

Introduction

The United Nations (UN) estimates that approximately 10% of the world's population is living with some form of disability, and that people with disabilities (PWD) form the world's largest minority [1]. Furthermore, it is predicted that the number of PWD is going to increase in Southern and Eastern Africa (ESA) as a result of the HIV pandemic [2-4]. PWD in ESA continue to face inequality, prejudice and marginalisation, despite the rights protection afforded by international and regional human rights instruments such as the African Charter on Human and People's Rights, 1981 ('the African Charter'), the Protocol to the African Charter on Women's Rights, 1995 ('The Maputo Protocol') and the African Charter on the Rights and Welfare of the African Child, 1989 ('African Children's Charter'), as well as the recent international Convention on the Rights of Persons with Disabilities, 2006 (CRPD) [5, 6]. Countries that have ratified international and regional human rights treaties are obliged to ensure that their provisions are domesticated at a national level, and ESA countries have done so in a range of

Definition of Disability

The CRPD does not specifically define disability, but bases its understanding on the social model of disability; the Preamble recognises that "disability is an evolving concept and that disability 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".

different ways. However these obligations have not been used to adequately address the interlinkages between disability and HIV yet.

Although there is limited data on disability and HIV, a number of recent studies amongst PWD in selected African countries suggests that rates of HIV infection

are at least similar to, or higher than those of the general population [7-10]. This data is consistent with internationally recognised rights-based arguments suggesting that marginalised populations are often at higher risk of HIV exposure [8]. Additionally, there is growing evidence of the disabling impact of HIV on those infected [13-14]. Despite this, PWD have not been routinely identified as a vulnerable population to be integrated within national strategic plans on HIV and AIDS (NSPs) in ESA [11]. One of the stepping stones towards better integration of disability into HIV programming is the domestication of disability obligations.

HIV/AIDS, disability and domestication of international and regional obligations

A surprisingly large number of countriesⁱ have adopted some form of dedicated disability legislation aimed at protecting the rights of PWD to equality, non-discrimination and service provision. Much of this legislation pre-dates the CRPD, and suggests an early preoccupation by African governments with disability related concerns. More than half of the ESA countriesⁱⁱ have also included disability related provisions in their national constitutions.

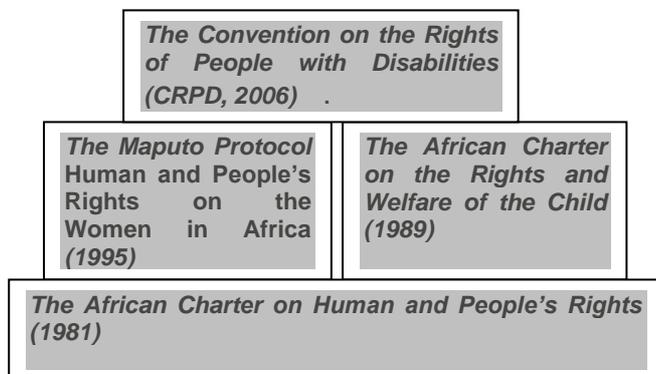


Figure 1: Building blocks of disability rights in Africa

Country	African Charter	Maputo Protocol	African Children's Charter
Angola	Yes	No	Yes
Botswana	Yes	No	Yes
Burundi	Yes	No	Yes
DRC	Yes	No	No
Kenya	Yes	No	Yes
Lesotho	Yes	Yes	Yes
Madagascar	Yes	No	No
Malawi	Yes	Yes	Yes
Mauritius	Yes	No	Yes
Mozambique	Yes	Yes	Yes
Namibia	Yes	Yes	No
Rwanda	Yes	Yes	No
Seychelles	Yes	Yes	Yes
South Africa	Yes	Yes	Yes
Swaziland	Yes	No	No
Tanzania	Yes	Yes	No
Uganda	Yes	No	Yes
Zambia	Yes	Yes	No
Zimbabwe	Yes	No	Yes

