵² Kenya, Employment Act, 2007, s5.

⁶⁵³ *Ibid*.

⁶⁵⁴ Kenya, Persons with Disabilities Act, s12(1).

⁶⁵⁵ Sierra Leone, Persons with Disability Act, s19(1).

and other terms, conditions, and privileges of employment.⁶⁵⁶ The new Act comprehensively defines reasonable accommodation,⁶⁵⁷ specifying explicitly that failure to provide reasonable accommodation constitutes discrimination under the Act.⁶⁵⁸ Such discrimination constitutes an offence under the Act.⁶⁵⁹

In **Malawi**, the Employment Act provides that no person may discriminate against an employee or prospective employee on the grounds of disability.⁶⁶⁰ The Act requires employers to pay employees equal remuneration for work of equal value without distinction or discrimination of any kind, including on the basis of disability.⁶⁶¹ An employer must not dismiss or discipline an employee on account of disability.⁶⁶² Malawi's Persons with Disabilities Act affirms the right of persons with disabilities to work and employment. It prohibits discrimination on the basis of disability in respect of conditions of recruitment, hiring and restructuring of employment, continuation of employment, career advancement, and safe and healthy working conditions.⁶⁶³ Importantly, it requires that persons with disabilities are provided with reasonable accommodation both to "undertake a job interview" and "in the performance of a job".⁶⁶⁴ However, the Act does not define "discriminate" consistently with the CRPD, as a failure to provide reasonable accommodation is not generally defined as constituting discrimination under the Act.

Nigeria's general legislation on employment does not have any disability-specific provisions.⁶⁶⁵ The Discrimination Against Disabled Persons (Prohibition) Act prohibits the discrimination against a person on the basis of disability by any person or institution, in any manner or circumstance.⁶⁶⁶ The Act also establishes that a person with disability has the right to work on an equal basis with others, including "the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open".⁶⁶⁷ Nevertheless, the Act does not define reasonable accommodation, require the provision of reasonable accommodation to persons with disabilities, or confirm that the denial of reasonable accommodation amounts to discrimination.

The Law Regulating Labour in **Rwanda** prohibits employers from discriminating against employees on the basis of physical or mental disability, and it also requires employers to pay employees equal salary for work of equal value without discrimination of any kind.⁶⁶⁸ The Law Relating to Protection of Disabled Persons in General prohibits discrimination in any form against persons with disabilities on matters of employment. The Act also legislates for preferential access to employment opportunities for persons with disabilities where they are as qualified as non-disabled citizens.⁶⁶⁹ The Law Regulating Labour in Rwanda also requires employers to provide employees with disabilities with "working conditions suitable to his/her disability".⁶⁷⁰ It also allows for an employee with a disability to be transferred within the same placement of employment, subject to a set of conditions and the proviso that "The transfer of an employee with disability to another job position must not worsen his/her life conditions".⁶⁷¹ The Law Relating to Protection of Disabled Persons in General and the Law Regulating Labour in Rwanda do not: define reasonable accommodation; or require the provision of reasonable accommodation to persons with disabilities; or confirm that the denial of reasonable accommodation amounts to discrimination.

⁶⁵⁶ Kenya, Persons with Disabilities Act 2025, s21.

⁶⁵⁷ Kenya, Persons with Disabilities Act 2025, s21(7).

⁶⁵⁸ Kenya, Persons with Disabilities Act 2025, s21(7)(c). Some lack of clarity is produced by this provision, which, although defining failure to provide "reasonable accommodation" generally as discrimination also specifies that failure to provide "necessary accommodation" in the form of "training materials or policies; and the provision of qualified readers or interpreters" is discriminatory. The Act fails to define necessary accommodation or differentiate it from reasonable accommodation. Reading this provision with the interpretation section 2 of the Act suggests that "reasonable accommodation" and "necessary accommodation" might be intended to bear the same meaning.

⁶⁵⁹ Kenya, Persons with Disabilities Act 2025, s62.

⁶⁶⁰ Malawi, Employment Act, s5.

⁶⁶¹ Ibid, s6.

⁶⁶² Ibid, s57.

⁶⁶³ Ibid, s27.

⁶⁶⁴ Ibid.

⁶⁶⁵ For example, see, Nigeria, the Labour Act.

⁶⁶⁶ Nigeria, Discrimination Against Disabled Persons (Prohibition) Act, s1.

⁶⁶⁷ Ibid, s28.

⁶⁶⁸ Rwanda, N° 66/2018 du 30/08/2018, Law Regulating Labour in Rwanda, 2018, s9.

⁶⁶⁹ Law Relating to Protection of Disabled Persons in General of Rwanda, Art 18.

⁶⁷⁰ Ibid, Art 64.

⁶⁷¹ Ibid, Art 65.

The Employment Act of **Sierra Leone** prohibits discrimination on a range of grounds, including disability.⁶⁷² The Act also contains a range of provisions specific to the employment of persons with disabilities in respect of: special incentives for the employment of persons with disabilities; employment of persons with disabilities in the public service; transfer of employees with disabilities; and training of persons with disabilities.⁶⁷³ As already noted, the Persons with Disability Act also prohibits a person from denying a person with disability with “requisite skills and qualifications”, access to opportunities for suitable employment.⁶⁷⁴ Neither the Employment Act nor the Persons with Disability Act define reasonable accommodation, require the provision of reasonable accommodation to persons with disabilities, or confirm that the denial of reasonable accommodation amounts to discrimination. Despite this, the Disability Act does provide that where a private employer provides a person with a disability with a reasonable accommodation, they are entitled to a tax benefit in respect of the costs of doing so.⁶⁷⁵

In **South Africa**, the Labour Relations Act prohibits discrimination against employees or employers, respectively, for exercising their trade union rights or their rights as employers under the Act.⁶⁷⁶ Neither this Act nor the Basic Conditions of Employment Act⁶⁷⁷ provides specific protections for persons with disabilities. More specific to disability, and as explained in section 2 of the study, the Promotion of Equality and Prevention of Unfair Discrimination Act prohibits the unfair discrimination against persons on the basis of disability, including within its definition of discrimination, the failure to provide reasonable accommodation.⁶⁷⁸ In addition, the Employment Equity Act requires employers to eliminate unfair discrimination in employment policies and practices, and not to discriminate against employees with disabilities directly or indirectly.⁶⁷⁹ It also defines measures taken to provide reasonable accommodation as “affirmative action measures”.⁶⁸⁰ The Act defines reasonable accommodation as “any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment.”⁶⁸¹ The Act does not, however, specify that failure to provide reasonable accommodation amounts to discrimination, though this is generally the case in terms of South African constitutional law.⁶⁸² The Minister of Labour has, under the Act,⁶⁸³ issued a Code of Good Practice on Employment of Persons with Disabilities.⁶⁸⁴ The Code clarifies that discrimination in terms of the Employment Equity Act should be understood to include denial of reasonable accommodation.⁶⁸⁵ It requires employers to take a range of “effective measures”⁶⁸⁶ to ensure the provision of reasonable accommodation, and clarifies that the duty to provide reasonable accommodation applies to both employees and applicants for employment.⁶⁸⁷ It clarifies that the obligation to provide reasonable accommodation can either arise because it is “reasonably self-evident” or where an individual discloses their disability,⁶⁸⁸ and requires an employer to consult with the employee in determining an appropriate accommodation.⁶⁸⁹

Uganda’s Employment Act makes discrimination “in employment” on a range of bases, including

⁶⁷² Sierra Leone, Employment Act, 2023, ss1, 17.

⁶⁷³ Ibid, ss104-110.

⁶⁷⁴ Sierra Leone, Persons with Disability Act, s19(1).

⁶⁷⁵ Ibid, s23.

⁶⁷⁶ South Africa, Labour Relations Act 66 of 1995, ss5, 7.

⁶⁷⁷ South Africa, Basic Conditions of Employment Act (1997).

⁶⁷⁸ Promotion of Equality and Prevention of Unfair Discrimination Act (2000), s9(c), <https://www.justice.gov.za/legislation/acts/2000-004.pdf>, accessed on 6 June 2024.

⁶⁷⁹ Ibid, ss5-6.

⁶⁸⁰ Ibid, s15(c)

⁶⁸¹ Ibid, s1.

⁶⁸² *Damons v City of Cape Town* (CCT 278/20) [2022] ZACC 13; [2022] 7 BLLR 585 (CC); (2022) 43 ILJ 1549 (CC); 2022 (10) BCLR 1202 (CC) (30 March 2022), para 56. See also: MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2007 (3) BCLR 287 (CC); 2007 (2) SA 106 (CC); (2007) 28 ILJ 133 (CC) (5 October 2007), para 72.

⁶⁸³ Promotion of Equality and Prevention of Unfair Discrimination Act (2000), s54.

⁶⁸⁴ Code of Good Practice on Employment of Persons with Disabilities, https://www.worklaw.co.za/SearchDirectory/PDF/Codeofgoodpractice/Codes_Disabilities.pdf, accessed on 1 August 2024.

⁶⁸⁵ Ibid, para 5.1.

⁶⁸⁶ Ibid, para 6.2.

⁶⁸⁷ Ibid, para 6.3.

⁶⁸⁸ Ibid, para 6.4.

⁶⁸⁹ Ibid, para 6.6.

disability, unlawful.⁶⁹⁰ However, it also provides that “any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of that particular job shall not be deemed to be discrimination”.⁶⁹¹ The Disabled Persons Act prohibits an employer from discriminating against a person on the basis of disability, defining discrimination to include failure to provide reasonable accommodation.⁶⁹² The Act requires employers to encourage persons with disabilities to apply for the jobs they advertise “where appropriate”.⁶⁹³ It provides a context-specific definition of reasonable accommodation as follows: “necessary and appropriate modification and adjustments where needed to ensure that an employee who is a person with a disability can enjoy or exercise all human rights and fundamental freedoms on an equal basis with others and includes tools, equipment, working environment and where necessary, a modified work schedule”.⁶⁹⁴ The Act also provides further guidance on conduct that amounts to employment related discrimination on the basis of disability, including: refusing to accept an application of an otherwise qualified person;⁶⁹⁵ establishing conditions for job application or selection criteria that exclude persons with disabilities; providing employees with disabilities lesser remuneration or inferior terms than their non-disabled peers performing similar tasks; and terminating an employee on the basis of disability.⁶⁹⁶

In **Zimbabwe**, the Labour Act prohibits employers from discriminating against employees or prospective employees on a range of grounds, including disability.⁶⁹⁷ Prohibited discrimination includes discrimination in respect of: job advertisements; recruitment; the creation, classification or abolition of jobs or posts; and the determination or allocation of wages, salaries, pensions, accommodation or leave.⁶⁹⁸ The Act specifies that any act or omission arising “from the implementation by the employer of any employment policy or practice aimed at assisting disabled persons” does not amount to discrimination.⁶⁹⁹ The Disabled Persons Act also prohibits an employer from discriminating against a person with disability,⁷⁰⁰ but explicitly excludes failure to provide “special facilities or modifications, whether physical or administrative or otherwise,” required “to accommodate the disabled person which the employer” from constituting discrimination. However, one reading of the provision suggests that if an employer could “reasonably be expected to provide” such accommodation measures, the failure to provide them may be understood to constitute discrimination.⁷⁰¹

c. Financial incentives

Laws in four of the study States – Ghana, Kenya, Sierra Leone and Uganda – provide financial incentives to employees with disabilities and their employers in support of the right to work for persons with disabilities:

- The Constitution of **Ghana** requires special incentives to be given to persons with disabilities engaged in business and to businesses that employ persons with disabilities “in significant numbers”.⁷⁰² This constitutional provision is given effect by the Labour Act and the Persons with Disability Act, which require Ghana to grant special incentives to persons with disabilities engaged in business and business organisations that employ persons with disabilities.⁷⁰³ The Labour Act indicates that such special incentives are to be “determined by the Minister”.⁷⁰⁴ The Persons with Disability Act also provides that the taxable incomes of employers of persons with disabilities have

⁶⁹⁰ Uganda, Employment Act, 2006, s6 (3).

