



Women Enabled International

accountABILITY toolkit

African Regional Human Rights System

Legal Standards on the Rights of
Women and Girls with Disabilities

accountABILITY:

**African Regional Human Rights System
Legal Standards on the Rights of
Women and Girls with Disabilities**



**Women Enabled
International**

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Cover image depicts the current flag of the African Union, a dark green outline of the African continent with the Sinai Peninsula and offshore islands in white, centered on a stylized white sun with 53 pointed rays, all surrounded by a circle of 53 5-pointed gold (yellow) stars, on a dark green background. The flag is positioned inside of a 7-inch circular area and centered on the upper portion of the cover; the remainder of the cover is a dark purple. For the cover of this document, a photo of an African mother and child has been superimposed within the main African continent outline. The mother has short curly brown hair and medium-dark skin tone. She is wearing a dress with a beige top and bright teal and green leaf-patterned sleeves and skirt. She is holding a child between one and two years old. She holds the child to her side above her hip. The child wears a white and green striped sleeveless top and nothing else. The child's face is slightly above and to the left of the mother's face. She is looking up at the child and smiling. The child has short curly brown hair and medium-dark skin tone and is looking off to the right of the camera. The subjects are inside of a home constructed of natural materials. The photo can be viewed in full at: <https://unsplash.com/photos/a2-VGRQi0v8>

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Photograph taken in 2018 Lomé, Togo, by Jordan Rowland (@yakimadesign) via <https://unsplash.com>

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The accountABILITY Toolkit on the African Regional Human Rights System is dedicated to the millions of women and girls with disabilities in Africa and around the world who routinely encounter multiple and intersecting forms of discrimination. This Toolkit is a call to action, urging and empowering us to collectively raise our voices to demand that international and regional human rights standards protect the rights of all women and girls, including those with disabilities.

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Using this Briefing Paper

As discussed in [accountABILITY: African Regional Human Rights System Advocacy Guide](#), the African human rights bodies consist of independent human rights experts whose job is to (1) monitor whether States are meeting their legal obligations under relevant African human rights treaties, (2) interpret the meaning and concepts of the corresponding human rights treaties through development of documents such as General Comments and Concluding Observations, and (3) in some instances, make decisions on Individual Complaints submitted to them concerning the interpretation and application of the human rights treaties. Together, these documents make up the “jurisprudence” of the human rights bodies. By looking at this jurisprudence, together with the human rights treaties, we can better understand what types of actions violate African human rights law and what governments must do to meet their regional legal obligations.

When we engage in regional human rights advocacy in Africa – for instance, when we submit written information like shadow reports to the African Commission on Human and People’s Rights – our advocacy is strengthened with an analysis of the existing human rights standards on an issue. In addition to referring to the African human rights treaties, when we can demonstrate that African human rights bodies have previously interpreted regional human rights obligations in a way that supports what we are saying, we are more persuasive, human rights bodies may be more likely to take up our issues, and they may provide better guidance to States on how they can remedy the issues that we raise.

This briefing paper provides an in-depth summary of what African human rights treaties and African human rights bodies have said about the rights of women and persons with disabilities generally, and, in some instances, the rights of women and girls with disabilities specifically. This paper introduces the legal standards set out in a few main human rights treaties, including the African Charter on Human and People’s Rights (Banjul Charter), the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol) and the African Charter on the Rights and Welfare of the Child (ACRWC). As to African human rights bodies, this paper identifies what the African Commission on Human and People’s Rights (African Commission), African Court on Human and People’s Rights (African Court) and African Committee of Experts on the Rights and Welfare of the Child (ACERWC) have said in their general comments, concluding observations and decisions on individual complaints through May 2020.