Table 1 Ratification of regional conventions

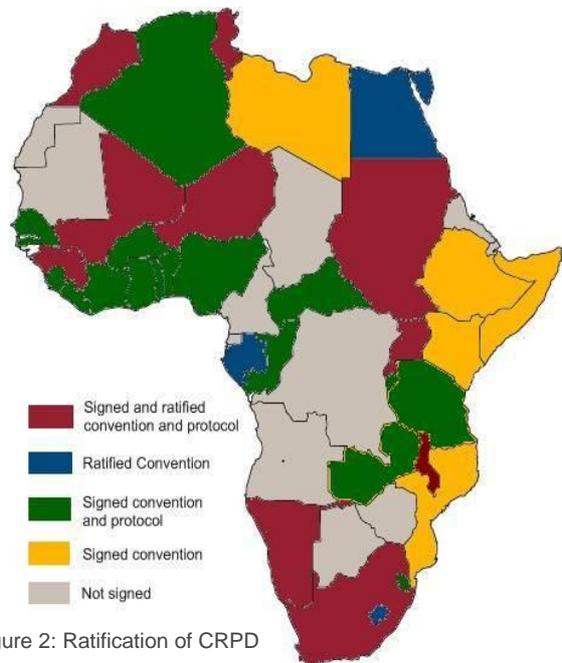


Figure 2: Ratification of CRPD

These protections are largely located in equality and non-discrimination clauses in terms of which discrimination is prohibited on a range of grounds, including disability. A few (21%) countriesⁱⁱⁱ have also developed disability policies and/or national action plans.

Key rights protection found in countries that have domesticated disability rights includes:

- *The right to equality and non-discrimination:* Provision for equality and non-discrimination is the primary disability rights protection found in many countries. Given the recognised links between HIV and human rights, and the impact of HIV and AIDS on those with limited access to basic human rights, equality protection is fundamental for PWD in the context of HIV.
- *The right to care, including health care:* Disability law and policy in ESA tends to make provision for the care and welfare of people with disabilities, and frequently makes specific reference to the provision of health care and social assistance for people with disabilities. Disability and HIV policies and plans in some countries refer more specifically to the need for HIV-related prevention, treatment, care and impact mitigation services for people with disabilities.
- *The right to employment:* A number of disability laws and policies^{iv} in ESA focus on

protecting and promoting the rights of people with disabilities within the employment context^v. Protecting employment rights promotes economic and social empowerment, which serves to reduce vulnerability to HIV. Employment-related discrimination is a key issue for people affected by HIV, and loss of employment has economic ramifications for those affected by HIV and AIDS.

- *The right to participation:* Disability laws and policies in the countries surveyed commonly further provide for the rights of people with disabilities to participation. Participation in the design, development, implementation and monitoring and evaluation of the national response to HIV is vital to ensure appropriate and accessible services for people with disabilities.
- *Legal protections and penalties:* Almost all of the disability-related laws found in ESA contain penalties for failing to comply with the provisions of the legislation, and in some cases these include the criminalisation of conduct that discriminates against persons with disabilities. While these measures are important to protect and promote the rights of persons with disabilities, as indicated below, there are questions regarding the extent to which PWD are able to access legal support services and courts in order to enforce their rights.

However, the segregated development of disability legislation has not led to countries systematically addressing the links between HIV, AIDS and disability in law, policy or plans. There is limited evidence to suggest that these linkages are currently being addressed in legislation or policies relating to HIV or disability in ESA. Where they have been addressed, it is largely in the context of NSPs on HIV and AIDS, and several countries^{vi} have attempted to integrate disability related concerns into these plans. There is also some evidence^{vii} that disability issues have been inserted into national HIV policies [12].

Whilst the general protection afforded to people with disabilities is important, it is inadequate to ensure the full protection of the human rights of people with disabilities in the context of HIV. This is particularly so given the vulnerability of people with disabilities to HIV, as well as the increased risk of people living with HIV (PLHIV) developing disabilities. The few studies that are available on this issue in the south indicate that this affects a large number of PLHIV [13-15]. In addition people with disabilities who are also infected with or affected by HIV face 'double-discrimination' because of their disability (both pre-existing as well as possible HIV-related) and HIV status.