⁶⁹¹ Ibid, s6(4).

⁶⁹² Uganda, Persons with Disabilities Act, s9(3)(e).

⁶⁹³ Ibid, s 9(2)(b)-(c).

⁶⁹⁴ Ibid.

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Zimbabwe, Labour Act [Chapter 28:01] (1985, 2023), ss5(1), 5(2).

⁶⁹⁸ Ibid, s5.

⁶⁹⁹ Ibid, s5(7)(d).

⁷⁰⁰ Zimbabwe, Disabled Persons Act [Chapter 17:1], s9.

⁷⁰¹ Ibid, s9(2)(c).

⁷⁰² Constitution of Ghana, Art 29(7).

⁷⁰³ Ghana, Labour Act, s46; Persons with Disability Act of Ghana, s10.

⁷⁰⁴ Ibid, s 46(3).

annual tax rebates.⁷⁰⁵ However, Ghana appears not to have implemented the provisions on tax exemptions and special incentives.⁷⁰⁶

- In **Kenya**, employees with disabilities are permitted to apply for an exemption from taxes on income accruing from their employment.⁷⁰⁷ A parent or guardian having custody of a person certified to have severe disability and incapable of providing basic needs is also eligible to apply for income tax exemption and “a long-term social assistance monthly cash transfer”.⁷⁰⁸ Employers who hire employees with disabilities, and improve their facilities to cater for persons with disabilities or provide reasonable accommodation to persons with disabilities are entitled to deductions of the expenditure incurred from their taxable incomes.⁷⁰⁹ Moreover, private employers are also entitled to apply for deductions from their taxable income of up to 25% of the salary or wage of an employee with a disability.⁷¹⁰ Additionally, a private employer who improves or modifies its physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities is entitled to apply for additional deductions from its net taxable income equivalent to 50% of the direct costs of the improvements, modifications or special services.⁷¹¹ In addition, “articles and equipment, including motor vehicles for use of persons with disabilities” are exempted from import duties and value added tax “to the extent provided under tax laws”, as are “goods, items, materials, machinery, tools, articles, implements or equipment” donated to organizations of persons with disabilities. Materials or equipment related to the health of persons with disabilities may be so exempted, whether they are gifted, transferred, purchased or imported.⁷¹²
- Similar provisions in respect of tax deductions for employers of persons with disabilities are legislated in **Sierra Leone** and **Uganda**.⁷¹³ It has, however, been noted that such tax deductions need to be significant enough to be sufficiently attractive to incentivise employers to employ persons with disabilities, and that tax incentives have not worked in Uganda because the tax incentives have been set too low.⁷¹⁴

Preferential employment

Laws in the nine States establish employment opportunities for persons with disabilities on a preferential basis. These measures range from quite general directions to provide preferential treatment to more specific and proactive requirements. In Rwanda, persons with disabilities have preferential opportunities for employment where they have equal capacities or grades as other candidates.⁷¹⁵ Four study States – Kenya (5%),⁷¹⁶ Nigeria (5%),⁷¹⁷ South Africa (2%)⁷¹⁸ and Uganda⁷¹⁹ – establish quotas or numerical targets for the employment of persons with disabilities either generally or for public sector employment in particular. For example, in Nigeria, the 5% employment quota applies only to the public sector, and it has been argued that extending it to include large private companies could create increased employment opportunities for persons with disabilities.⁷²⁰ It is arguable that States such as Malawi, which do not have disability employment quotas, thereby undermine employment prospects of persons with

⁷⁰⁵ Ghana, Persons with Disability Act, s10(2).

⁷⁰⁶ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, paras 71-72.

⁷⁰⁷ Kenya, Persons with Disabilities Act of Kenya 2025, s56.

⁷⁰⁸ Ibid, s57.

⁷⁰⁹ Ibid, s60.

⁷¹⁰ Ibid, s23(1).

⁷¹¹ Ibid, s23(2).

⁷¹² Ibid, s 56(4)-(6).

⁷¹³ Persons with Disability Act of Sierra Leone, s23; Persons with Disabilities Act of Uganda, s9(5).

⁷¹⁴ Chrispas Nyombi and Alexander Kibandama, “Access to Employment for Persons with Disabilities in Uganda” (2014) 65 *Labor Law Journal* 248-258.

⁷¹⁵ Law Relating to Protection of Disabled Persons in General of Rwanda, Art18.

⁷¹⁶ Persons with Disabilities Act of Kenya, s13.

⁷¹⁷ Discrimination Against Disabled Persons (Prohibition) Act of Nigeria, s29.

⁷¹⁸ Department of Public Service and Administration, “The Public Service Job Access Implementation Guidelines and Plan on the Recruitment, Employment and Retention of Persons with Disabilities,” <https://www.dpsa.gov.za/dpsa2g/documents/ee/DPSA%20Implementation%20Guideline%20CD%20Opt.pdf>, accessed on 2 July 2024. Also see CRPD/C/ZAF/1, para 291.

⁷¹⁹ Persons with Disabilities Act of Uganda s9(6).

⁷²⁰ Chineze Ibekwe and Onyeka Aduma, “Disability Discrimination in Employment: Comparative Legal Solutions for Nigeria” (2017) 13 *Unizik Law Journal* 7.

disabilities.⁷²¹ It should, however, be pointed out that none of the study States achieve the quota targets or numerical goals set in the laws and policies for the employment of persons with disabilities. A recent parliamentary report in Kenya, for example, found that only one Kenyan agency had met the 5% statutory numerical target, with the average employment of persons with disabilities in sampled public agencies being at 2.1%.⁷²²

Other specific measures implemented in the nine States include the following:

- In **Nigeria**, state governments such as that of Lagos State, have ring-fenced funds from which persons with disabilities can draw resources to undertake business ventures.⁷²³
- **Kenya** has established the Access to Government Procurement Opportunities (AGPO) Programme under which 30% of government procurement opportunities are reserved for women, youth and persons with disabilities.⁷²⁴ The Persons with Disabilities Act raises the retirement age of employees with disabilities by five years above the mandatory retirement age set by the government (currently to the age of 65), thereby enabling such employees to earn a regular income for a few more years.⁷²⁵

d. Remaining barriers to the employment of persons with disabilities in practice

Despite the various measures the study States have put in place to guarantee and enhance employment for persons with disabilities, progress is stymied by systemic institutional weaknesses, limited resources, restrictions on career opportunities for persons with disabilities, and limited vocational training opportunities. Some examples of these barriers in practice include:

- In Nigeria, structural and physical barriers force persons with disabilities to resort to begging for a living.⁷²⁶ Employers also commonly stereotype the types of work which employees with disabilities can perform in spite of their training.⁷²⁷
- In Ghana, the exclusion of persons with disabilities from the open labour market is exacerbated by the lack of access to education and training; the lack of access to financial resources; high levels of ignorance; inaccessible financial opportunities; the lack of enabling work environments; and discriminatory perceptions about disability and persons with disabilities.⁷²⁸
- In South Africa, women with disabilities in employment settings often experience termination following disability disclosures and are frequently denied reasonable accommodation measures.⁷²⁹

⁷²¹ See, A joint submission by the Africa Albinism Network and the Association of Persons with Albinism in Malawi (APAM) to the Committee on the Rights of Persons with Disabilities on the situation of persons with albinism in Malawi, July 2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FMWI%2F53276&Lang=en; and , accessed on 12 May 2024.

⁷²² Republic of Kenya, National Assembly, 13th Parliament, Committee on National Cohesion and Equal Opportunity, Report on Compliance to Article 54 (2) of the Constitution on Employment of Persons with Disabilities in Public Institutions (2024), <http://www.parliament.go.ke/sites/default/files/2024-03/Report%20on%20compliance%20to%20article%2054%282%29%20of%20the%20Constitution%20on%20employment%20of%20persons%20with%20disabilities%20in%20public%20institutions-1.pdf>, accessed on 1 May 2024.

⁷²³ Oluchi Adieze, "The Rights of Persons with Disabilities" in Tony Ojukwu, 2021 Human Rights Situation Assessment In Nigeria (National Human Rights Commission, 2023), <https://nigeriarights.gov.ng/publications/more/425-2021-human-rights-situation-assessment-in-nigeria.html>, accessed 1 June 2024.

⁷²⁴ Public Procurement and Asset Disposal Act, 2015, s 53(6). See also, The National Treasury and Economic Planning, "Access to Government Procurement Opportunities," [https://www.treasury.go.ke/agpo/#:~:text=Access%20to%20Government%20Procurement%20Opportunities%20\(AGPO\)&text=The%20AGPO%20program%20is%20founded,and%20Asset%20Disposal%20Act%2C%202015.](https://www.treasury.go.ke/agpo/#:~:text=Access%20to%20Government%20Procurement%20Opportunities%20(AGPO)&text=The%20AGPO%20program%20is%20founded,and%20Asset%20Disposal%20Act%2C%202015.), accessed on 1 June 2024.

⁷²⁵ Kenya, Persons with Disabilities Act 2025, s21(6) read together with Regulation 70 of The Public Service Commission Regulations (2020), <https://www.publicservice.go.ke/index.php/publications/acts-legislation?download=282:the-public-service-commission-regulations-2020>, accessed on 13 May 2024. A cautious approach to such provisions should be adopted because it is possible that, depending on how they are implemented and framed, they could have the effect of compelling persons with disabilities to more years – and to an older age – than others in order to qualify for retirement benefits.

⁷²⁶ Global Rights: Partners for Justice, "Report on the Situation of Disabled Persons in Nigeria," 2012, https://is.muni.cz/el/ped/jaro2015/SP_CEC/um/ShadowReport_DisabledPersons_Nigeria.pdf, accessed on 10 May 2024.

