

Africanisation of Disability Rights: An Analysis of The Protocol to the African Charter on Human and People's Right of Persons with Disabilities

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ABSTRACT

This article makes an analysis of the CRPD, illustrating how the Global South has departed from the Global North by introducing legislative provisions that speak to Africa and relate to the African people as peculiar people who have distinct histories and cultures. This paper discusses the extent, if any, to which the approach to disability has been Africanized as opposed to strict adherence to the provisions of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the CRPD). The article concludes by finding that the ACHPRD has provisions that speak directly to the African context and that the UNCRPD is largely a framework that has provided a skeleton framework that was developed to suit the Global North context.

Keywords: Persons with Disabilities (PWDs), Protocol to the African Charter on Human and Peoples Right of Persons with Disabilities, Convention on the Rights of Persons with Disabilities (CRPD), African disability laws.

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1.1 Introduction

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) was the first of its kind to solely compile most of the rights of persons with disabilities, echo the need for respect and dignity for persons with disabilities, and prevent discrimination (Adiela 2023). The CRPD acknowledges and recognizes the various international instruments that have a bearing in the arena of disability rights (Kamga 2021). The purpose of the CRPD is to “promote, protect, and ensure the full and equal enjoyment of all human rights and freedom by persons with disabilities” (Article 1 of the CRPD). The Protocol to the African Charter on Human and Peoples Rights of Persons with Disabilities (ACHPRD) was drafted and signed after the CRPD and focuses on the same purpose as the CRPD, which is to “promote, protect, and ensure the full and equal enjoyment of all human and people’s rights by all persons with disabilities, and to ensure respect for their inherent dignity disability” (Article 3 of the CRPD). The ushering in of this protocol triggered debate over whether or not the ACHPRD is Africanized. This paper aims to discuss the extent, if any, to which the approach to disability has been Africanized as opposed to strict adherence to the provisions of the CRPD. It begins by briefly examining the historical context that led to the existence of the ACHPRD. The first leg of the inquiry discusses why there was a need for the development of the African Protocol on Disability, yet there was another international instrument in place. The second leg of this essay deals with some of the similarities and differences between the CRPD and the ACHPRD. The third part of the leg discusses whether or not there are evident features of Africanization in the protocol.

2.1 Historical context

African countries have a peculiar history of unique experiences situated in their location on the globe, economic position, communal-based societies, poverty, and colonial history, amongst others (Kamga 2021). This does not mean Africa is a homogeneous group; issues of culture and religion remarkably differ. In light of disability, it is commonplace that many cultures in Africa attribute disability to supernatural causes, either as retribution for wrong done by one’s forebears or as a curse or punishment (Adiela 2023). This has led to negative and sometimes unacceptable cultural beliefs, which lead to discrimination and disenfranchisement of people with disabilities. In Africa, it is estimated that 80 million people live with some form of disability, and albinism constitutes a considerable number in terms of these figures (Biegon 2011). This condition seems unique to the African continent as opposed to other continents. The murder of albinos in Kenya, Tanzania, and Malawi, the beliefs of virgin cures,

and the perceptions of manifestations of evil associated with people with disabilities have further subjugated the position of Africans with disabilities compared to those on other continents.

The Organization of African Unity (OAU) was the first organization to have the capacity to make an impact on disability on the continent, but it was not forthcoming in prioritizing disability rights from its inception. In the late 1970s, the OAU made some efforts towards addressing disability issues on the continent. Its focus was narrowly on disability, which was occasioned by the effects of the liberation wars fought on the continent. Furthermore, the OAU's interest in disability was prompted by the passage of UN General Assembly Resolution No. 3447 (XXX) relating to the Declaration of the Rights of the Disabled. Several developments followed the United Nations program on persons with disabilities. The OAU adopted a resolution in April 1981 aimed at addressing the disability issue in Africa. Various other developments followed, but it was the AU ministerial committee that conceived that vulnerable groups, which include the elderly and persons with disabilities, needed to be protected'. (Appiagyei-Atua 2017). This led to a draft protocol for the rights of people living with disabilities that is known as the Accra Draft (Kamga 2021). This Accra draft was not inclusive and failed to rob some of the key stakeholders in its formulation (Kamga 2021). The CRPD then came into force and was quickly ratified by many countries. It was after the CRPD that the ACHPRD was drafted.