The briefing paper uses the language of the treaties and the human rights bodies as often as possible. Advocates can use this briefing paper to help explain why specific situations or actions violate protected rights and what governments must do to protect those rights. For each issue outlined here, the briefing paper footnotes the original source(s) of the jurisprudence. Advocates can cite to these original sources to help support their interpretation of particular human rights obligations. When engaging in country-specific advocacy, we also recommend that advocates always review prior concluding observations or mission reports for that particular country. Prior concluding observations on compliance with the Banjul Charter and its Protocols can be found on the country’s homepage through the website of the African Commission.¹ Prior concluding observations on compliance to the ACRWC can be found on the website of the ACERWC.²

In addition to summarizing what African human rights treaties and human rights bodies have said on the rights of women and persons with disabilities, this briefing paper also identifies some gaps in the standards in the jurisprudence, particularly as related to women and girls with disabilities. Given that the African human rights system is relatively new, some rights and freedoms stipulated in the Banjul Charter and its Protocols have not yet been fully addressed by African human rights bodies. In addition, because the Disability Protocol is not yet in effect and has not yet been widely ratified, the African human rights bodies have not had many opportunities to address the rights of persons with disabilities, for instance, regarding topics raised under the

“Emerging Issues” section in this briefing paper. There is even less jurisprudence that specifically addresses the rights of women and girls with disabilities. It is worth noting that, while the cases and recommendations in the African human rights system’s jurisprudence do not directly mention women and girls with disabilities, they all should apply to women and girls with disabilities on an equal basis.

This briefing paper identifies some gaps in current human rights standards, which gives opportunities for human rights bodies to strengthen their jurisprudence, ensure that their interpretations of the legal standards respond to the specific human rights issues that women and girls with disabilities face, and promote greater complementarity of standards across all international and regional human rights bodies. We encourage advocates to consider this discussion of the gaps in the legal standards as an invitation to raise these issues in written submissions to African human rights bodies and to give the human rights bodies more information on these specific issues to help build stronger and more responsive standards.

For background information on the treaties, protocols, and human rights bodies highlighted in this document, see [accountABILITY Toolkit: African Human Rights System Advocacy Guide](#) or [accountABILITY Toolkit: African Human Rights System Factsheet](#).

Rights of Women and Girls with Disabilities: An Overview

Women and girls with disabilities,* who account for almost one-fifth of the world's population of women and 21.6 percent of African women and girls between the ages of 15-59,³ face discrimination and human rights abuses based on both their gender and disability. This intersectional discrimination means that women with disabilities face barriers to their full exercise of rights that are unique from and disproportionate to those experienced by men with disabilities and nondisabled women. However, as the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee), which monitors State implementation of the Convention on the Rights of Persons with Disabilities (CRPD), has noted,

International and national laws and policies on disability have historically neglected aspects related to women and girls with disabilities. In turn, laws and policies addressing women have traditionally ignored disability. This invisibility has perpetuated the situation of multiple and intersecting forms of discrimination against women and girls with disabilities.⁴

Furthermore, it is difficult to find accurate and comprehensive data disaggregated by both gender and disability. African countries face the same challenges as many other States in this regard.

Human Rights Violations against Women and Girls with Disabilities in Africa

Human rights violations against women and girls with disabilities manifest in all areas of their lives and include discrimination; violence; unequal access to education, health care, economic opportunities, social interaction, and justice; unequal recognition before the law; and lack of political participation.⁵ Though disaggregated data concerning women with disabilities is scarce, statistics from some African countries have shown that women with disabilities are more likely to be malnourished, illiterate, unemployed or underemployed, and to live in poverty.⁶ Women with disabilities who also belong to, or are perceived as belonging to, other groups that face heightened vulnerability to human rights violations—such as women with disabilities who are also immigrants, racial or ethnic minorities, indigenous, LGBTQI, older women, or adolescents—may experience compounded human rights violations. These violations are particularly present when women with disabilities experience gender-based violence—by family members, partners, caregivers, and in state- and privately-run institutions—and in their exercise of sexual and reproductive rights, where they are disproportionately denied access to sexual and reproductive health services or subjected to forced or coerced sterilization, contraception, and abortion.