⁷²⁷ Chineze Ibekwe and Onyeka Aduma, "Disability Discrimination in Employment: Comparative Legal Solutions for Nigeria" (2017) 13 *Unizik Law Journal* 7.

⁷²⁸ Submission by Ghana Federation of Disability Organisations to the Committee on the Rights of Persons with Disabilities, INT_CRPD_ICO_GHA_47924_E, para70.

⁷²⁹ Submission by Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International to the CRPD Committee Working Group for South Africa, 31 July 2018,

A study on South Africa's public service concluded that persons with disabilities continue to face significant barriers in their efforts to obtain employment in the public service. These barriers continue because of conceptual, infrastructural, managerial and organisational factors that undermine the integration of persons with disabilities into mainstream employment. Government departments also have a poor record of providing reasonable accommodation measures to employees with disabilities.⁷³⁰

- In Malawi, there is a disconnect between policy and government rhetoric on the rights of employees with disabilities on one hand, and the experiences of workers with disabilities on the other. Persons with disabilities have queried the value of legislation on disability rights which is not implemented and report that discrimination continues to prevail. Moreover, given that the substantial majority of Malawi's workforce is engaged in the informal sector, legislative provisions in respect of the formal employment of persons with disabilities only stand to benefit the small percentage of prospective workers with disabilities in formal employment. Persons with disabilities in self-employment, including in the informal sector, face economic stigma and discrimination when seeking business loans, business premises and even training opportunities.⁷³¹
- In Kenya, the discrimination which employees with albinism face in the workplace results in hostile working conditions such as: being made to work directly under the hot sun or bright light; being subjected to ridicule from colleagues; and being sexually harassed by superiors seeking sexual encounters with a person with albinism to gain assumed good luck or other benefits.⁷³²

iii. Findings and recommendations

The ICJ makes the following findings:

1. The nine study States have constitutional provisions on work, with some being directive principles which are not enforceable directly by the courts – Nigeria and Sierra Leone – while others are quite detailed and directly enforceable. Some constitutions legislate expressly on rights at work – Ghana, Kenya, Malawi, Rwanda, South Africa, Uganda and Zimbabwe.
2. Persons with disabilities in several of the study States have successfully sought judicial interventions when their work-related rights have been violated by state or non-state actors – Kenya, South Africa and Zimbabwe.
3. Laws in the nine States prohibit discrimination against persons with disabilities in the workplace. Statutes in some of the States provide guidance on the reasonable accommodation measures that employers should provide to persons with disabilities. However, laws in the majority of States do not define reasonable accommodation, require the provision of reasonable accommodation to persons with disabilities, or confirm that the denial of reasonable accommodation amounts to discrimination.
4. Laws in the nine States include specific measures intended to increase the number of persons with disabilities in employment. These range from tax incentives to employers who employ persons with disabilities or who adapt their work environments to accommodate employees with disabilities, to tax exemptions on the incomes of persons with disabilities in employment or who start businesses. Other specific measures include preferential employment of persons with disabilities, numerical employment targets for persons with disabilities, and preferential allocation of procurement contracts.
5. Despite the various measures that States have put in place to guarantee and enhance employment for persons with disabilities, progress is stymied by systemic institutional weaknesses, limited

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FZAF%2F31996&Lang=en.

⁷³⁰ Warren Charles, Liza Gie & Rhodrick Musakuro, "Barriers to the Employability of People with Disabilities in the South African Public Service" (2023) 12 *African Journal of Disability*.

⁷³¹ Jennifer Remnant, *et al.*, "Disability Inclusive Employment in Urban Malawi: A Multi-perspective Interview Study" (2022) 34 *Journal of International Development* 1002-1017.

⁷³² A/HRC/40/62/Add.3: Visit to Kenya – Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, 22 January 2019, 90.

resources, restrictions on career opportunities for persons with disabilities, and limited vocational training opportunities.

The ICJ therefore makes the following recommendations:

1. States should enact new laws or amend existing laws to include rights to work which are fully enforceable.
2. States should legislate for the protection of the right to work for persons with disabilities.
3. States should enforce laws that prohibit the discrimination of persons with disabilities in the workplace. They should clarify and monitor the provision of reasonable accommodation measures for employees with disabilities. Their laws should define 'reasonable', require the provision of reasonable accommodation to persons with disabilities and state expressly that denial of reasonable accommodation amounts to discrimination.
4. States should initiate or enhance specific measures as tools for facilitating the employment of persons with disabilities, including the provision of tax incentives and exemptions for persons with disabilities and their employers.

IX. Sexual and Reproductive Health and Rights

Article 25 of the CRPD: Health

1. States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:
2. Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
3. Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
4. Provide these health services as close as possible to people's own communities, including in rural areas;
5. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
6. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
7. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Article 17 of the ADP: Right to health

1. Every person with a disability has the right to the highest attainable standard of health.
2. States Parties shall take appropriate and effective measures to ensure persons with disabilities have on an equal basis with others, access to health services, including sexual and reproductive health, such as by:
 - a) Providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons;
 - b) Providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimise or prevent further disability, the provision of medicines including pain relieving drugs;
 - c) Prohibiting discrimination against persons with disabilities by providers of health services or providers of insurance;
 - d) Ensuring that all health services are provided on the basis of free, prior and informed consent;
 - e) Providing persons with disabilities with healthcare in the community;
 - f) Ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective;
 - g) Ensuring that persons with disabilities are provided with support in making health decisions, when needed;
 - h) Ensuring that health campaigns include disability specific needs, but in a manner which does not stigmatise persons with disabilities, and designing services to minimise and prevent further disability; and
 - i) Ensuring that the training of health-care providers takes account of the disability specific needs and rights of persons with disabilities, and ensuring that formal and informal health services do not violate the rights of persons with disabilities.

This chapter explores the extent to which the study States have implemented their obligations to secure

sexual and reproductive health and rights, including services, for persons with disabilities, as a critical element of their international law obligation to guarantee the right to the highest attainable standard of health without discrimination based on disability. It focuses on the extent to which laws, policies and programmes address stigma, prejudice and discriminatory attitudes by health and other personnel against women with disabilities and other persons with disabilities in exercising their sexual and reproductive health rights.⁷³³ It also considers the extent to which these States have established measures to provide persons with disabilities with information in accessible formats about sexual and reproductive health rights and services, and undertaken training to ensure that health-care practitioners are aware of the rights of persons with disabilities.

i. Legal content and state obligations

According to the World Health Organization, sexual and reproductive health refers to a broad range of services that cover access to contraception, fertility and infertility care, maternal and perinatal health, prevention and treatment of sexually transmitted infections (STIs), protection from sexual and gender-based violence, and education on safe and healthy relationships.⁷³⁴ Sexual and reproductive health services include family planning, maternal health care, preventing and managing gender-based violence, and preventing and treating sexually transmitted infections.⁷³⁵

The barriers that persons with disabilities face when they seek sexual and reproductive health services from service providers include: the assumption that persons with disabilities should not have a sexual life, reproduce or look after children and, therefore, should not need sexual and reproductive health services; physically inaccessible health-settings; and health information that is not provided in accessible formats.⁷³⁶ Specific to women, the CmRPD has explained that the barriers they face when they seek to exercise and enjoy their sexual and reproductive health and rights include:

- Wrongful stereotyping based on disability and gender, such as that they are asexual, incapable, irrational, lacking control and/or hypersexual;
- Denial of access to healthcare;
- Harmful eugenic stereotypes, such as that women with disabilities will give birth to children with disabilities;
- Subjection to sexual violence;
- Physically inaccessible healthcare facilities and equipment;
- Attitudinal barriers by healthcare staff; and
- Forced interventions, such as sterilization, abortion and contraception.⁷³⁷

The ICESCR obligates States to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.⁷³⁸ Access to and the provision of sexual and reproductive health rights and services to persons with disabilities are critical components of the right to the highest attainable standard of health under the CRPD. The CRPD enshrines the principle of free and informed consent of a person seeking information about, provision of or access to sexual and reproductive healthcare goods, services and facilities.⁷³⁹ Article 25 of the CRPD and Article 17 of the ADP obligate States to provide persons with disabilities with the same range, quality and standard of free or

⁷³³ The focus of the section is on the disproportionate impact of particular laws and policies on women and girls with disabilities in particular.

⁷³⁴ World Health Organization, 'Sexual and Reproductive Health Rights,' https://www.who.int/health-topics/sexual-and-reproductive-health-and-rights#tab=tab_1, accessed on 2 April 2025.

⁷³⁵ World Bank and World Health Organisation, 'World Report on Disability,' 2011, 61, <https://www.who.int/publications/i/item/9789241564182>, accessed on 14 May 2024.

⁷³⁶ World Health Organization, 'Sexual Health, Human Rights and the Law,' 20 July 2015, <https://www.who.int/publications/i/item/9789241564984>, accessed on 2 April 2025.

⁷³⁷ CmRPD, General comment No. 3 on Women and Girls with Disabilities, CRPD/C/GC/3, 25 November 2016, paras 38-46.

⁷³⁸ ICESCR, Art 12.

⁷³⁹ ICJ, UN-IIGH, and HRP, "The Notion of Consent in the UN Treaty Bodies General Comments and Jurisprudence," 2024, <https://unu.edu/iigh/news/notion-consent-un-treaty-bodies-general-comments-and-jurisprudence#:~:text=It%20clarifies%20distinctions%20between%20consent,to%20autonomy%20and%20bodily%20control>, accessed on 2 April 2025.

affordable sexual and reproductive health services as provided to other persons.⁷⁴⁰ In a similar fashion, Article 23 of the CRPD obligates States to take measures to guarantee the rights of persons with disabilities to decide freely the number and spacing of their children, and to have access to age-appropriate information, reproductive and family planning education, and the means necessary to enable them to exercise these rights. States must also ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.⁷⁴¹

The obligations established in the ADP are more extensive. The Protocol obligates States to take appropriate and effective measures to ensure persons with disabilities have, on an equal basis with others, access to sexual and reproductive health.⁷⁴² It obligates States to "... guarantee the sexual and reproductive health rights of women with disabilities, and to ensure they have the right to retain and control their fertility, and that they are not sterilised without their consent."⁷⁴³ It also obligates States to ensure that persons with disabilities, including youth with disabilities,⁷⁴⁴ have access to sexual and reproductive health education and services.⁷⁴⁵ States must also provide older persons access to appropriate sexual and reproductive health information and services.⁷⁴⁶

The ADP's requirement for States to provide sexuality education to youth with disabilities is groundbreaking because it is framed for the first time in a binding human rights instrument in express terms rather than by inference.⁷⁴⁷ The provisions in the ADP also resonate with the obligations established in the Maputo Protocol to which all nine study States are party.⁷⁴⁸

The Maputo Protocol obligates States to respect women's rights to sexual and reproductive health in relation to controlling their fertility, deciding whether and when to have children, choosing contraception, protecting themselves against sexually transmitted infections, and having family planning education.⁷⁴⁹ The Maputo Protocol also includes the rights to "choose any method of contraception",⁷⁵⁰ and "medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus".⁷⁵¹ Finally, the Maputo Protocol places a specific obligation on States to "ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity".⁷⁵²

ii. Implementation

The concerns expressed by the CmRPD under its Article 35 review procedure illustrate the extent to which the nine study States are ensuring that persons with disabilities are availed sexual and reproductive health rights. These concerns include the following:

- States had not put effective measures in place to protect women and girls with disabilities seeking sexual and reproductive health services from discriminatory and dismissive attitudes by healthcare professionals;⁷⁵³

⁷⁴⁰ CRPD, Art 25(a); ADP, Art 17(2). Also see Penelope Weller, "Article 25: Health" in Ilias Bantekas, Michael Stein and Dimitris Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).

