

WHAT IS NEW
for African Children, Youth, and Older Persons with Disabilities
in the
PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF
PERSONS WITH DISABILITIES IN AFRICA
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1 Defending the Rights of African Children with Disabilities of the 21st Century

The rights of African children are based off of the Convention on the Rights of the Child (1989), and the African Charter on the Welfare of the Child (1990). These international treaties contain dated protection for children with disabilities. Also they are not fully inclusive of children with disabilities because they fail to consider all forms of disabilities. They also rarely consider other intersecting identities, such as gender. Until the Protocol, African children with disabilities remained obscured and unprotected; they were often categorized as just “children” or “persons with disabilities,” terms which fail to recognize the diversity of children with disabilities and the specific challenges that they face. The Protocol protects children with disabilities, noting that their intersecting identities of age and disability create an increased vulnerability. By outlining specific and detailed provisions, the Protocol creates a more effective legal framework to protect boys and girls with disabilities that is localized and relevant.

No Longer Ignored: Youth with Disabilities 2

Before the Protocol, youth with disabilities have been widely ignored; while the African Youth Charter (2009) recognizes some rights of “mentally and physically challenged” youth, it fails to represent the diversity of youth and the contributions they can make to society. In Article 29, the Protocol lists many provisions that are specific to individuals with disabilities who are in-between childhood and adulthood. These provisions address the unique difficulties that youth with disabilities face, including their lack of access to sexual and reproductive health education and their exclusion from youth organizations and programs.

3 Protecting the Growing Populations of Older Persons

The population of older persons in Africa is quickly growing with two-thirds of the world’s older people living in low- and middle-income countries. Despite their continued increase in population, older persons, especially older persons with disabilities, remain neglected and largely invisible in the human rights system. The Protocol dedicates Article 30 to explicitly protecting older persons with disabilities in Africa. It recognizes that when gender intersects with age and disability, it can create an increased vulnerability, demonstrating an understanding of the diversity within older persons with disabilities. The Protocol progressively protects older persons that have previously been obscured and undifferentiated.

The Protocol on the Rights of Persons with Disabilities in Africa, adopted 29 January 2018 (referred to as The Protocol), seeks “to promote, protect and ensure the full and equal enjoyment of all human and peoples’ rights by all persons with disabilities and to ensure respect for their inherent dignity” (Article 2). The Protocol is a major progress in advancing the dignity and rights of all persons with disabilities in Africa, particularly of women, girls and older persons. Adopting an intersectional perspective, it is the first human rights treaty of its kind to elaborate on the specific provisions required to effectively address intersecting forms of discrimination and violence. While maintaining positive African values, the Protocol works to uphold the rights of women with disabilities of all ages by designating a whole article to women and girls as well as integrating a disability inclusive gender lens throughout. Additionally, the protective mandate of the Commission and the Court’s jurisdiction are automatically extended to the Protocol, allowing individuals and NGOs who have exhausted the remedies provided by the domestic justice system to submit communications to the Commission or bring their case to the Court.





LOCALIZED

PROGRESSIVE

INTERSECTIONAL

GENDER
INCLUSIVE

WHAT'S NEXT

The Protocol on the Rights of Persons with Disabilities in Africa is a legally binding instrument that protects the rights of persons with disabilities in Africa. It maintains positive African values while protecting persons with disabilities from violations that are particularly relevant in Africa. It recognizes, for instance, the need to address harmful practices and gives a legal framework to fight discrimination by association. It also urges States to ensure that customary laws are inclusive and cannot be used to deny persons with disabilities access to justice. By having a regional protocol, the African Union supplements international conventions with rights and provisions that are contextualized. It creates a practical and efficient framework for African countries to establish progressive laws and policies.

Over ten years ago, the CRPD was written with major contributions from the African Union and African civil society. In 2018, the AU remained concerned that there were not effective measures to ensure that the rights of persons with disabilities were being protected. Specifically, they were concerned about the discrimination and violence against women and girls with disabilities, as well as the effect of harmful practices and the need to further protect caregivers and families of persons with disabilities. These concerns drove the AU to create the Protocol. In addition to expanding on protections for persons with disabilities, the Protocol moves away from the medical model of disability and reaffirms the rights of persons with disabilities through a human rights-based approach.

More than other regional human rights instruments, the Protocol adopts an intersectional approach to rights violations. People with disabilities are not a homogeneous group, and their challenges and rights violations vary drastically. The Protocol discusses the discrimination experienced by women with disabilities, older persons with disabilities, and children with disabilities with a gender lens. It also discusses youth with disabilities. Intersectionality is a vital concept to consider when working on upholding human rights; it ensures the rights of individuals with intersecting identities, who are more at risk for rights violations. The Protocol ensures that it applies an age and gender lens to people with disabilities to make sure that each unique individual's rights are effectively protected.