Women with disabilities are at least two to three times more likely than women without disabilities to experience gender-based violence in various spheres.⁷ They are also likely to experience abuse over a longer period of time, resulting in more severe injuries.⁸ Women with disabilities experience both the same forms of gender-based violence as non-disabled women, as well as unique forms as a result of their disability; they also experience distinct barriers to escaping such violence and seeking justice. In Africa, data on violence against women with disabilities is scarce, but more than 70 percent of women generally report having been the victims of domestic violence, including sexual violence; and more than 90 percent report having been the victims of sexual harassment or not feeling safe in public places.⁹

Many African countries have a dual legal system where statutory law and customary law co-exist. Customary law represents the traditions, rules, and culture that have evolved within the community over time and may permit practices that violate human rights, particularly the rights of women.¹⁰ For instance, women and

* Throughout this paper, the term “women” should be interpreted to include women and girls of all ages, unless otherwise noted.

persons with disabilities are particularly subject to harmful practices, which are often associated with serious forms of violence or are themselves a form of violence, such as female genital mutilation.¹¹ In certain African countries, up to 95 percent of girls experience genital mutilation.¹² Statutory law, on the other hand, is written law that is created and adopted by a legislative body.

Both legal and practical barriers limit access to essential sexual and reproductive health information, goods, and services for all women, such as laws that restrict access to reproductive health goods (e.g., contraceptives) and services (e.g., abortion) without parental or spousal notice or authorization; the high cost of relevant information, goods, and services; and the stigma associated with such goods and services. Women with disabilities face additional significant physical and informational barriers to accessing sexual and reproductive health services, for instance, due to lack of accessible information about sexual and reproductive health as well as equipment and facilities in sexual and reproductive health care settings.¹³ Women with disabilities are also disproportionately subjected to practices such as forced or coerced sterilization, contraception, and abortion.¹⁴ Researchers in some African countries have documented that women with disabilities are subject to forced sterilization¹⁵ and are discriminated against by sexual and reproductive healthcare providers,¹⁶ though comprehensive data on this issue is lacking.

Women with disabilities also encounter significant barriers to accessing justice in Africa and globally, including physical barriers and lack of accessible information and communication services such as materials in Braille or sign language interpreters.¹⁷ Stigma and stereotypes also play a significant role in limiting access to justice for women with disabilities, especially for those who are subjected to violence. For example, there are laws that deny women with disabilities the right to exercise legal capacity, including to the right to make decisions on intimate sexual relationships because they are seen as asexual or incapable.¹⁸ In addition, stereotypical beliefs that people with intellectual and/or psychosocial disabilities are not credible are still widely held and affect their right to testify in legal proceedings.¹⁹ Barriers to accessing justice can limit women's ability to seek legal protection or redress; such barriers can also functionally perpetuate further rights violations against women with disabilities by compelling women to remain silent and emboldening human rights abusers who know that the justice system is unlikely to take their complaints seriously.

Ensuring Rights Protections for Women and Girls with Disabilities

To ensure rights protections for women with disabilities, there should be equal and effective legal protection against discrimination for women with disabilities. This includes the provision of reasonable accommodations, which, according to the African Disability Protocol, are “necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and people’s rights.”²⁰ States should collect disaggregated data on issues that most impact women and girls with disabilities, and women and girls with disabilities should be included in all data collected about women and in all data collected about persons with disabilities.