⁷⁴¹ CRPD, Art 23(1)(b) and (c).

⁷⁴² ADP, Art 17(2).

⁷⁴³ ADP, Art 27(k).

⁷⁴⁴ ADP, Art 29(1)(h). Youth, under Art 1 of the Protocol, are all persons between the ages of 15 and 35 years.

⁷⁴⁵ ADP, Art 26(2)(a).

⁷⁴⁶ ADP, Art 30(f).

⁷⁴⁷ Thina Mthembu and Willene Holness, "Criteria for Law Reform on Comprehensive Sexuality Education for Children with Disabilities in South Africa" (2022) 10 *African Disability Rights Yearbook* 78-109.

⁷⁴⁸ Protocol to the African Charter on Human and Peoples' rights on the Rights of Women in Africa (Maputo Protocol), African Union, adopted in 2003.

⁷⁴⁹ Ibid, Art 14; Also see, African Commission, General Comment No. 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 on the Rights of Women in Africa, 28 November 2014, <https://achpr.au.int/index.php/en/node/854>.

⁷⁵⁰ Maputo Protocol, Art 14(1)(c).

⁷⁵¹ Ibid, Art 14 (2)(c)).

⁷⁵² Ibid, Art 23(b).

⁷⁵³ CRPD/C/MWI/CO/1-2, para 51(b).

- States had not established public health care facilities and services accessible to persons with disabilities, including sexual and reproductive health services, particularly in remote rural areas;⁷⁵⁴
- States had not undertaken adequate training of health professionals on the human rights of persons with disabilities, including on free and informed consent;⁷⁵⁵ and
- States had not provided information on sexual and reproductive rights in accessible formats for persons with disabilities, including adequate training for children, teachers and healthcare workers on sexual and reproductive rights and the recognition of the sexual and reproductive rights of persons with disabilities.⁷⁵⁶

a. Guarantees on sexual and reproductive health services

The Constitutions of three of the study States – Kenya, South Africa and Zimbabwe – establish specific guarantees on reproductive health rights. The Constitution of Kenya, as well as the Constitution of South Africa, guarantees every person the right to the highest attainable standard of health, which includes the right to healthcare services, including reproductive healthcare.⁷⁵⁷ The Constitution of Zimbabwe too guarantees every citizen and permanent resident of Zimbabwe the right to have access to basic healthcare services, including reproductive healthcare services, to be realised progressively subject to available resources.⁷⁵⁸ While the provisions in these three constitutions do not mention persons with disabilities, the Constitutions of South Africa and Zimbabwe also guarantee every person the right to bodily and psychological integrity, including to make decisions concerning reproduction, and not to be subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue, without their informed consent.⁷⁵⁹ The three constitutions focus on reproductive health services and do not make any reference to reproductive rights or sexual rights. The Constitutions of Ghana, Malawi, Nigeria, Sierra Leone and Uganda establish more general guarantees on health.⁷⁶⁰ For example, under the Constitution of Sierra Leone, the State is required to direct its policy towards ensuring that “there are adequate medical and health facilities for all persons, having due regard to the resources of the State”.⁷⁶¹

Six of the nine study States mention persons with disabilities in their policies on sexual and reproductive health services – Ghana, Kenya, Malawi, Nigeria, South Africa and Uganda.⁷⁶² In the instance of Kenya, its National Reproductive Health Policy makes cursory mentions of disability inclusion, which it prefaces with a statement recognising that persons with disabilities have special reproductive health needs, and pledging to prioritise integration of reproductive health services that are responsive to the needs of persons with disabilities.⁷⁶³ Kenya’s Persons with Disabilities National Policy identifies the “protection of the rights of women and girls to sexual and reproductive health services” as a key intervention. The Policy specifically highlights requirement for health professionals “to provide care of the same quality to persons with disabilities as to others, including based on free and informed consent” as well as the role of government in ensuring “access to accurate and comprehensive sexual and reproductive health information and services for all women and girls with disabilities especially those in rural areas”.⁷⁶⁴ Malawi’s National Sexual and Reproductive Health and Rights Policy requires services “to be responsive to the reproductive health needs of the people of Malawi, including the adolescents, youth, adults, the

⁷⁵⁴ CRPD/C/RWA/CO/1, para 45; CRPD/C/ZAF/CO/1, para 42; CRPD/C/UGA/CO/1, para 50.

⁷⁵⁵ CRPD/C/RWA/CO/1, para 45; CRPD/C/ZAF/CO/1, para 42.

⁷⁵⁶ CRPD/C/ZAF/CO/1, para 42; CRPD/C/KEN/CO/1, para 45.

⁷⁵⁷ Constitution of Kenya, Art 43(1)(a). Also see the Constitution of South Africa, s27(1)(a).

⁷⁵⁸ Constitution of Zimbabwe, s76.

⁷⁵⁹ Ibid, s52(b)-(c); Constitution of South Africa, s12.

⁷⁶⁰ Constitution of Uganda, Art27(1); Constitution of Malawi, s13(c); Constitution of Nigeria, s17(3)(d); Constitution of Sierra Leone, s8(3)(d); Constitution of Uganda, XIV.

⁷⁶¹ Constitution of Sierra Leone, s8(3).

⁷⁶² A key informant told the study that Rwanda’s legislation on reproductive health is not inclusive of persons with disabilities. - Key Informant 5. Also see, Law Relating to Human Reproductive Health No. 21/2016 of 20/05/2016, https://www.partners-popdev.org/docs/2016/Rwandan_Reproductive_Health_Law_2016.pdf, accessed on 27 July 2024.

⁷⁶³ Kenya National Reproductive Health Policy (2022-2032), 2022, <http://guidelines.health.go.ke/#/category/18/347/meta>, accessed on 1 August 2024.

⁷⁶⁴ Kenya, Persons with Disabilities National Policy, 2024.

disabled, mentally disturbed and the elderly”.⁷⁶⁵

More detailed is the National Integrated Sexual and Reproductive Health and Rights Policy of **South Africa** that seeks to afford people with disabilities: “an opportunity to gain agency, choice, and control over their sexuality and relationships.”⁷⁶⁶ The Policy recognises that:

“People living with disabilities are an underserved population subjected to harmful stereotypes and myths. They have similar SRHR needs as able-bodied people. However, they are much more likely to be victims of physical and sexual abuse and rape, sometimes even at the hands of their caretakers. They are also more likely to be subjected to forced or coerced procedures, such as sterilisation, abortion, and contraception.”

The policy calls for facilities to remove barriers to accessing sexual and reproductive health and rights for persons with disabilities by ensuring access to information in a range of formats. The policy also requires facilities to ensure physical access for persons with disabilities in relation to the distance between the facilities and users’ homes, transport, the structure of entrances/exits, passages, and structures within the facilities’ buildings. The policy also requires facilities to ensure financial access for persons with disabilities (i.e., the cost of the health service to an individual, including the hidden cost of transportation and loss of income when going to the health facility). Finally, the Policy requires facilities to ensure access for persons with disabilities to comprehensive sexual and reproductive health and rights care.⁷⁶⁷

Nigeria’s policy on the sexual and reproductive health and rights of persons with disabilities acknowledges the drivers of negative attitudes on providing sexual and reproductive health services to women with disabilities. The policy notes that people question why women with disabilities should have sex, become pregnant and have a child, or adopt a child; and they also question why women with disabilities should access post-abortion services, family planning and other reproductive health services.⁷⁶⁸ Consequently, the thematic interventions established by the policy include:

- Increasing knowledge, awareness-raising, popular support and mainstreaming;
- Improving accessibility to sexual and reproductive health (access to education, access to sexual and reproductive health services, access to transport, and access to information and communication); and
- Improving the inclusion of women with disabilities in governance (laws, policies, programmes and budgeting).⁷⁶⁹

b. The right to access safe and legal abortion

Table 12: Legislation on abortion in the study States

State	Laws	Date	Circumstances in which abortion is lawful
Ghana	Criminal Offences Act	1960	Rape Defilement of a “female idiot” Incest Pregnancy is a risk to the life of a woman or a

⁷⁶⁵ The Government of Malawi Ministry of Health, National Sexual and Reproductive Health and Rights Policy (2017-2022), 2017, https://malawi.unfpa.org/sites/default/files/resource-pdf/Malawi_National_SRHR_Policy_2017-2022_16Nov17.pdf, accessed on 1 August 2024.

⁷⁶⁶ Republic of South Africa, National Integrated Sexual and Reproductive Health and Rights Policy of South Africa, 2019, https://www.health.gov.za/wp-content/uploads/2023/04/National-SRHR-Policy_Final_2021.pdf, accessed on 10 August 2024.

⁷⁶⁷ Ibid.

⁷⁶⁸ Nigeria, National Policy on Sexual and Reproductive Health and Rights of Persons with Disabilities with emphasis on Women and Girls, June 2018, https://nesgroup.org/download_policy_drafts/National%20Policy%20on%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Persons%20with%20Disabilities%20with%20emphasis%20on%20Women%20and%20Girls%20%282018%29_1661868834.pdf, accessed on 27 May 2024.

⁷⁶⁹ Ibid.

			threat to her mental or physical health Abortion can be requested by the victim of rape or her next of kin or the person <i>in loco parentis</i> , if the woman “lacks the capacity to make the request”
Kenya	Article 26(4) of Constitution Penal Code	2010 1930, 2023	Rape Where the life or health of pregnant woman are in danger
Malawi	Penal Code	2014	Where life and health of pregnant woman in danger
Nigeria	Penal Code (Northern Nigeria) Criminal Code (Southern Nigeria)	1990	For the purpose of saving the life of a pregnant woman
Rwanda	Law Determining Offences and Penalties in General	2018	The Pregnant person is a child Rape Incest Risk to the health of the pregnant person or the foetus
Sierra Leone	Offences Against the Person Act	1861	Unclear, but possible exception if risk to the mother’s life
South Africa	Choice on Termination of Pregnancy Act	1996	First 12 weeks: On request 13-20 weeks: rape, incest, risk of injury to physical/mental health, risk foetus will suffer “severe physical or mental abnormality”, significant effect on woman’s social/economic circumstances After 20 th week: danger to woman’s life; risk of severe malformation of foetus; risk of injury to foetus.
Uganda	Constitution, Article 22(2) Penal Code Act	1995 2007	Preservation of a mother’s life
Zimbabwe	Termination of Pregnancy Act	1977	Threat to the life or health of the woman Serious risk child will be “seriously handicapped” Foetus conceived from “unlawful intercourse”, such as rape or incest

As Table 12 shows, except for **South Africa**, the other study States significantly curtail the circumstances under which individuals – including persons with disabilities – have a right to access safe and legal abortion services. In this regard, the case has been made for the complete decriminalisation of abortion, and for the State to guarantee the right to safe and legal abortion to everyone.⁷⁷⁰ For the guarantee to operate on a basis of equality for persons with disabilities, the State would also need to repeal all disability-related limitations on abortion, and have regard for supported decision-making for persons with disabilities.

