

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 of Persons with Disabilities

Summary
May 2025



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Acknowledgements

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A. Context of the Study

The ICJ's study of nine sub-Saharan African States' implementation of the Convention on the Rights of Persons with Disabilities shows that despite some progress, much more is needed by these States to make human rights protections real.

With Eritrea having recently become the latest State party, all African Union Member States have now ratified or acceded to the Convention on the Rights of Persons with Disabilities (CRPD).¹ Of these 54 States, 31 have ratified or acceded to the Optional Protocol to the CRPD (OP-CRPD).² Historically, numerous African stakeholders, including organizations of persons with disabilities, played an important role in the elaboration of the CRPD.³

Building on existing international human rights law and standards providing for protection for the human rights of all persons, including individuals with disabilities, the CRPD has constituted something of a paradigm shift in the protection of these rights.⁴ It also presents an opportunity for an upscaling of legal protection of these rights on domestic, regional and global levels.

Shortly after the CRPD came into force, a range of stakeholders, led by organizations of persons with disabilities, began to call for an African regional disability rights instrument. After a lengthy process, in 2018, the African Union (AU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP). To date, 16 AU Member States have become party to the Protocol, which came into force on 3 May 2024.⁵

In the early stages of the drafting of the ADP, the working group tasked with this process by the African Commission on Human and Peoples' Rights (African Commission) acknowledged that "Africa's human rights architecture [would] remain lopsided and incomplete without a human rights instrument affirming or reaffirming the rights of persons with disabilities".⁶ This was due, not only, to the absence of a disability specific instrument, but also because existing African human rights instruments were "by and large informed by the deficit/medical rather than the social/rights model of disability".⁷

The primary aim of elaborating the Protocol was therefore to ensure consistency with "the letter and spirit of the Convention on the Rights of Persons with Disabilities", while taking the opportunity to "raise[] the bar for the rights of persons with disabilities in Africa by establishing further affirmations and clarifications to tackle Africa's specificities and realities".⁸

It is in this context, that the ICJ, through this study, aims to assess the implementation of both the CRPD – and to a more limited extent the recently operational Protocol – in nine study States in sub-Saharan Africa: Ghana, Kenya, Malawi, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda, and Zimbabwe. The study provides an important tool for stakeholders to take stock of the developments regarding the realization of the rights of persons with disabilities in the study countries with a view to working towards further progress in that end.

¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD accessed 30 April 2025.

² https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD accessed 30 April 2025.

³ Frans Viljoen & Japhet Biegon (2014) The Feasibility and Desirability of an African Disability Rights Treaty: Further Norm-Elaboration or Firmer Norm-Implementation?, *South African Journal on Human Rights*, 30:2, 345-365, p 348-352.

⁴ https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf, p 6, accessed 30 April 2025.

⁵ African Commission "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" (9 June 2024) <https://achpr.au.int/en/news/press-releases/2024-06-09/entry-force-protocol-persons-disabilities>, accessed 30 April 2025.

⁶ H Combrinck and L Mute "Developments regarding disability rights during 2013: The African Charter and African Commission on Human and Peoples' Rights" (2014) 2 *ADRY* 309-317, available: <https://www.adry.up.ac.za/regional-developments-2014/african-charter-achpr#pqfid-1066144>.

⁷ Ibid.

⁸ Ibid.

B. Aims of the Study

While all the nine study States are bound by the CRPD, two States – Malawi and Kenya – are not yet party to the OP-CRPD. Ghana and Sierra Leone are not yet parties to the ADP. The ICJ recommends that all AU member states who have not yet ratified the ADP and/or the OP-CRPD do so expeditiously. The ICJ also recommends that the study States comply with their obligations to report to the CRPD Committee and the African Commission in terms of these treaties.

The study concludes with some recommendations for all stakeholders, including organizations of persons with disabilities and civil society organizations, of how to build on this strong history of advocacy and seek the full implementation of the CRPD and ADP in the nine Study States. Although the report focuses on these nine States, the ICJ's recommendations are of some more general application in the broader African context.

C. Specific focuses of the Study

The study identifies the extent to which these nine sub-Saharan African States have implemented the CRPD in the following selected areas: 1) legal capacity; 2) liberty of person; 3) access to justice; 4) political participation; 5) education; 6) work; and 7) sexual and reproductive health rights. The ICJ makes specific findings and recommendations in respect of each of these topics,⁹ the main elements of which are summarized below.