The Protocol on the Rights of Women in Africa (2005), applies women's rights to women with disabilities without including provisions specific to women with disabilities. The Protocol on the Rights of Persons with Disabilities improves this generalization drastically by including twelve provisions specific to women with disabilities. The Protocol embodies the objectives in the 2030 Sustainable Development Goal 5 on Gender Equality. These objectives include, but are not limited to ending all forms of discrimination against women and girls with disabilities everywhere, eliminating all forms of violence against women and girls with disabilities, eliminating all forms of harmful practices against women and girls with disabilities, and providing sexual and reproductive health care and information. The Protocol takes the priorities of the 2030 agenda and puts them into the legal language that the African Union can use to create laws, policies, and administrative actions that will protect the human rights of women and girls with disabilities in particular. Women and girls with disabilities are particularly vulnerable to experience rights violations concerning their own safety, as well as education, employment, and their social, economic, and political life. They are at a high risk for experiencing violence, and not having access to sexual and reproductive health services or education. It is especially important that legislation and legal actions specifically protect women and girls with disabilities to address these human rights violations and promote the empowerment and inclusion of women and girls with disabilities.

Even with the CRPD and the Sustainable Development Goals encouraging a future where “No One is Left Behind,” persons with disabilities in Africa continue to experience discrimination, violence, and exclusion from their enjoyment of rights. Action must happen now to protect the rights and lives of persons with disabilities. There needs to be a collective effort of all actors on all levels to advocate for the signing and ratification of the Protocol:

Governments: Signing and ratifying the Protocol will not only demonstrate the prioritization of the rights of persons with disabilities, but it could encourage other African States to sign and ratify. This will bring the Protocol into effect quicker and hasten the realization of rights for persons with disabilities.

Organizations: Disabled persons organizations, community-based organizations, organizations of women with disabilities, non-governmental organizations, women's rights and human rights organizations can help mobilize and inform individuals with and without disabilities of the rights of persons with disabilities, and how the Protocol will help ensure those rights. Organizations can also pressure governments to ratify the Protocol.

Individuals: Persons with disabilities can take ownership of their rights and advocate for them. By becoming informed of what the Protocol protects, individuals can become more empowered and effective advocates.

...let's talk about rights

CHILDREN WITH DISABILITIES: ARTICLE 28

Children with disabilities have been protected through various legal instruments since the 1990s. First, the UN Convention on the Rights of the Child (CRC) entered into force in 1990. It included an article protecting children with disabilities (Article 23), which focused only on protecting their medical rights. Second, the African Union developed the Charter on the Rights and Welfare of the Child, which came into force in 1999. This charter protected “Handicapped Children” (Article 13). The CRPD, in force since 2008, was revolutionary for children with disabilities because it was based on a human rights-based approach instead of the medical model. Still, the CRPD left a gap in focusing on specific violations against children with disabilities in Africa. As a localized document, the Protocol protects children with disabilities in Africa from specific violations that they are at an increased risk to experience. Under the Protocol, children with disabilities are protected from:

- Organ harvesting (Article 28.e)
- Forced Sterilization (Article 28.l)

Additionally, the Protocol:

- Protects all children from discrimination by association (Article 5.c)
- Provides gender-appropriate assistance in rights realization (Article 28.b)

The Protocol utilizes an intersectional approach more than any other international human rights instrument. By using intersectionality, the Protocol recognizes that persons with disabilities are not a homogeneous group, but that boys and girls with disabilities face specific challenges that must be protected through disaggregating their rights by age, gender, and disability.

YOUTH WITH DISABILITIES : ARTICLE 29

In 2006, the African Commission created the African Youth Charter, which outlined the rights of youth, including “Mentally and Physically Challenged Youth” (Article 24). While having a document that protects youth with disabilities is beneficial, the language in the African Youth Charter demonstrates the medical model instead of a human rights-based approach, dehumanizing youth with disabilities and failing to recognize their diversity and potential to contribute to society. In contrast the Protocol protects the rights of youth with disabilities while using empowering language.

Additionally, the African Union defines youth as between the ages of 15-35 instead of the UN's definition of youth (individuals between the ages of 15-24). This enlarges the population protected under the rights for youth with disabilities in the Protocol.

The Protocol reaffirms many of the rights in the African Youth Charter, but addresses new rights not previously mentioned in the CRPD or the African Youth Charter that are specific to youth with disabilities. These new rights include:

- The inclusion of youth with disabilities in mainstream youth organizations and programs including leadership and participation training at the regional, national, and international levels (Article 29.b)

- The development of programs to overcome social and economic isolation and removing systemic barriers in the labor market for youth with disabilities (Article 29.e)
- Promoting sexual and reproductive health education for youth with disabilities (Article 29.h)