⁷⁷⁰ See, for example, ICJ, ‘The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, International Commission,’ 2023, Principle 15, <https://share-netinternational.org/wp-content/uploads/2023/03/8-MARCH-Principles-FINAL-printer-version-1-MARCH-2023.pdf>, accessed on 1 March 2025. Also see, World Health Organization, ‘Abortion Care Guideline,’ 2022, <https://www.who.int/publications/i/item/9789240039483>, accessed on 1 March 2025.

As the table shows, some legislative provisions purport to guarantee access to abortion in circumstances that include disability-specific conditions:

- In **Ghana**, abortion is permitted where a pregnancy takes place through the “defilement of a female idiot”, and it allows for an abortion to be requested by a next of kin or guardian where a woman “lacks the capacity to make the request”. This is a clear violation of the legal capacity of women with disabilities and amounts to substituted decision-making in contravention of the CRPD.
- **Zimbabwe** permits abortion where there is a “serious risk” that a child will be born “seriously handicapped”.
- **South Africa’s** legal requirements for abortion include “severe physical or mental abnormality” (between the 13th and 20th weeks of pregnancy) and “severe malformation of foetus” and “risk of injury to foetus” (after 20th week of pregnancy).

Finally, it is significant that two study States – **Kenya** and **Uganda** – entered reservations on the exercise of Article 14(2)(c) of the Maputo Protocol, which obligates States to “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.” Kenya entered a reservation to this provision, deeming it inconsistent with its laws on health and reproductive rights.⁷⁷¹ In its reservation to the same provision, Uganda conditioned its implementation to the extent domestic legislation expressly provides for abortion.⁷⁷²

c. Sexual autonomy

Laws inhibiting, and indeed criminalising, the autonomous sexual choices of persons with disabilities are widespread in Africa.⁷⁷³ Such laws typically criminalise an individual who, with knowledge that a person has a disability, has sex with such a person who, while described in discriminatory language, is commonly a person with an intellectual and/or psychosocial disability. These laws are anchored on the ableist assumption that a person with psychosocial or intellectual disability cannot have consensual sex. Most of these laws specify that the criminal offence in question is not rape, while still criminalising a broad swathe of consensual sexual conduct between a person with such disability and another person, whether disabled or not, thereby impinging on their autonomy. Some of the laws creating such offences are also gender discriminatory, as they apply only when the person with a disability in question is a woman or a girl.

Table 13: Laws that limit or criminalize the sexual choices of persons with disabilities

State	Law	Date	Issues
Ghana	Criminal Offences Act	1960	Sex with “any idiot, imbecile or mental patient” whether “with or without his or her consent” if the accused “knew” the person had “mental incapacity”. ⁷⁷⁴ Also generally considers “consent” as “void” “by reason of insanity ... or of any other permanent or temporary incapability” ⁷⁷⁵
Kenya	Penal Code	1930	Criminalizes sex with a person with a “mental illness” which does not amount to rape, if the

⁷⁷¹ Reservations and Declarations Entered by Members States on the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women In Africa (2003), [https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.pdf](https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf), accessed on 1 August 2024.

⁷⁷² Ibid.

⁷⁷³ Anna Arstein-Kerslake, *et al.*, “Criminalisation of Sex with Disabled People with Cognitive Impairments in Commonwealth Countries” (2023) 3 *International Journal of Disability and Social Justice* 4-25.

⁷⁷⁴ Ghana, Criminal Offences Act 29 of 1960, s102, which is headed “unlawful carnal knowledge”.

⁷⁷⁵ Ibid, s14(a).

			accused “knew ... that the person was a person suffering from mental illness” ⁷⁷⁶
Malawi	Penal Code	2014	Sex, that is not rape, or attempting to have sex, with a woman or girl who is an “idiot” or “imbecile” is an offence if the accused “knew” that she was an idiot/imbecile. ⁷⁷⁷ Similar provision for “indecent assault” of men/boys. ⁷⁷⁸
Nigeria	Penal Code (Northern Nigeria) Criminal Code (Southern Nigeria)	1990	Having sex with or attempting to have sex with a woman or girl “knowing” her to be an “idiot or imbecile”. ⁷⁷⁹
Rwanda	Law Determining Offences and Penalties in General	2018	Rape carries a higher sentence if the victim is a person with a disability, ⁷⁸⁰ as does rape resulting in disability.
Sierra Leone	Sexual Offences Act	2012	It is an offence for a person who “intentionally causes, incites, induces, threatens or deceives” a person with a “mental disability” to engage in “sexual activity”. ⁷⁸¹
South Africa	Criminal Law (Sexual Offences and Related Matters) Amendment Act	2007	Presumes that persons who are “mentally disabled” cannot consent to sex. ⁷⁸²
Uganda	Penal Code Act	1950	Having sex with or attempting to have sex with a woman or girl if the accused “knew” her to be an “idiot or imbecile”, in circumstances not amounting to rape. ⁷⁸³
Zimbabwe	Criminal Law (Codification and Reform) Act ⁷⁸⁴	2004	Sex with a “mentally incompetent adult person” can be the subject of various criminal charges “unless there is evidence that the mentally incompetent person” consented and was capable of consenting. Creates an offence of sex with an “intellectually handicapped person” if it is “extra-marital”. It also makes “immoral or indecent” acts with such persons unlawful. Allows for a defence if the accused did not “know” the person was intellectually “handicapped”. ⁷⁸⁵
	Sexual Offences Act	2001	

The above table highlights several matters of significant concern from a disability-rights perspective.

First, eight of the nine study States apply laws that limit or criminalise the sexual choices of persons with disabilities and their partners, for example, by sanctioning persons who have consensual sex with

⁷⁷⁶ Kenya, Penal Code, CAP.63, 1930, s146, which uses the word “defilement” to describe such sex, whether consensual or not.

⁷⁷⁷ Malawi, Penal Code [Chapter 7:01], 2014, s139.

⁷⁷⁸ Ibid, s155A.

⁷⁷⁹ s221, Southern Nigeria.

⁷⁸⁰ Rwanda: Law No. 68/2018 of 30/08/2018 Determining the Offences and Penalties in General, Art 134.

⁷⁸¹ Sierra Leone, The Sexual Offences Act, 2012, s8(1).

⁷⁸² South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Ss1(3)(d)(v) and 3.

⁷⁸³ Uganda, Penal Code Act [Chapter 128], 1950, s130 describes this as “defilement of idiots and imbeciles”.

⁷⁸⁴ Zimbabwe, Criminal Law (Codification and Reform) Act [Chapter 9:23], 2004.

⁷⁸⁵ Zimbabwe, Sexual Offences Act 8 of 2001, s4.

them. Only **Rwanda** appears not to have such a criminal offence, although its Law Determining Offences and Penalties in General does provide for higher sentences for individuals who are found guilty of rape if the person they raped is a person with a disability.

Second, these laws are often justified by a purported desire to “protect” persons with disabilities who are perceived as “inherently vulnerable and unable to consent to sexual activity”, and the laws are typically consistent with the medical model of disability.⁷⁸⁶ These laws are also commonly grounded in specific colonial era legislation, of which **Sierra Leone**, which continues to apply a provision enacted in 1861, provides a good example. Sierra Leone makes it a crime for a person to intentionally cause, incite, induce, threaten or deceive “... another person with a mental disability to engage in a sexual activity”,⁷⁸⁷ thereby assuming that a person with “mental disability” cannot have consensual sex. Uganda provides that persons with intellectual disability require verbal or written consent from a parent, guardian or spouse before they can be given family planning services.⁷⁸⁸

Third, these laws are framed in moralistic and derogatory terms, for example, criminalising “defilement” of “carnal knowledge” with “imbeciles” or “idiots”.

Fourth, in addition to denying the sexual autonomy of persons with disabilities, there is insufficient evidence to suggest that these laws reduce the prevalence of sexual abuse of persons with intellectual and/or psychosocial disabilities.⁷⁸⁹ In fact, over and above criminalising consensual sex for persons with disabilities, these laws also risk making criminally liable and imposing disproportionate criminal sentences on consenting sexual partners of persons with disabilities, in violation of international human rights law and standards. A **Kenyan** court pushed back on this assumption in a case where the appellant had been convicted of the offence of rape when in fact the evidence was that he had consensual sexual intercourse with a woman who had what it described was a “mental disability”. On appeal, the High Court stated that the issue was not whether the complainant was mentally impaired generally but rather whether the complainant was mentally impaired at the time when the alleged act of rape was committed. The Court stated the prosecution had the duty to prove beyond a reasonable doubt that the complainant did not consent by reason of impairment at the time of commission of the felonious act.⁷⁹⁰ The Court’s conclusion is apposite:

“I would be remiss if I did not mention that the approach taken by the prosecution and the learned magistrate is that the complainant is an object of social protection rather than a subject capable of having rights including the right to make the decision whether to have sexual intercourse. This approach is inconsistent with the provisions of Article 12 of the CRPD, which requires State Parties to recognise persons with disabilities as individuals before the law, possessing legal capacity to act, on an equal basis with others... It is therefore improper and inconsistent with the Convention and an affront to the right of dignity of a person protected by Article 28 to label any person as mentally retarded and proceed on the basis that the person is incapable of making a free choice to engage in sexual intercourse. ...”⁷⁹¹

Finally, even laws that increase criminal penalties for sexual assault of persons with disabilities, such as Rwanda’s law, may often have a discriminatory effect in practice, reinforcing stigma about the sexual agency of persons with psychosocial and/or intellectual disabilities.⁷⁹² Such increased sentencing could

⁷⁸⁶ Anna Arstein-Kerslake, *et al.*, “Criminalisation of Sex with Disabled People with Cognitive Impairments in Commonwealth Countries”, (2023) 3 *International Journal of Disability and Social Justice* 5.

⁷⁸⁷ Sierra Leone, The Sexual Offences Act, 2012, s8.

⁷⁸⁸ The Republic of Uganda, The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2006, <https://www.prb.org/wp-content/uploads/2018/05/National-Policy-Guidelines-and-Service-Standards-for-Sexual-and-Reproductive-Health-and-Rights-2006.Uganda.pdf>, accessed on 10 August 2024.

