

for African Women and Girls 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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Women with Disabilities are Uniquely Prioritized

Historically, human rights instruments included women with disabilities by applying women's rights or disability rights to women with disabilities without recognizing the specific challenges they face in the protection or enjoyment of their rights. The Protocol recognizes that the intersection of gender and disability along with other grounds of discrimination creates increased vulnerability and requires specific protection. It explicitly tackles the different forms of violations that women and girls with disabilities in Africa are particularly at risk of. By outlining specific and detailed provisions, the Protocol creates a more effective legal framework to protect women and girls with disabilities.

Fighting Against Discrimination by Association

The Protocol protects caregivers and family members who are discriminated because of their association with a person with a disability. Women and girls are disproportionately affected by discrimination by association and stigmatized as mothers who gave birth to a child with a disability. Women and girls are also more responsible for domestic labor which includes caring for family members, increasing the risk of being discriminated by association as caregivers.

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Protection from Harmful Practices

Women and girls with disabilities are disproportionately affected by harmful practices including forced sterilization and abortion, virgin testing, virgin rapes and infanticide. The Protocol protects persons with disabilities, including women and girls with disabilities, from harmful practices in Africa. It calls States to act and implement legal sanctions and educational and advocacy campaigns. The Protocol also categorizes stereotyping and derogatory language as harmful practices.

Progressive Disability Inclusive Gender Perspectives

The Protocol takes special care to specify that disability inclusive gender perspectives are applied in all spheres that affect women with disabilities, making sure intersectionality is considered in "policies, legislation, plans, programs, budgets and activities".

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Unprecedented Protection of Girls with Disabilities

Girls are largely undifferentiated in the main human rights treaties protecting women in general such as CEDAW or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which use general terms such as "women" and "children." The Protocol unprecedentedly mentions girls with disabilities in six different occasions. By specifically including girls with disabilities in different provisions, the Protocol acknowledges that girls with disabilities are at a high risk of violence, exploitation, neglect, and abuse. It demonstrates a clear prioritization of protection for African girls with disabilities.

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 encourage 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

WOMEN WITH DISABILITIES: ARTICLE 27

The Protocol is ground-breaking because it explicitly lists the specific rights of African women and girls with disabilities. CEDAW, while monumental in protecting the rights of women in general, fails to mention women or girls with disabilities at all. The CRPD generally applies the rights of persons with disabilities to women and girls with disabilities (Article 6) but fails to go into specific provisions. The African Union's Protocol on the Rights of Women protects some rights of African women with disabilities (Article 23) but fails to mention girls with disabilities.

The Protocol protects both women and girls with disabilities in a localized context by devoting Article 27 to them, listing twelve provisions that protect them. The following provisions from the Protocol are either indirectly and vaguely applied to women and girls with disabilities or not mentioned at all in the African Protocol on the Rights of Women, CEDAW, or the CRPD:

- Inclusion of women with disabilities in mainstream women's organizations and programs
- Equal participation of women with disabilities in sports and culture
- Protection from sexual and gender-based violence
- The right for women with disabilities to retain and control their fertility and not be sterilized without their consent
- Integration of Disability inclusive Gender perspectives in policies, legislation, plans, programs, budgets, and activities in all spheres that affect women with disabilities

It is important to emphasize the intersectional approach in the Protocol. By specifying women with disabilities in the Preamble, Article 4, and Article 27, the Protocol recognizes that people with disabilities are not a homogeneous group, and that women with disabilities are disproportionately affected by violence and in unique ways. By including provisions that protect them specifically, the Protocol demonstrates an understanding of the particular discrimination and violence that women and girls with disabilities face.

NON-DISCRIMINATION BY ASSOCIATION: ARTICLE 5.C

The Protocol recognizes the discrimination that individuals experience by being associated with a person with a disability. This includes family members, caregivers, or intermediaries. It is important to note that women and girls are often selected as the caregivers for persons with disabilities. Women are also disproportionately affected as mothers of a child with a disability. Infanticide is a harmful practice in Africa, and women with children with disabilities can be pressured to kill their disabled child. If they do not, they can face discrimination because it is believed that the mother is being punished or the child is cursed. Discrimination by association can increase caregiver's risk of experiencing violence, discrimination, and exploitation and can increase women's isolation from social, economic, and political opportunities. The Protocol calls for "effective and appropriate measures to protect" (Article 5.c) women and girls from discrimination from their association with a persons with disability.