1. Legal capacity

Legal capacity is both the competency under the law to hold rights and duties (legal standing), and the ability to exercise those rights and duties (legal agency). Constitutional provisions and laws in most study States restrict the rights to legal capacity of persons with disabilities, and particularly persons with intellectual and/or psychosocial disabilities. Legislation pertaining to "mental health" in all study States provide for the denial of legal capacity based on "mental illness" and regimes of substituted decision-making which deprive persons with disabilities of their legal capacity. This is so even in countries with laws explicitly affirming the rights of persons with disabilities or, drawing on the CRPD, purport to be based on a supported decision-making approach. Restrictions on legal capacity span a range of areas of life, including decisions about reproductive health, voting and political participation, participation in legal proceedings and management of personal and financial affairs. Stigma and stereotyping about persons with disabilities is generally prevalent in the study States and *de facto* guardianship persists even in circumstances where laws do not prescribe restrictions on legal capacity of persons with disabilities. In some States such *de facto* guardianship systems are effectively enforced by family members, communities or traditional and religious leaders.

2. Liberty of person

Five of the study States guarantee the right to personal liberty in their Constitutions, while four limit this right for persons with intellectual and/or psychosocial disabilities, who are variously referred to as "persons of unsound mind" or "lunatics". Even where such restrictive constitutional provisions are not in effect, the laws of the study States commonly provide for the detention of persons with psychosocial and/or intellectual disabilities who they deem "insane", criminally incapable or unfit to stand trial. In some study States, such persons may be detained indefinitely at the discretion of state authorities, likely for longer than if they had been convicted for the alleged crime. The institutionalization of persons with disabilities occurs not only in

⁹ Full section specific findings appear in each section of the main report which is available here: https://www.icj.org/wp-content/uploads/2025/05/An-Opportune-Moment_Realizing-the-Rights-of-Persons-with-Disabilities-in-Africa_1.pdf, pp 1-10.

State-run facilities. In some study States, persons with disabilities, whose disabilities are believed to be caused by spiritual or moral failings, or ancestral or divine “curses”, are sometimes confined to faith-based centres, such as traditional religious shrines, Christian prayer-camps or Islamic rehabilitation centres, where they are often subjected to human rights violations and abuses. Facilities in which persons with disabilities are detained are typically not accessible for persons with disabilities, who are often not provided with reasonable accommodations, including accessible infrastructure, basic mobility aids and auxiliary devices, and specialized healthcare services.

3. Access to justice

The Constitutions of some of the study States provide general guarantees on access to justice. However, none of the study States have express disability-specific guarantees ensuring access to justice for persons with disabilities. While some of the study States have legislation providing for legal aid support, implementation is generally insufficient. Court premises are not commonly accessible to persons with disabilities. Even basic accessibility features such as lifts, ramps, rails and accessible toilets are often unavailable. Information about court proceedings and court papers are not made consistently available to persons with disabilities in accessible formats. Communication barriers for persons with disabilities persist in courts, including the absence of sign language interpreters. In some instances, courts rely on the support of non-governmental organizations of persons with disabilities to provide such services on an ad hoc basis, while in others deaf litigants, for example, are themselves required to provide interpreters. Persons with intellectual and/or psychosocial disabilities, who are not commonly provided with appropriate support through justice intermediaries, also struggle to communicate effectively in legal processes in which complex and technical language is used. Justice personnel often hold negative attitudes and assumptions about such persons, considering them to be unreliable, lacking credibility and as incapable of giving evidence or otherwise participating in legal proceedings. The study States do not undertake adequate training for justice actors on disability rights and the provision of support to persons with disabilities. Women with disabilities are disproportionately impacted by barriers to access to justice both because of their vulnerability to violence and the tendency of justice actors to not consider them as credible witnesses. Overall, persons with disabilities seldom even file cases alleging rights violations or abuses in court because of the overly complex and inaccessible legal systems, the length of time cases take to process and the cost of litigation.