⁷⁸⁹ Anna Arstein-Kerslake, *et al.*, “Criminalisation of Sex with Disabled People with Cognitive Impairments in Commonwealth Countries” (2023) 3 *International Journal of Disability and Social Justice*, 6.

⁷⁹⁰ *Wilson Morara Siringi v Republic* [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/101502/>, accessed on 22 July 2024.

⁷⁹¹ *Ibid*, as per Justice David Majanja.

⁷⁹² Anna Arstein-Kerslake, *et al.*, “Criminalisation of Sex with Disabled People with Cognitive Impairments in Commonwealth Countries” (2023) 3 *International Journal of Disability and Social Justice* 4-25.

also be argued to “legitimise[] the idea that sexual offences where the survivor is a person with cognitive impairments are somehow worse than those where the victim is not a person with cognitive impairments”. However, disagreement persists about whether such increased sentencing is necessary in the context of the prevalence of sexual violence against persons with disabilities and whether increased sentencing can be shown to be effective in reducing sexual violence.⁷⁹³

d. Common barriers to the provision of sexual and reproductive health services

The sexual and reproductive health rights of persons with disabilities across the nine study States are violated by public actors or abused by private actors in various ways. These violations or abuses either impact persons with disabilities generally or they impact specific sub-categories of persons with disabilities in different ways. The violations are evident in the physical, attitudinal and institutional barriers that persons with disabilities face when they seek sexual and reproductive health services.

Some States acknowledge the physical barriers that persons with disabilities face when seeking to exercise their sexual and reproductive health rights.

A study involving policy makers and implementers based in post-conflict Northern Uganda⁷⁹⁴ categorised the barriers persons with disabilities faced in accessing and using sexual and reproductive health services as physical, attitudinal, communication and structural.⁷⁹⁵

Persons with multiple disabilities fare particularly badly in accessing sexual and reproductive health services. This is illustrated by a survey on the use of sexual and reproductive health services by persons with disabilities in **Rwanda**. While some persons with disabilities could access information on sexual and reproductive health through radio, television, newspapers and billboards, persons with multiple disabilities, such as persons who were deaf and blind, could only learn from their peers or friends. Other findings of the survey corroborated studies from the other States that access to health services for persons with disabilities was difficult due to a lack of disability-friendly infrastructure. Healthcare workers had limited knowledge of persons with disabilities and were unable to communicate with patients with disabilities: nurses would address questions to the assistants of persons with disabilities instead of addressing themselves to the concerned individuals directly in the first place. As a result, the nurses violated the confidentiality of the patients with disabilities.⁷⁹⁶

The situation has not changed in **Kenya** since an inquiry held over a decade ago by the Kenya National Commission on Human Rights found that persons with disabilities faced many violations of their sexual and reproductive health rights. The Commission found that discrimination in accessing sexual and reproductive health services was common because persons with disabilities were branded as asexual and deemed to be unable to take care of the home, family and clan. Men with disabilities were teased on the paternity of their children. Health workers pitied women with disabilities seeking maternity services on their “double tragedy of disability and pregnancy”, wondering who dared “to burden them in that way”. Health care providers performed medical procedures on women with disabilities without obtaining their consent, such as when a hysterectomy was performed on a woman with disability without her consent, with the surgeon later telling her that persons with disabilities should not be allowed to give birth to

⁷⁹³ Ibid.

⁷⁹⁴ The conflict, which ended in 2006, had pitted the government against the Lord’s Resistance Army.

⁷⁹⁵ Mac-Seing, Ochola, Ogwang, Zinszer and Zarowsky, “Implementation Challenges and Barriers to Access Sexual and Reproductive Health Services Faced by People with Disabilities: An Intersectional Analysis of Policy Actors’ Perspectives in Post-Conflict Northern Uganda” (2022) 11 *International Journal of Health Policy and Management* 1187-1196. Addressing the barriers in healthcare facilities, the study quotes one official stating: “Especially in our ... maternity ward. You find that it is very hard to deliver them. Sometimes, we prefer to deliver them down on the floor. Sometimes, if you have the energy, you, as the medical person, you have to lift her up on the bed. She delivers. Again, you lift her down or you use a trolley to push her ... In case of an operation ... We don’t have the equipment for people with [physical] disabilities like [involving] lower limbs. There is no way you can help her ... [For] most of them, we deliver them on the floor. The delivery bed is made for normal people”

⁷⁹⁶ Patrick Suubi, et. al., “Exposure of Socio-Demographic Risk Factors on HIV Transmission and Use of Sexual Reproductive Health Services Among Persons with Disabilities in Rwanda” (2023) *Research Square*.

children because they have no potential to adequately bring up the children. Persons with physical disabilities often find it difficult to access health facilities owing to the lack of suitable ramps, the prohibitive distances between service areas within health facilities, and high examination couches and delivery beds. The cost of health services was compounded by transport fares and hospital and pharmaceutical charges, and persons with disabilities had been detained in hospitals for failing to settle their bills. Women with disabilities complained that health workers had sexually harassed them, or that they had been slapped by nurses in the labour wards for failing to follow instructions, which they had not heard. Finally, there were no concerted efforts to avail basic facts and information on sexual and reproductive health to persons with disabilities.⁷⁹⁷

Kenya's Persons with Disabilities National Policy 2024 highlights the challenges facing persons with disabilities in accessing health services, thus:

"most persons with disabilities have challenges accessing health facilities and services largely due to distance, terrain and a situation that is worsened by the fact that transportation of persons with disabilities is costly and unavailable...; stereotypes and prejudices of health personnel remain a serious barrier to the realization to the right to health of persons with disabilities...; Medical interventions aimed at correcting disabilities are carried out without free and informed consent of the concerned persons with disabilities and at times sterilization is carried out under the assumption that they do not have the right to have children...; Reproductive health and related services are generally inaccessible to most persons with disabilities since they are assumed that not(sic) able to make their own decisions."⁷⁹⁸

Kenya's newly enacted Persons with Disabilities Act attempts to address some of these challenges by securing the right to marry, form a family and "control his or her sexual and reproductive health".⁷⁹⁹ Furthermore, the Act makes provision for the protection of matrimonial property during marriage and at the dissolution of marriage.⁸⁰⁰

Women with disabilities

While all persons with disabilities face sexual and reproductive health barriers, those barriers are compounded for women and girls with disabilities on account of intersecting gender-based and disability-based discrimination.

A submission to the Committee on Elimination of Discrimination against Women by **Rwanda's** umbrella body of OPDs reported that women and girls face multiple sexual and reproductive health problems. These included low awareness of and poor attitudes of society and health-care providers towards women with disabilities; low levels of inclusion of women with disabilities in health services; physical inaccessibility of health services; lack of Sign Language interpretation, and limited knowledge on how to interact with women and girls who have certain disabilities.⁸⁰¹ As a Rwandan and Ugandan study noted, the human rights violations that women with disabilities face include rape, coerced procedures, such as sterilization and contraception, and denial of sexual and reproductive health services.⁸⁰²

Malawi has acknowledged that women with disabilities seeking antenatal, delivery and post-natal services were mistreated "as if persons with disabilities are not supposed to reproduce." They were demeaned, for example, by being asked by health workers how they could be pregnant when they were

⁷⁹⁷ Kenya National Commission on Human Rights, 'Realising Sexual and Reproductive Health Rights in Kenya: A Myth or a Reality?' April 2012, https://www.knchr.org/portals/0/reports/reproductive_health_report.pdf, accessed on 20 May 2024.

⁷⁹⁸ Kenya, Persons with Disabilities National Policy, 2024, p 13.

⁷⁹⁹ Kenya, Persons with Disabilities Act 2025, s8.

⁸⁰⁰ Ibid.

⁸⁰¹ Report on Situation of Women and Girls with Disabilities to CEDAW Committee by the National Union of Disability Organisations of Rwanda (NUDOR), 2022, <https://www.ecoi.net/en/document/2075356.html>, accessed on 20 May 2024.

⁸⁰² Ingrid Heijden, "Avoiding Harm, Respecting Rights: Facilitating Person-centred, Disability-inclusive Informed Consent in Sexual and Reproductive Health Settings (Experience from Uganda & Rwanda)" (Global Inclusive Health Division), 2023, 5-6, https://www.hi-us.org/sn_uploads/document/Disability-inclusive-informed-consent-in-SRH-RS-19.pdf, accessed on 19 May 2024.

disabled.⁸⁰³ Malawian OPDs reported stereotypes about the rights and abilities of women with disabilities to parent. In one instance, a woman with disability who went to a health centre to give birth to her first baby, was abused by health workers and not given due attention, causing her baby to die, subsequent to which she was divorced by her husband. In another cited instance, a woman with epilepsy was denied contraception that she had sought, although she had given birth to two children conceived as a result of being raped. Another concern was that the digitalization of health information excluded women and girls with disabilities who could not access the digital platforms on which information on health services was curated.⁸⁰⁴

A **South African** study found that gender-based discrimination compounded the negative experiences of women with disabilities seeking sexual and reproductive health services. Forming intimate relationships was difficult for women with disabilities because of harmful societal disability-based attitudes. They feared sexual exploitation, particularly since they were assumed on account of their disability to be virgins and hence could not possibly be people living with HIV. Their experiences of childbearing in public hospitals were particularly sobering: health workers disapproved of the notions that women with disabilities should have sexual partners, seek family planning services, use contraception and, indeed, that they should have children.⁸⁰⁵

In **Nigeria**, an analysis found that the challenges women with disabilities experienced in accessing healthcare include inaccessible public transport, lack of accessible facilities and equipment, absence of accessible communication facilities, poverty, negative attitudes of healthcare personnel, and very few skilled medical providers.⁸⁰⁶

A study found that women and girls with intellectual disabilities in African States, such as **Nigeria** and **Kenya**, were particularly at risk of forced sterilization on the basis of four rationales:⁸⁰⁷

- First, women with intellectual disabilities faced forced sterilization for reasons of eugenics, the idea being that society should prevent the conception of “unfit and defective individuals”, such as persons with intellectual disabilities.
- Second, parents and guardians allowed their girl children with disabilities to be sterilized because of financial limitations, e.g., that women or girls with intellectual disabilities would not have the economic wherewithal to raise their children.
- Third, women and girls with disabilities were forcibly sterilized for their own “good”, i.e., the sterilization was in the best interest of the women or girls.⁸⁰⁸ As we have shown in this study, that approach assumed that women and girls with disabilities did not have legal capacity to make their own choices on their sexuality.
- Fourth, forced sterilization was undertaken without the informed consent of women and girls with intellectual disabilities because of the assumption that women with intellectual disabilities were “unfit or unqualified” to be married and become mothers.⁸⁰⁹

Some of these rationales are evident in **Ghana’s** Policy on sexual and reproductive health and rights, which States that contraception shall be provided to persons with mental disability or serious psychiatric disease, “where the nature of the disease does not allow for informed choice ... in consultation with all

⁸⁰³ CRPD/C/MWI/1-2, para 197.