Key gaps and weaknesses in the domestication of disability rights in ESA



Limited obligations to ensure the availability and accessibility of specialised goods, services and facilities, including limited provision for access to information: Key concepts within the CRPD, such as those of "universal design", "reasonable accommodation" and "accessibility", are important in that they provide specific guidance to States on the implementation of disability rights, and are thus valuable principles for the integration of disability within responses to HIV. However, the research found limited reference to these concepts within the national disability laws, policies and plans, and no reference to the concept of "universal design". Without domestication of these key rights and concepts, practical implementation of disability rights within HIV programmes may be limited. Information, education and media is a vital component of HIV prevention programmes, and is

particularly important for PWD for whom existing HIV-related communication programmes may be inaccessible. Yet the research found limited provision for the right to accessible information and means of communication for people with disabilities.



Limited provision for access to justice: Due to the high levels of discrimination against PWD and against people living with HIV or AIDS, provision for access to justice is a major concern. The creation of strong legal frameworks is inadequate to protect rights, and needs to be coupled with enforcement and access to justice measures. However, national disability law and policy in ESA makes limited reference to access to justice issues in the context of disability.



Limited provision for data collection: Data collection on disability, including on disability and HIV, is one of the more serious challenges to responding adequately to the needs of PWD. Very few countries make reference to the need to collect data and information on aspects of disability. Failure to include this key right within national law and policy may contribute to the continued invisibility of PWD in the context of HIV and AIDS.



Limited recognition of the gender dimensions of disability: Gender rights are a critical component of disability rights, and particularly so within the context of HIV and AIDS. Disability law and policy makes little reference to the specific need to protect and provide for the rights of women and girls with disabilities.

Recommendations

Recommendations for governments

- Immediately ratify the CRPD
- Ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. This Protocol contains the most explicit articulation of women's rights, including provisions protecting women from HIV and women with disabilities
- Ratify the African Charter on the Rights and Welfare of the Child

- Take all necessary steps to domesticate international and regional commitments relating to disability
- Work towards the mainstreaming of disability in all Millennium Development Goals processes
- Develop implementation strategies to support the implementation of international and regional commitments by all key sectors

Research and Utilisation

- Develop a clearer understanding of the inter-relationships between HIV and disability, including disability and vulnerability to HIV, incidence and prevalence of HIV among PWD, the impact of HIV on PWD, the disabling impact of HIV and other inter-relationships
- Increase awareness of the links between disability and HIV, and how the domestication of international and regional commitments can protect PWD in the context of HIV and AIDS
- Integrate disability and HIV issues in national law, policies and plans relevant to disability and HIV, including those that impact on women with disabilities
- Promote research on all aspects of disability, HIV and AIDS
- Implement existing laws, policies and plans that facilitate the participation and representation of PWD, including through the provision of accessible information.
- Collate and disseminate good practices on disability, HIV and AIDS in ESA.

Advocacy opportunities for civil society

The CPRD is a new convention, and countries are still considering how to domesticate its provisions. This period will provide a window of opportunity to ensure that laws, policies and plans recognise and address the HIV-related needs and rights of people with disabilities.

- Advocate for the ratification of the CRPD.
- Advocate for an audit of all laws and policies to ensure that they are consistent with the provisions of the CPRD; advocate for law reform and policy formulation for those that are inconsistent with the CPRD and for HIV-

related issues to be fully integrated in new laws and policies.

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ⁱⁱ Kenya, Madagascar, Malawi, Mauritius, Namibia, Seychelles, Tanzania, Uganda, Zambia, Zimbabwe

ⁱⁱ Angola, Burundi, Democratic Republic of Congo, Malawi, Mozambique, Rwanda, Seychelles, South Africa, Swaziland, Uganda

ⁱⁱⁱ Botswana, Kenya, Mozambique, Namibia, Tanzania

^{iv} Although beyond the scope of this report, a number of countries also have employment equity legislation that protects the rights of people with disabilities.

^v Additionally, the right to education is also protected in various countries.

^{vi} Democratic Republic of Congo, Lesotho, Madagascar, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe

^{vii} Lesotho, Malawi, Namibia, Swaziland, Zambia