In order to ensure equality and non-discrimination, women and girls with disabilities must be able to make decisions for themselves, with support when needed, and must therefore retain their legal capacity.²¹ As such, they should be given the opportunity to provide informed consent on an equal basis with others. For example, if a reproductive health procedure is performed on a woman or girl with disabilities without her informed consent—regardless of whether a parent, spouse, guardian, health care worker, judge, or other individual provides consent—it should be considered a forced or coerced procedure in violation of the woman's fundamental rights.²² In order to ensure that women with disabilities are free from gender-based and sexual violence, laws and policies should be in place to prevent and investigate acts of such violence committed by

State and non-State actors, to prosecute and punish perpetrators, and to provide effective remedies and services to victims.²³

Ensuring rights protections for women with disabilities requires that information and services are accessible, are disability- and gender-sensitive, and are provided on the basis of non-discrimination, including by providing reasonable accommodations when needed.²⁴ Information must be available in alternative formats, including, e.g., sign language interpretation, Braille, audio, simplified formats, pictorial guides, and through other technologies.²⁵ Physical spaces where services are provided must be accessible to women with disabilities, medical equipment and exam tables must be accessible, and there must be available and accessible transportation to and from those facilities. Finally, government employees, justice system actors, and service providers should be trained to work with persons with disabilities and provide services that are based on dignity and that respect the autonomy of women with disabilities.

Questions to Consider

The following questions, while not exhaustive, may help advocates identify key issues to raise in a country-specific submission addressing the rights of women and girls with disabilities:

- ▶ What are the relevant laws, policies, programs, and national plans around rights for women? Do these laws address the rights of women with disabilities specifically?
- ▶ What are the relevant laws, policies, programs, and national plans aimed at addressing the rights of persons with disabilities? Do these laws or policies make any provisions for rights of women with disabilities specifically? To what extent do these laws use substituted decision-making systems, such as guardianship, instead of supported decision-making systems for people with disabilities who may need assistance to exercise their right to legal capacity?
- ▶ Does the State collect data concerning women and girls with disabilities, and is such data disaggregated by both disability and gender? Does the State include a disability module in its census?
- ▶ Are there any small-scale or regional studies on women and girls with disabilities that could shed light on the situation of women and girls with disabilities nationwide?
- ▶ To what extent, if at all, is information on rights of women and girls and the rights of persons with disabilities available in accessible formats?
- ▶ To what extent are existing public facilities and available equipment accessible to women and girls with disabilities? Does the State make any express provisions to ensure such accessibility? How well are facilities that are equipped to provide services for women with disabilities distributed geographically across the country?
- ▶ Does the State provide any funding for programmes concerning rights of women and girls with disabilities?
- ▶ Are governmental employees, judicial personnel and service providers given any training on the rights of women with disabilities, or on women or persons with disabilities more generally? Are they trained on how to meet the accessibility needs of persons with disabilities?
- ▶ Has the State undertaken any awareness-raising campaigns about the rights of women with disabilities, with the aim of overcoming stigma and tackling intersectional discrimination against women with disabilities?
- ▶ Are legislative, administrative, judicial and educational measures taken by the State to protect the rights of women with disabilities being effectively implemented?

It is important that the factual information provided in a written submission includes detailed information and is well-substantiated, including with citations or annexed documentation. The most effective submissions will include information of the type addressed in the above questions to establish that a problem is of a systemic or generalized nature, as well as a few detailed case studies to illustrate the impact of the problem on individuals. For more detailed considerations around Gender-Based Violence and Sexual and Reproductive Health and Rights, see our United Nations accountABILITY Toolkit Briefing papers on [UN Standards on Sexual and Reproductive Health and Rights of Women and Girls with Disabilities](#)²⁶ and [UN Standards on Gender Based Violence against Women and Girls with Disabilities](#).²⁷

African Human Rights Standards on Non-discrimination and Equality

Note that non-discrimination and equality are both rights enshrined within human rights treaties and also fundamental principles guiding the implementation of all human rights treaty provisions. While States parties undertake obligations to guarantee non-discrimination and equality in general, they are also obligated to ensure that people can exercise all of their rights on an equal basis with others and without discrimination. As such, non-discrimination and equality are important issues to keep in mind throughout Section III of this briefing paper.