HARMFUL PRACTICES: ARTICLE 11

While the CRPD encourages raising awareness to stop harmful practices related to persons with disabilities, including women, girls, and boys with disabilities, the Protocol is monumental because it elaborates on harmful practices and puts them into the African context. The Protocol defines harmful practices in the Preamble and Article 11 as behavior, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which violates human rights and fundamental freedoms of persons with disabilities or creates discrimination. This definition is broad enough to include all harmful practices, but it continues on in Article 11 to specifically include witchcraft, abandonment, concealment, ritual killings, the association of disability with omens, and maiming or killing of persons with albinism in many parts of the continent. Article 11 also discourages the use of stereotypes of people with disabilities and discriminatory terms. Additionally, throughout the Protocol, people with disabilities in general (Article 10), women with disabilities (Article 27.k), and children with disabilities (Article 28) are protected from forced or coerced sterilization.

PREVENTION OF SEXUAL AND GENDER BASED VIOLENCE (SGBV):

PREVALENCE: In Africa, it is estimated that 45.6% of women of age 15 and above have reported intimate partner violence and/or non-partner sexual violence. Of women with disabilities, it is estimated that 83% will be sexually abused in their lifetime. Despite other actions that have been taken to control violence against women in Africa, the African Union remains "concerned at the multiple forms of discrimination, high levels of poverty and the great risk of violence, exploitation, neglect and abuse that women and girls with disabilities face" (Preamble).

PREVENTION: Under the Protocol, African women with disabilities are protected from SGBV (Article 27), adding additional framework for countries to establish laws, policies, and programs protecting women with disabilities from SGBV. African persons with disabilities also have the right to access justice on an equal basis as others (Article 13). Article 13 also provides for customary law to be inclusive of persons with disabilities, and not to be "used to deny persons with disabilities their right to access appropriate and effective justice". Article 7 discusses the issue of legal capacity, when the issues of consent and supported decision-making are discussed in Article 17.d. In addition, law enforcement should be properly trained to engage and ensure the rights of persons with disabilities (Article 13). All of these articles together contribute to enhancing access to justice for women survivors, to fighting impunity and empowering women – all elements that are essential to the prevention of violence against women.

RESPONSE: The Protocol ensures that women with disabilities have access to rehabilitation and psychosocial support in the event of violence (Article 27). Additionally, in Articles 17, 26, and 27, women with disabilities have their sexual and reproductive health rights (SRHR) protected, which should include the right to medical support for survivors of violence.

INDIVIDUAL REDRESS

Under the African Charter on Human and Peoples' Rights, individuals and non-governmental organizations may, under certain conditions, bring a case of a breach of human rights directly before the African Court on Human and Peoples' Rights or indirectly through the African Commission on Human and Peoples' Rights. Article 66 of the Charter provides for additional Protocols to supplement the Charter which are considered "additions" to the Charter if State parties ratify these protocols.

Essentially, if 15 State parties ratify the Protocol on the Rights of Persons with Disabilities, then it will become effective for every State party to it. Individuals and organizations will then automatically be able to submit communications to the Commission to denounce violations of their rights by a State party to the Protocol. Similarly the Court will automatically have jurisdiction over cases regarding the interpretation and application of the Protocol, in States having accepted its competency.

GIRLS WITH DISABILITIES

Girls are often generalized as "women" or "children," terms which fail to capture the specific challenges that girls face. Girls with disabilities, who experience age, gender, and disability-related discrimination, are particularly invisible in international treaties. CEDAW mentions girls in general once "in context of...female drop-out rates" (CEDAW Article 10f), and the CRPD mentions girls with disabilities three times- twice to acknowledge their risk of experiencing violence (CRPD Preamble, Article 6.1), and once to protect their access to social and poverty programs (CRPD 28.b).

Girls with disabilities are mentioned an unprecedented six times in the Protocol, demonstrating a clear prioritization for the differentiation of the terms "women" and "girls." Their vulnerability is acknowledged in the Preamble, and they are included in four provisions in Article 27. Additionally, Article 28 calls for gender-appropriate assistance to helping children realize their rights.

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.