The promotion of sexual and reproductive health education for youth with disabilities is important because with no UN Convention on youth, sexual and reproductive health education for youth is frequently unprotected. Youth with disabilities in particular often do not receive an accessible and complete sexual and reproductive health education because of false assumptions that people with disabilities are sexually inactive or hypersexual, or because parents and educators are uncomfortable discussing the topic with youth with disabilities. Article 23.b of the CRPD protects reproductive and family education, but fails to include sexual health. While the African Youth Charter mentions programs on the prevention and education about HIV/AIDS, it does not include the right to an education on sexual and reproductive health beyond HIV/AIDS. A full sexual and reproductive health education is particularly important to youth with disabilities because they are three times more likely to experience sexual violence than youth without disabilities

OLDER PERSONS WITH DISABILITIES: ARTICLE 30

Older persons are more likely to either develop a disability, or have a previous disability become more prominent. The African population is growing older with advances in technology and medicine, and older persons with disabilities are quickly becoming a prominent group. Despite the increasing population, there is not a UN international treaty to protect the rights of older persons with and without disabilities. People with disabilities are a widely diverse group, and older women and older men with disabilities experience different challenges than younger persons with disabilities. For instance, older women with disabilities are more vulnerable to violence in institutions because of the isolation.

The CRPD mentions older persons with disabilities twice: once to say that services should be provided to minimize and prevent disabilities (Article 25.b), and a second time to ensure access to social programs (Article 28.2.b). The African Union adopted a Protocol on the Rights of Older Persons in 2016, but it has not been put into force. The Protocol is monumental because it dedicates a whole article to addressing the neglected protections for older persons with disabilities. These provisions include:

- Taking account of age and gender-related aspects of disability in programming and programming (Article 30.b.)
- Protection from violence, neglect and witchcraft accusations (Article 30.e)
- Access to sexual and reproductive health information, and services (Article 30.f)

Once again, the Protocol demonstrates an intersectional approach by disaggregating people with disabilities by age and gender. The Protocol begins to address the needs of older persons with disabilities by protecting their rights with provisions that are intersectional, local, and progressive.

DEFINITIONS

African Charter on Human and Peoples' Rights or African Charter: Adopted by the African Unity (which has been replaced by the African Union) in June, 1981, the Charter “[promotes] and [protects] human and people's rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa.”

African Charter on the Rights and Welfare of the Child: The African Charter on the Rights and Welfare of the Child entered into force in 1999, almost nine years after it was adopted. It has been ratified by 41 of the 55 African Countries, and protects the rights of African children.

African Commission: The African Commission on Human and Peoples' Rights was inaugurated on 2 November 1987. The Commission is charged with the protection of human and peoples' rights, the promotion of human and peoples' rights, and the interpretation of the African Charter.

African Union: Following after the OAU, the African Union, or AU, is an organization of 55 African states that was created in 2002.

African Youth Charter: The African Youth Charter entered into force in 2009, and protects the rights of individuals between the ages of 15-35. It has been ratified by 39 African countries.

Harmful practices: “refers to practices, behaviors and attitudes—often grounded in culture, religion, or superstition—that negatively affect the human rights and fundamental freedoms of women and young persons with disabilities.665 Examples of harmful practices include child or forced marriage, female genital mutilation, and honor killings.”

Intersectionality: the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, classism and ableism) combine, overlap, or intersect especially in the experiences of marginalized individuals or groups .

Medical Model: The understanding that disability equals physical, mental, or social impairments, thus becoming a problem of the individual. According to the medical model, people with disabilities need to be cured or fixed to become normal in society. This model focuses on the dimension of impairment and disregards the role of society. While still commonly applied, it has been rejected widely and replaced by the social model.

Process for Legal Instruments: After a treaty, protocol or any legal instrument is written, State parties can adopt it. It means that States are interested in supporting the instrument.

The next step is that it enters into force. This usually happens after a certain number of states have ratified it. Ratification means that a State has signed the treaty and agrees to be legally bound by the treaty, protocol, or charter. Accession is direct ratification, generally after the treaty has entered into force.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons: This protocol was adopted in 2016, but has only been ratified by a single country, meaning that it is not in effect. Its goal is to protect the rights of older persons in Africa.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: This protocol entered into force in 2005, and has had 36 out of 55 of the African Union countries ratify it.

Sexual and Gender Based Violence: “refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys.”

Sustainable Development Goals: Developed by the United Nations in 2015 to be completed by 2030, “the Sustainable Development Goals are the blueprint to achieve a better and more sustainable future for all. They address...global challenges...including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. The Goals interconnect and in order to leave no one behind.”

The Protocol: Adopted in January, 2018, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa protects the rights of persons with disabilities in Africa.

UN Convention on the Elimination of all forms of Discrimination against Women: Ratified by 189 States, CEDAW was put into force in 1981. “Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.”

UN Convention on the Rights of the Child: Coming into force in 1990, 196 countries have ratified, including every member of the United Nations, with the exception of the United States. This convention protects the rights of individuals under the age of 18.

UN Convention on the Rights of Persons with Disabilities: : Ratified or acceded by 177 countries world-wide, this international human rights convention, or formal agreement between States, entered into force in 2008. It protects the rights of persons with disabilities under a rights-based approach.