Treaty Provisions

■ The African Charter on Human and People's Rights (The Banjul Charter)²⁸

Article 2 of the Banjul Charter guarantees that all individuals are entitled to rights and freedoms included in the Banjul Charter on an equal basis and without discrimination, including on the basis of sex or “other status.” It also provides that States should “ensure the elimination of every discrimination against women” and persons with disabilities “have the rights to special measures of protection in keeping with their physical or moral needs” (Article 18).

■ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)²⁹

The Maputo Protocol complements the Banjul Charter by providing an explicit definition of discrimination against women (Article 1):

“Discrimination against women” means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”

The Maputo Protocol requires that States parties combat all forms of discrimination against women by undertaking the following measures (Article 2):

- ▶ Ensuring that equality between men and women is enshrined in constitutions and other laws, policies, development plans, programmes, and activities at all levels;
- ▶ Enacting and implementing laws and regulatory measures to ensure gender equality and prohibit discrimination;
- ▶ Taking corrective and positive action in those areas where discrimination against women in law and in practice persists; and
- ▶ Modifying the social and cultural patterns of conduct of women and men to eliminate harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Besides general provisions that apply to all women and girls, the Maputo Protocol addresses “special protection of women with disabilities,” requiring States parties to facilitate their access to employment, vocational training, and participation in decision-making, and to ensure that women with disabilities are free from violence, sexual abuse, and discrimination (Article 23).

Equality in Marriage and Family

The Maputo Protocol sets out equal rights for women during marriage and in the process of concluding and terminating marriage. It requires that States parties ensure that, among other protections, marriage only takes place with full consent of both parties and that women have equal rights to choose the matrimonial regime and place of residence, decide on her own nationality as well as that of her children, and acquire, administer, and manage her own property (Article 6). Women also have equal rights to seek separation, divorce or annulment of a marriage, to joint property, and on issues concerning her children (Article 7).

■ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (The Disability Protocol)

The Disability Protocol requires that States parties prohibit discrimination on the basis of disability, including denial of reasonable accommodations (Article 1), and requires States parties to enact special measures in order to eliminate discrimination (Article 5). The Protocol also prohibits discrimination against people because of their association with persons with disabilities, including parents, children, spouses, other closely related family members, caregivers or intermediaries (Article 5). The Protocol also guarantees a right to equality, highlighting that persons with disabilities enjoy “equal protection and benefit of the law” in order to realize “full and equal enjoyment of all human and people’s rights” (Article 6).

The Disability Protocol recognizes intersectional forms of discrimination and includes separate articles specifically addressing the rights of women, children, youth, and older persons with disabilities. It provides that women with disabilities should be ensured full participation in society; be included in mainstream women’s organizations and programmes; have access to information, employment, and income-generating opportunities; be protected from discrimination and sexual and gender-based violence; and be guaranteed sexual and reproductive rights. It also requires integration of a gender perspective into all policies, legislation, and programs (Article 27).

Equality in Marriage and Family

The Disability Protocol provides that “Everyone with a disability has a right to marry and form a family with their full, prior and informed consent” (Article 26). Under the Protocol, States parties should take measures to eliminate discrimination against persons with disabilities and ensure that they can decide on the number and spacing of their children, have access to sexual and reproductive education and services, and not be deprived of their children (Article 26).

Equal Recognition before the Law

Under the Disability Protocol, there is a right to equal recognition before the law implies that emphasizes that persons with disabilities have “the ability to hold rights and duties and to exercise those rights and duties” (Article 1) on an equal basis with others.³⁰ This concept, known as legal capacity, is indispensable for the exercise of all human rights and particularly important for persons with disabilities when they have to make fundamental decisions regarding their health, education, and work.³¹ The Disability Protocol provides that States parties should ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, without interference by State or non-State actors, and are provided with effective support in exercising legal capacity (Article 7). It also provides that States parties should review or repeal laws and policies limiting exercise of legal capacity by persons with disabilities and provide effective support and safeguards for exercising this right (Article 7). The Protocol specifically highlights the

rights of persons with disabilities to hold documents relating to the exercise of legal capacity, to own or inherit property, and to control their own financial affairs (Article 7).