Why was there a need for the development of the African protocol on disability?

The CRPD was a negotiated document in which African states were consulted, but the outcome did not fulfill all the expectations of people with disabilities. In light of the drafting process, countries such as Kenya pushed for imperative language, but this was not adopted in the final text (Kamga 2021). It pushed for the use of words such as 'require' as compared to 'encourage' (Biegon 2011). The CRPD could not adopt all the various issues brought forth, and some of these issues seemed peculiar to Africa and were paramount to being included in a disability framework (Biegon 2011). Factors such as abject poverty, wars, albinism, the HIV/AIDS pandemic, and harmful cultural practices remained outstanding.

Kamga (2021) identifies four thematic areas discussed that seemingly were not fully taken or explicitly included by the CRPD, which would have spoken to the African context. These issues include silence on the issues of albinism and HIV/AIDS, a lack of clarity about specific harmful traditional practices affecting PWDS, and the need to supplement the individualism at the heart of the treaty with the African communal-based conception of society (Kamga 2021).

The CRPD is silent on the link between disability and HIV, yet it is acknowledged that in Africa, more people die of HIV/AIDS-related diseases than on another continent (Kamga 2021). South Africa pushed for HIV/AIDS issues to be reflected in the said document. However, this is not included in the CRPD. The issue of albinism was left out of the CRPD, despite the challenges experienced by albinos and the high number of murders that are experienced in certain African states as a result of this condition (Kamga 2021). In light of the issues raised by Kamga (2021), albinism should have been incorporated into the CRPD to reflect African realities. Other scholars have argued for the CRPD that it does not give a definition of disability with the purpose of accommodating various other forms of disabilities that might have been conceived.

Furthermore, given the significantly higher perception of disabilities being linked to evil and some of the negative misconceptions that have led to the endangerment of the lives of PWDS (Sibanda 2006), It is without doubt that the CRPD should have dealt more extensively and elaborately on the PWDS and issues of cultural and harmful cultural practices to adequately address the African challenges (Kamga 2021).

Kamga (2021) argues that the manner in which the CRPD is coined does not bring out the African communal-based conception of society. He argues that individualism characterizes the CRPD, and this does not reflect the spirit of Ubuntu lived in African communities (Kamga 2021). Other writers, however, have opined differently, as will be discussed later in this essay.

Similarities and differences between the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa and the United Nations Convention on the Rights of Persons with Disabilities.

Sibanda (2006) opines that the CRPD is a key instrument in advancing the rights of persons with disabilities, but it lacks specificity to the African context. In this vein, the African Protocol does not depart from the foundations of the CRPD but rather is an expansion of the CRPD that aims to speak to an African context (Kamga 2021). There are therefore more similarities than differences, as the African Protocol is an extension of the CRPD.

The UNCRPD is distinguished from the African protocol in that it lacks a definition of disability. Adiola (2023) argues that the lack of an explicit definition is not deficient in itself because the CRPD provides a working definition for persons with disabilities, from which others can deduce the definition of disability. According to the African protocol, persons with disabilities" include those who have "physical, mental, psycho-social, intellectual, neurological, developmental, or other sensory impairments that, in interaction with environmental, attitudinal, or other barriers, hinder their full and effective participation in society on an equal basis with others" (Adiola 2023). Adiola (2023) argues that the lack of definition therefore allows the different states to include aspects of albinism that are not explicitly mentioned.

Another highly contested issue that underlies Africanization are ideologies and strategies for the survival of people and societies, which are embedded in Ubuntu. Ubuntu is understood from the general principles of survival of the entire community, a sense of cooperation, interdependence, and collectiveness (Sibanda, 2022). Kamga opines that the CRPD does not enunciate well the idea of communalism but rather stresses the western context of individualization. (Kamga 2021). His assertion is based on the emphasis that is made with reference to rights to individual autonomy, the call for freedom to make one's choices, independence of persons, and the right to privacy, which is incompatible with the communal-based world view (Kamga 2021). According to Kamga, personal space is weighted in light of the interests of society; therefore, support in this regard should be for interdependence instead of individualism and independence. It is for this reason that states are obligated to protect caregivers and families of people with disabilities from discrimination under Article 5 of the ACRPD.