⁸⁰⁴ Disabled Women in Africa, Alternative Report Submitted to the Committee Towards Malawi’s CRPD Review, July 2023.

⁸⁰⁵ Sibusisiwe Mavuso, “Access to Sexual and Reproductive Health Services: Experiences and Perspectives of Persons with Disabilities in Durban, South Africa” (2015) 29 *Agenda* 79-88.

⁸⁰⁶ Disability Rights Advocacy Centre, “A Situation Analysis on Access to Sexual and Reproductive Health Services by Women and Girls with Disabilities in Nigeria” (May 2020) cited in Uzoma Prince-Oparaku and Ngozi Chuma-Umeh, “Imperatives of Securing Equitable Access to Healthcare Services for Persons with Disabilities in Nigeria” (2022) 10 *African Disability Rights Yearbook* 41-61.

⁸⁰⁷ Adetokunbo Johnson and Karin van Marle, “Exploring Intersectional and Ethical Feminist Perspectives as a Possible Framework for Understanding Violence against Women with Disabilities in Africa with Specific Reference to Forced sterilisation” in Stephen J. Meyers, Megan McCloskey and Gabor Petri (eds) *The Routledge International Handbook of Disability Human Rights Hierarchies* (Routledge 2024).

⁸⁰⁸ Ibid.

⁸⁰⁹ Ibid.

relevant parties including persons in loco parentis and trained service providers.”⁸¹⁰

Kenya’s Persons with Disabilities National Policy 2024 highlights critical concerns facing women and girls with disabilities, including:

“harmful cultural practices, neglect or overprotection, abandonment, abuse, inaccessible sexual and reproductive health services, forced sterilization and abortion, separation from their children and family members and sexual and gender-based violence. ...These are further worsened by illiteracy and disinheritance of property.”⁸¹¹

The Persons with Disabilities Act explicitly guarantees a woman with disabilities the rights to: protection from sexual and gender-based violence; habilitation, rehabilitation and psychosocial support against sexual and gender-based violence; sexual and reproductive health services; and to retain and control her fertility. The Act also safeguards the woman’s right to “keep her child and not be deprived of her child on the grounds of disability.”⁸¹²

In **Uganda**, the agency of women and girls with disabilities to manage their sexual and reproductive health and rights was limited by their families, including on if and when to have children, whether and what contraception to use, and whether or not to interact socially.⁸¹³

A **Zimbabwean** case study highlighted the strategies nongovernmental organisations used to support sexual and reproductive health services for women and girls with disabilities. The strategies sought to make persons with disabilities active participants in exercising their sexual and reproductive health rights in rural settings where resources were scarce. They included building practical knowledge on sexual and reproductive health services; increasing community awareness and sensitivity; enhancing access to justice and related services for survivors of sexual violence; delivering assistive devices; and promoting the livelihoods and economic empowerment of persons with disabilities.⁸¹⁴

The positive impact of such strategies was evident in **South Africa**, where the Western Cape Forum for Intellectual Disability developed materials for educators and health care workers to provide sexuality education to learners and adults with intellectual disabilities.⁸¹⁵ Developing a sexuality education programme entailed, for example, accommodating the learning needs of persons with intellectual disabilities by using visual resources, such as pictures, and participatory methods, such as games and role plays.⁸¹⁶

A study in **Sierra Leone** involving women with and without disabilities sought to find what women understood to be inclusive sexual and reproductive healthcare. Respondents stated that inclusive services had to be based in the community and accessible to all; the services had to be low-cost or free and, in particular, not encumbered by travel costs as well as bribery. The services also had to be dignified and private and not impinged by negative attitudes from healthcare workers.⁸¹⁷

⁸¹⁰ Republic of Ghana, National Reproductive Health Service Policy and Standards, 2014, <https://platform.who.int/docs/default-source/mca-documents/policy-documents/policy/gha-cc-10-01-policy-2014-eng-national-reproductive-health-service-policy-and-standards.pdf>, accessed on 1 August 2024.

⁸¹¹ Kenya, Persons with Disabilities National Policy, 2024, p32.

⁸¹² Kenya, Persons with Disabilities Act 2025, s10.

⁸¹³ Humanity and Inclusion, “Access to Sexual and Reproductive Health and Rights Information and Services: Perspectives of Women and Girls with Disabilities in Uganda and Bangladesh,” August 2021, https://www.hi-us.org/sn/uploads/document/1257_HI_report_research_2022_P6_17_10_22_DIGITAL.pdf, accessed on 15 May 2024.

⁸¹⁴ Tafadzwa Rugoho and John Ganle, “NGOs and the Promotion of the Sexual and Reproductive Rights of Girls and Young Women with Disabilities in Zimbabwe” (2023) *Social Policy and Society* 2023).

⁸¹⁵ Rebecca Johns and Colleen Adnams, “My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disability in the Western Cape, South Africa” (2016) 4 *African Disability Rights Yearbook* 100-123.

⁸¹⁶ Ibid.

⁸¹⁷ Leonard Cheshire, “Towards Inclusive Sexual and Reproductive Healthcare: Insights from Women with Disabilities in Sierra Leone,” <https://www.leonardcheshire.org/sites/default/files/2022-12/Inclusive-SRH-Evidence-brief.pdf>, accessed on 16 May 2024.

Youth with disabilities

Youth with disabilities also face significant barriers when seeking access to sexual and reproductive health services.

A study in **Ghana** found that the barriers that young female deaf persons faced in the utilization of sexual and reproductive health services were at two levels: point of service delivery, and barriers at the individual level. Point of service delivery barriers included communication barriers that tended to result in misinformation. For example, deaf women and girls resorted to guessing the meaning of sexual and reproductive health from pictures and improvised demonstrations by health workers in the absence of Sign Language interpretation. The cost of accessing sexual and reproductive health services for deaf persons was prohibitive since they had to pay for drugs and Sign Language interpretation. Barriers at the individual level included limited knowledge on sexual and reproductive health, and inability to read and write occasioning inadequate knowledge on sexual and reproductive health.⁸¹⁸

Another study found that the barriers that young people with physical disabilities face when accessing sexual and reproductive health services in **South Africa** also manifest at the personal and interpersonal levels. At the personal level, poverty made them ill-able to care for themselves, which was compounded by limited information on sexual and reproductive health and fear of seeking sexual and reproductive health services in clinics. At the interpersonal level, they were afraid of speaking about sexual and reproductive health with their parents, and often they did not have assistants to help them go to clinics.⁸¹⁹

Adolescents and youth with disabilities experience particular challenges in respect of sexual and reproductive health. A study that interviewed youth with disabilities in **Zimbabwe** found that parents did not provide youth with disabilities as much information on sexual and reproductive health as availed to their non-disabled siblings. Parents assumed their disabled children were asexual and only provided them information on hygiene and not sexuality.⁸²⁰ This assumption is corroborated by a **South African** study that found that even when educators did provide learners with disabilities with sexuality education, its content primarily focused on hygiene, abstinence and self-respect, rather than comprehensive sexuality education.⁸²¹ The Zimbabwean study also reported that information on sexuality was similarly restricted for persons with disabilities in schools. Even community outreach programmes on sexual and reproductive health services restricted information provided to persons with disabilities: interviewers reported being forced to leave community meetings on HIV/AIDS when the use of condoms was being demonstrated.⁸²² The dearth of information on sexual and reproductive health became manifest when youth with disabilities sought to have sexual relations: male youth reported uncertainty and anxiety when they first attempted to have sex, while female youth reported fears of abuse since they did not have agency to initiate sexual intercourse.⁸²³

⁸¹⁸ Wisdom Mprah, *et al.*, "Barriers to Utilization of Sexual and Reproductive Health Services among Young Deaf Persons in Ghana" (2022) 26 *African Journal of Reproductive Health*, December 58.

⁸¹⁹ Bheki Mathabela, Sphiwe Madiba and Perpetua Modjadji, "Exploring Barriers to Accessing Sexual and Reproductive Health Services Among Adolescents and Young People with Physical Disabilities in South Africa" (2024) 21 *International Journal of Environmental Research and Public Health*, 199.

⁸²⁰ Tafadzwa Rugoho, *et al.*, "Sexual and Reproductive Experiences of Youth with Disabilities in Zimbabwe" (2020) 8 *African Disability Rights Yearbook* 31-51.

⁸²¹ Submission by Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International to the CRPD Committee Working Group for South Africa, 31 July 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FZAF%2F31996&Lang=en.

⁸²² Tafadzwa Rugoho, *et al.*, "Sexual and Reproductive Experiences of Youth with Disabilities in Zimbabwe" (2020) 8 *African Disability Rights Yearbook* 31-51.

⁸²³ *Ibid.*

iii. Findings and recommendations

The ICJ makes the following findings:

1. Three of the study States establish constitutional guarantees on reproductive health services – Kenya, South Africa, and Zimbabwe. The constitutions of the other study States establish more general guarantees on health.
2. While all the study States, with the exception of Kenya, do not legislate specifically for sexual rights for persons with disabilities, many of them have disability specific policy statements on sexual and reproductive health rights. For example, South Africa's National Integrated Sexual and Reproductive Health and Rights Policy requires facilities to remove barriers to accessing sexual and reproductive health and rights by ensuring access to information, physical access, financial access, and access to comprehensive sexual and reproductive health and rights care.
3. The drivers of negative attitudes on providing sexual and reproductive health services to women with disabilities include questioning why women with disabilities should have sex, become pregnant and have a child, or adopt a child; and questioning why they should access post-abortion services, family planning and other reproductive health services.
4. With the exception of South Africa, the other study States criminalise abortion and include additional disability-specific conditions on the circumstances in which persons can lawfully access abortion services.
5. Laws inhibiting and often criminalising the autonomous sexual choices of persons with disabilities prevail in the study States. Eight of the nine States (apart from Rwanda) apply laws that limit or criminalise the sexual choices of persons with disabilities.
6. The sexual and reproductive health rights of persons with disabilities across the nine States are violated by public actors or abused by private actors in various ways. These violations or abuses either impact persons with disabilities generally or they impact specific sub-categories of persons with disabilities, including women and girls with disabilities, adolescents with disabilities, youth with disabilities, and persons with hearing, mobility, visual, intellectual, psychosocial, multiple or other disabilities. The violations are evident in the physical, attitudinal and institutional barriers that persons with disabilities face when they seek to access sexual and reproductive health rights.
7. While all persons with disabilities face sexual and reproductive health barriers, those barriers are compounded for women and girls with disabilities on account of their intersecting marginalisation as women and persons with disabilities. Significant problems that women with disabilities face include rape; coerced procedures, such as sterilisation; and denial of access to sexual and reproductive health rights.
8. Youth with disabilities also face significant barriers when they seek to access sexual and reproductive health services. Parents assume that youth with disabilities are asexual and therefore fail to provide them with information on sex and reproduction.