4. Political participation

The Constitutions of all nine study States treat persons with certain disabilities differentially, by barring them from registering as voters and voting, and from standing in parliamentary or presidential elections. In this context, the laws characterize persons with disabilities with pejorative terms such being “of unsound mind”, “criminal lunatics”, “persons detained as mentally disordered or intellectually handicapped” or “mentally incompetent.” The study States provide various levels of support and accommodations to facilitate and assist persons with disabilities to vote in elections. However, such supports and accommodations are not always available in all circumstances, at all polling stations and to all voters. Even where some supports are provided, persons with disabilities face a range of barriers to full and effective participation including limited resources, limited access to information, stigmatization, and limited access to national identification documents. Voter education information, for example, is often reported to be inaccessible to persons with disabilities. Although in many of the study States some persons with disabilities have been elected, rates of representation remain low, especially for women with disabilities. This is the case despite some States having established specific measures aimed at enhancing the inclusion of persons with disabilities in their legislatures.

5. Education

While the Constitutions and laws of some study states contain specific provisions in respect of the education

of persons with disabilities, some of those provisions prioritize special education systems which segregate persons with disabilities to special schools. Although the study States have adopted policies or enacted laws with provisions on inclusive education, education policies and laws commonly retain significant contrary provisions on segregated education. Segregated special schools still present the most plausible possibility of accessing education for many persons with disabilities in the study States. In all study States, it is likely that many children with disabilities do not attend school at all, with evidence from some study States suggesting that large numbers of children with disabilities are not in school despite legal provisions mandating compulsory school attendance for all children. None of the study States have put in place sufficiently 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 based on disability; inaccessible school premises; inadequate curricula and teaching material; limited staff trained on inclusive education; a dearth of expertise on Sign Language, Braille, Easy-Read; and negative social attitudes on the attendance of learners with disabilities in regular community schools. Even where States endeavour to implement inclusive education policies, limited human and financial resources at ordinary community schools inhibit the provision of inclusive, quality education on an equal basis. Girls with disabilities in some study States face additional barriers to access to quality, inclusive education including the absence of adequate menstruation hygiene management products. Additionally, sanitation facilities do not take account of the specific needs of girls with disabilities, and some may also face sexual violence and sexual harassment at school.

6. Work

Employment rates for persons with disabilities in the study States remain poor and substantially lower than general employment rates. Although legal protections provided to persons with disabilities in the workplace varies between countries, study States commonly: 1) fail to define reasonable accommodation; and/or 2) fail to require the provision of reasonable accommodation to persons with disabilities; and/or 3) fail to provide under law that the denial of reasonable accommodation amounts to discrimination. The laws of some study States fail entirely to mention reasonable accommodation for persons with disabilities. While laws in several study States provide for financial incentives for employers of persons with disabilities, in some States such incentives are not sufficient to incentivize employers to employ persons with disabilities. Laws in several study States provide for preferential employment for persons with disabilities, some establishing quotas or numerical targets for the employment of persons with disabilities either generally or for public sector employment. Nevertheless, even though such quotas or numerical targets remain lower than the disability prevalence rates in such countries, none of the study States achieve these targets. Progress in improving employment rates for persons with disabilities continues to be stymied by a range of factors including: systemic and institutional weaknesses; limited resources; stereotyping of and discrimination against persons with disabilities; failure to provide reasonable accommodations; restrictions on career opportunities for persons with disabilities; and limited vocational training opportunities.

7. Sexual and Reproductive Health

Only six of the nine Study States mention persons with disabilities at all in their policies on the provision of sexual and reproductive health services. Some of the policies which do mention persons with disabilities do so in a cursory and incomplete manner. In all study States except for South Africa laws serve to significantly curtail the circumstances under which all individuals – including persons with disabilities – can access safe and legal abortion services, which remains a criminal offense in most circumstances. Both Uganda and Kenya have specifically entered reservations to the exercise of Article 14(2)(c) of the African Women's (Maputo) Protocol, which obligates States to "protect the reproductive rights of women by authorising medical abortion" in some circumstances. In some study States legislative provisions purport to guarantee access to abortion in circumstances that include disability-specific conditions such as where pregnancy results from the "defilement of a female idiot" or where there is a risk of a child being born "seriously

handicapped” or “with severe physical or mental abnormality”. Anchored in ableist assumptions that persons with intellectual and/or psychosocial disabilities cannot consent to sex, and framed in discriminatory language, criminal laws in eight study States (all but Rwanda) criminalize an individual who, with knowledge that a person has such disability, has consensual sex with them. In addition, the sexual and reproductive health rights of persons with disabilities across the nine study States are frequently violated by public actors or abused by private actors in various ways. These violations and abuses are evident in the physical, communication, informational, attitudinal and institutional barriers that persons with disabilities face when they seek sexual and reproductive health services. Healthcare workers have limited knowledge about the rights and needs of persons with disabilities and struggle to communicate with them effectively. The barriers faced by persons with disabilities in accessing such services are compounded for women with disabilities, who face a range of unique challenges including serious threats in some study States of forced sterilization and disproportionate risk of sexual and gender-based violence.