Another observation that can be made between the two protocols is that there is a lack of distinction between the CRPD and the African protocol in the realization of rights (Oyaro 2006). The African Protocol does not state how entrenched rights may be realized, while the CRPD allows for progressive realization of rights.

Whether or not there are evident features of Africanization in the Protocol?

There are significant advancements that feature in the African protocol but are not in the CRPD, which bring African perspective to the disability discourse. (Kamga 2021). The preamble of the African Protocol sets the tone on many issues that are common within the African context, which include poverty, Ubuntu, and harmful cultural practices (Preamble of ACHRPD).

In light of specific provisions, Article 11 speaks to harmful cultural practices and specifically targets issues that seem relevant and more applicable to the African context, such as witchcraft, abandonment, concealment, ritual killings, and the association of disability with omens (Article 11 of the ACHRPD). It further obligates the States Parties to take measures to discourage stereotyped views on the capabilities, appearance, or behavior of persons with disabilities. This feature is distinct from the ACHRPD and is a reflection of the lived realities experienced by people living with disabilities. This provision establishes a link to African roots and complements Article 4, which obligates the state to modify, outlaw, criminalize, or campaign against, as appropriate, any harmful practice applied to persons with disabilities. The CRPD is framed from a general perspective and protects the right to life but does not directly speak to culturally harmful practices leading to loss of life (Article 4 of the CRPD).

In addition to issues of harmful practices, the African Protocol has a provision directly speaking to women with disabilities. It takes cognizance of the reported fact that women with disabilities are more likely to face challenges in realizing most of their rights and are further subjugated by culture and patriarchy. Hence, an elaborate provision was adopted that seeks to emancipate and extinguish some of the barriers leading to their exclusion and discrimination. Article 27(h) stipulates that state parties must ensure that women with disabilities have access to income-generating opportunities and credit facilities (Article 4 of the ACHRPD). Sibanda (2006) argues that this provision is contextually relevant to the African continent, given that poverty and exclusion are higher among women with disabilities. The provision ensures that the women can earn an independent living and alleviate themselves from poverty (Sibanda 2006).

Sibanda also notes that Article 27(k), which also obligates state parties to ensure that the sexual and reproductive health rights of women with disabilities are contextually relevant to Africa, states that women with disabilities experience violations of their sexual and reproductive rights, such as forced sterilization. This provision is unique to the African Disability Protocol, which seeks to ensure that women with disabilities are protected from such abuses (Sibanda 2006). Furthermore, this provision recognizes that women with disabilities are women and may indulge in sexual relations and should retain their bodily autonomy in those relationships, like other women.

The underlying aspect that many writers have dwelled on is making emphasis on Africanization is the aspect of Ubuntu (Kanga 2021). It can be argued that although the CRPD has principles that resonate with the Ubuntu ideology, it is the African protocol that is elaborate in this respect. The preamble acknowledges the fact that families, guardians, caregivers, and the community play essential roles in the lives of persons with disabilities, a feature that resonates with the African concept of ubuntu. Further to this, Article 14 elaborates on the right to live in the community. It obligates the state to States Parties to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with other and further intensive support, and to ensure their families have adequate and appropriate facilities and services, including caregivers and respite services. To add on, Article 5 of the African Protocol makes a provision for the state to take measures to protect from discrimination family members, caregivers, and those closely related to persons with disabilities—a feature that is not present in the CRPD.

Conclusion

In light of the above discussion, it is evident that, in spite of the different views posed by different writers, the ACHRPD has provisions that speak directly to the African context. The UNCRPD is framed in general terms and is open to further contextualization by different continents. This is particularly evident in its lack of definition of the word disability. The word disability is defined broadly, in an attempt to allow various types of disabilities and impairments to fall within this category. The ACHRPD has provisions such as Article 11 on culturally harmful practices, Article 27 on women's empowerment, Article 14 on the right to live in community, and Article 5 on the protection of caregivers that seem to stand out and have been indigenized to speak to the African context. These rights are contextualised to the African framework to suit the needs and expectations of African communities. The issue of cultural harmful practices such as virginity testing and wife inheritance are mostly an issue of the Global South in comparison to the Global North. The same can be said in respect of Article 5 and Article 14 which acknowledges the collectivism that is ingrained in the African societies, where extended families are common in comparison to the north where nuclear families are a common feature. It is in this respect that the writer opines that the ACHRPD has been completely Africanized.

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