The ICJ therefore makes the following recommendations:

1. States should amend their laws to include the right for all, including persons with disabilities, to access reproductive health rights and services, including abortion services.
2. States should decriminalise abortion completely, and they should guarantee the right to safe and legal abortion to everyone.
3. States should repeal disability-related limitations on abortion, and they should provide persons with disabilities with the reasonable accommodation measures and other supports they may require in that regard.
4. States should undertake capacity building programmes for their officials, and public awareness programmes for the public, to combat negative attitudes on providing sexual and reproductive health services to persons with disabilities.
5. States should decriminalise and destigmatise the autonomous sexual choices of persons with disabilities and their partners, so that persons with disabilities may have intimate, consensual sexual relations with whomsoever they choose, on an equal basis with other persons.

X. Conclusion: an opportune moment to advance disability rights

In this study, the ICJ has synthesised key research material on developments in Ghana, Kenya, Malawi, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda and Zimbabwe in complying with some of their obligations to secure the rights of persons with disabilities under the CRPD. The study has reviewed evidence of implementation in seven areas: legal capacity, liberty of person, access to justice, political participation, education, work, and sexual and reproductive health services.

From the study's findings, it is clear that following the ratification of or accession to the CRPD by these States, many domestic authorities deliberately started to employ the narrative of the human rights approach to disability. The study found many instances where the rhetoric used to introduce or explain policy and law had apparently been drawn from the CRPD. The study, however, also found that the narratives advanced were far too often not translated into policy or legal changes and practices that were fully compliant with CRPD obligations, and that carried actual positive impacts on the lives of persons with disabilities.

This is not to say that the lives of some persons with disabilities across the nine States have not been impacted positively by policies and laws made pursuant to the implementation of the CRPD. These positive results are manifest in persons with disabilities who have enjoyed access to justice; those who have exercised their right to political participation; those who have studied in inclusive education settings; and indeed, those who have been provided reasonable accommodation by their employers. The judiciaries of some States have also spearheaded the affirmation of disability rights to the benefit of some persons with disabilities.

Nevertheless, the study's findings show that these States have far too often failed to translate their rhetoric on the human rights approach to disability into policy and legal frameworks that recognise, guarantee and give actual effect to the rights of persons with disabilities. State authorities, it would seem, have commonly failed to appreciate or ignored the meaning and implications of the progressive standards established in the CRPD on matters such as supported decision-making, inclusive education, employment in the open labour market, and the sexual autonomy of persons with disabilities.

The report makes a range of findings in respect of each individual section and topic. Broad recommendations – which are in the main not country specific – are provided at the end of each section. These findings and recommendations are not intended to be comprehensive, but instead to suggest some of the trends documented and clear steps that must be taken for the study States to ensure full compliance with international law and standards.

Moving forward, this study highlights some priorities for stakeholders, including not only state authorities, but also OPDs and general civil society organisations, such as the ICJ itself.-

First, civil society organisations, including particularly those addressing human rights, should fully integrate disability within their general human rights work. For example, organisations that work on access to justice or the right to education should use an approach grounded in disability rights – which would incorporate the rights and needs of persons with disabilities from the outset – in programme planning, implementation and monitoring. This necessitates that research, advocacy and litigation aimed at the realisation of the right to education should always be focused on ensuring access to *inclusive education* on a systemic level as well as in specific cases.

Second, stakeholders should consider that implementing the CRPD comes with significant challenges, and States require in-depth educational and technical support on the meaning and implications of ensuring the rights of persons with disabilities. In that regard, whether through approaches sometimes understood to be confrontational, such as naming and shaming, or through more collaborative

approaches, stakeholders should help States to build understanding and capacity relating to disability rights. For example, while the study shows that litigation has, in some instances, been successful in ensuring the recognition of the right to legal capacity and the need for supported decision-making, it also shows that capacity building of justice actors may similarly contribute towards improved access to justice. More generally, stakeholders should, within the extent of their mandates and capabilities: engage in policy and lawmaking processes; conduct research and advocacy; consider undertaking more public interest litigation; and explore alternative means of supporting persons with disabilities to claim their rights in the context of scarce resource settings that prevail in the nine States.

Third, stakeholders should communicate that the obligations States assume when they become party to international human rights treaties such as the CRPD and the ADP come with responsibilities and accountabilities which States cannot simply ignore or dismiss. Stakeholders should take concerted action to hold State authorities accountable in the discharge of their obligations concerning the rights of persons with disabilities. Encouraging States to conduct comprehensive audits of their legal and policy frameworks' compliance with the CRPD and ADP is critical to ensuring public officials' awareness of the full extent of measures required to ensure compliance. In this regard, monitoring implementation of the CRPD and ADP, therefore, will remain a critical element for ensuring state accountability. Ensuring that States report in a detailed and timely fashion to the relevant treaty bodies in respect of their compliance with their obligations and ensuring that States fully consider and comply with the recommendations of such treaty bodies remains critical.

Fourth, stakeholders need to have a better understanding of the relationship between legal obligations and concomitant budgetary considerations. Stakeholders should engage more robustly with the state institutions that oversee budget-making, where they should make the case for disability-responsive budgeting. The obligations established in the CRPD and the ADP will be more effectively realised when disability-responsive budgeting becomes a feature of domestic budget-making. Budgeting for disability rights, as this study shows, may require specific budgeting for the implementation of disability-specific legislation, but will also require disability-specific budgeting for other government departments and ministries. For example, without revised budgeting for the provision of procedural accommodations by authorities responsible for the justice sector – including in the form of support persons such as intermediaries and interpreters – it will be difficult for justice actors to ensure access to justice for persons with disabilities on an equal basis.

Fifth, stakeholders should fully consider pursuing forms of legal interventions through regional and international communications to treaty bodies. The possibility of communications to the CmrPD, in those States who are party to the Optional Protocol to the CRPD,⁸²⁴ exists alongside the growing potential for communications to the African Commission on Human and Peoples' Rights, given the recent coming into effect of the ADP. As this report shows, only one communications decision relating to disability rights has, as yet been decided by the Commission. This reveals clearly the underuse of this avenue for securing justice for persons with disabilities. For those seeking to use regional mechanisms in particular, the African Court on Human and Peoples' Rights' February 2025 decision finding against Tanzania for violating a range of rights of persons with albinism, should provide encouragement about the potential of legal interventions to give effect to the rights of persons with disabilities.⁸²⁵

Sixth, stakeholders should take advantage of the opportune moment provided by the coming into force of the ADP. Stakeholders should, in conducting their work, take account of the fact that the ADP both

⁸²⁴ Out of the nine study States, only three (Kenya, Malawi, and Sierra Leone have not ratified the Optional Protocol to the CRPD. The earliest to ratify amongst the study States is South Africa (30 November 2007), followed by Uganda (25 September 2008), Rwanda (1st December 2008), Nigeria (24th September 2010), Ghana (31 July 2012), and Zimbabwe (23 September 2013). For the status of ratification of the Protocol, see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD.

⁸²⁵ *Centre for Human Rights and Others v. United Republic of Tanzania*, African Court on Human and Peoples' Rights, Application No. 019/2018), <https://www.african-court.org/wpafc/african-court-on-human-and-peoples-rights-to-hold-public-hearing-in-application-no-019-2018-centre-for-human-rights-and-others-vs-united-republic-of-tanzania-10-september-2024/>, accessed on 4 April 2025.

complements the CRPD and provides for the protection of additional rights that persons with disabilities may exercise. As this study has found, the ADP adds value to the content of the various explored themes. The Protocol also provides Africans with disabilities a further avenue for seeking redress when their rights are violated or abused. Stakeholders should advocate for the ratification of or accession to the ADP and the Optional Protocol to the CRPD by more States. They should also work with domestic constituencies of States in support of the Protocol's implementation.

Finally, the African Commission must play an increased and unerring role in ensuring the rights of persons with disabilities, particularly in light of the ADP coming into effect. In that regard, a recent development is particularly welcome. At its 81st Ordinary Session, in November 2024, the African Commission adopted Resolution 617: Resolution on the Entry into Force and Implementation of the Protocols on the Rights of Older Persons and Persons with Disabilities in Africa. The Resolution, among other things:

- Called on all member States of the AU to become parties to the ADP;
- Urged state parties to the ADP, in consultation with persons with disabilities, to take concrete steps to fulfil their obligations under the ADP;
- Called on persons with disabilities and other stakeholders to collectively mobilise and work with government focal points and other agencies of State Parties to set up accountability mechanisms to support the implementation of the ADP;
- Urged private entities that offer facilities and services open or provided to the public to take into account all aspects of the rights of persons with disabilities under the ADP;
- Called for the adoption and promotion of Sign Language as a working language of the AU, and the provision of easy-to-read and/plain language documentation across the AU;
- Urged the AU, its member States and other organs of the Union to ensure the active and meaningful involvement of persons with disabilities and their representative organisations in policy making and implementation processes;
- Urged States Parties to undertake capacity strengthening and inclusion of women and girls with disabilities and underrepresented groups of persons with disabilities in the work of the African Commission, including policy dialogues, consultations and advocacy initiatives;
- Recommended that States prioritise marginalised groups of persons with disabilities, such as persons with psychosocial disabilities and persons with albinism, who continue to face life-threatening violence and deprivation of liberty due to persistent harmful beliefs and cultural practices;
- Decided to develop guidelines for periodic reporting under the ADP, to enable States Parties to report on their compliance with the ADP;
- Decided to develop implementation strategies for the ADP; and
- Committed to mainstream accessibility and inclusion in all aspects of the Commission's work and operations.⁸²⁶

Resolution 617, whose development was spearheaded by several OPDs and general human rights organizations, including the ICJ, establishes the short and medium-term priorities towards implementing the ADP.⁸²⁷ The Commission should double down on these commitments and develop clear and time-bound plans to improve the accessibility and level of engagement possible for persons with disabilities at the Commission's sessions and with its processes, proceedings and documents. The Commission should work closely with these and other critical stakeholders to clarify and interpret specific provisions of the Protocol through the production of General Comments and other interpretative material.

⁸²⁶ African Commission, Resolution on the Entry into Force and Implementation of the Protocols on the Rights of Older Persons and Persons with Disabilities in Africa, ACHPR/Res.717 (LXXXI) 2024, <https://achpr.au.int/en/adopted-resolutions/617-implementation-protocols-rights-rights-older-persons>, accessed on 4 April 2025.

⁸²⁷ ICJ, 'Africa: African Commission on Human and Peoples' Rights calls for the full continental ratification and implementation of the African Disability Protocol,' 3 December 2024, <https://www.icj.org/africa-african-commission-on-human-and-peoples-rights-calls-for-the-full-continental-ratification-and-implementation-of-the-african-disability-protocol/>.

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