D. Broader findings of the Study

Following the ratification of or accession to the CRPD by these nine States, domestic authorities started to employ the narrative of the human rights approach to disability. The ICJ found many instances where the rhetoric used to introduce or explain policy and law had apparently been drawn from the CRPD. However, the narratives advanced were far too often not translated into policy or legal changes and practices that are 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 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 ICJ’s findings show that the study States have far too often failed to translate their rhetoric on the human rights approach to disability into policy and legal frameworks that recognize, guarantee and give actual effect to the rights of persons with disabilities. Many 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.

E. Broader recommendations on the way forward

Moving forward, the ICJ highlights some priorities for stakeholders, including not only State authorities, but also organizations of persons with disabilities and general civil society organizations. –

1. Full integration of disability with general human rights work

Civil society organizations, including particularly those addressing human rights, should fully integrate disability within their general human rights work. For example, organizations 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 realization of the right to education should always focus on ensuring access to *inclusive education* on a systemic level as well as in

specific cases.

2. The need for in-depth educational and technical support

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 securing the rights of persons with disabilities. In that regard, stakeholders should help States to build understanding and capacity relating to these rights. 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.

3. Holding State authorities accountable

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 the compliance of their laws, policies and practices with the CRPD and ADP is critical to ensuring the awareness of public officials of the 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.

4. The relationship between legal obligations and budgetary considerations

Stakeholders need to have 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 contained in the CRPD and the ADP will be more effectively realized when disability-responsive budgeting becomes a feature of domestic budget-making. Budgeting for disability rights, as this study shows, may require specific provision for the implementation of disability-specific legislation, but will also require disability-specific provisions 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.

5. Pursuing legal interventions at regional and global levels

Stakeholders should fully consider pursuing forms of legal interventions through regional and international communications to treaty bodies. The possibility of communications to the Committee on the Rights of Persons with Disabilities, in those States which are party to the OP-CRPD, exists alongside the growing potential for communications to the African Commission, given the recent coming into effect of the ADP. Only one communications decision relating to the rights of persons with disabilities has, as yet been decided by the Commission.¹⁰ This reveals clearly the underuse of this avenue for securing justice for persons with

¹⁰ ACHPR Communication 241/01, *Purohit and Moore v Gambia*.

disabilities. For those seeking to use regional mechanisms, the African Court on Human and Peoples' Rights ruling in February 2025 against Tanzania for violating the rights of persons with albinism, should provide encouragement about the potential of legal interventions to give effect to the rights of persons with disabilities.¹¹

6. An opportune moment: the complementarity of the CRPD and ADP

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 complements the CRPD and provides for protection of additional rights that persons with disabilities may exercise. As the ICJ has found, the ADP adds substantial 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 OP-CRPD by more States. They should also work with domestic constituencies of States in support of the Protocol's implementation.

7. The critical role of the African Commission on Human and Peoples' Rights

The African Commission must play an increased and robust role in the realization the rights of persons with disabilities, particular 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:

- Called on all Member States of the AU to become party 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 mobilize 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 prioritize marginalized 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

¹¹ Centre for Human Rights and Others v. United Republic of Tanzania (Application No. 019/2018) <https://www.african-court.org/wpa/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 4 April 2025.

- Committed to mainstream accessibility and inclusion in all aspects of the Commission's work and operations.¹²

Resolution 617, the development of which was spearheaded by several organizations of persons with disabilities and general human rights organizations, including the ICJ, establishes the short and medium-term priorities towards implementing the ADP.¹³ The Commission should expand on these commitments and develop clear and timebound 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.

¹² 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 <https://achpr.au.int/en/adopted-resolutions/617-implementation-protocols-rights-rights-older-persons> accessed 4 April 2025.

¹³ 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.ici.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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