■ **African Charter on the Rights and Welfare of the Child (ACRWC)**³²

The ACRWC requires States parties to ensure children’s enjoyment of “the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status” (Article 3). It also provides that States parties should ensure special measures of protection for children with disabilities related to physical accessibility and access to training and recreation (Article 13).

Cases before the African Court on Human and People’s Rights (African Court)

■ ***The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali (Application No. 046/2016 (2018))***³³

This is the first case in which the African Court found violations of the Maputo Protocol. The African Court held that the Family Code of Mali violates women’s rights recognized in the Maputo Protocol, the ACRWC, and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which has also been ratified by the Republic of Mali.

Right to Consent to Marriage

The Family Code of Mali did not require religious ministers performing marriages to verify the marrying parties’ consent to marriage.³⁴ The African Court noted that “the way in which a religious marriage takes place in Mali poses serious risks that may lead to forced marriages and perpetuate traditional practices that violate international standards” and found Mali in violation of Article 2 (1) and 6 of the Maputo Protocol and Article 10 and 16 of CEDAW, which guarantee equal rights between men and women, in particular women’s free consent to marriage.³⁵

Right to Inheritance

The Family Code of Mali allowed application of Islamic law in matters of inheritance, which gives women half of the inheritance that men receive.³⁶ The African Court found Mali in violation of Article 21(2) of the Maputo Protocol providing that women and men have the right to inherit in equitable shares.³⁷

Jurisprudence of the African Commission

■ **Concluding Observations**

The African Commission frequently examines the legal and institutional framework of States parties to ensure they are implementing obligations related to non-discrimination and equality. It welcomes State actions to repeal discriminatory laws, domesticate international human rights standards (such as the Maputo Protocol and the CRPD and its Optional Protocol); enact laws and policies to protect the rights of women and persons with disabilities; and adopt national action plans, strategies, and programs to tackle issues of gender equality as well as the inclusion of persons with disabilities.³⁸ The Commission has

recommended that States parties adopt concrete institutional strategies to tackle discrimination, including establishing a ministerial department for women's affairs, appointing gender focal persons in all ministries,³⁹ listing disability issues as one of the principles of national policy in the constitutional amendments,⁴⁰ promoting mainstreaming of gender equality and disability rights, and strengthening socio-professional integration of people with disabilities.⁴¹ The Commission has also welcomed the establishment in one State of special centers for women and persons with disabilities,⁴² though it did not specify how these centers advance the rights to non-discrimination and equality.

The African Commission has also expressed concern that there is still a lack of information regarding equal rights enjoyment for persons with disabilities, especially those in rural areas, and has requested that several States parties provide details in their future State reports about how the rights of persons with disabilities are protected.⁴³

Equality in Marriage and Family

The African Commission has recommended that at least one State strengthen its efforts to eliminate existing patriarchal and gender stereotypes on the roles and responsibilities of women and men in the family and society.⁴⁴

■ Individual Communications

Purohit and Moore v. The Gambia (Communication. No. 241/01 (2003))⁴⁵

The petitioners in this case were mental health advocates, complaining on behalf of patients detained in a psychiatric unit of a hospital and future mental health patients detained under the Lunatics Detention Act (LDA) of the Republic of The Gambia, which allowed for automatic and indefinite institutionalization of any person described as a "lunatic" without due process.⁴⁶

The African Commission found violations of several articles of the Banjul Charter. In particular, it found that The Gambia failed to meet the standards of non-discrimination and equal protection of the law (Article 3) because, although patients had the right to challenge the LDA in court, most patients detained under the LDA were likely to be poor and would not be able to afford a lawsuit, since legal assistance was only extended to poor people charged with capital offences.⁴⁷ Furthermore, the Commission found that terminology used to describe persons with disabilities under the LDA ("lunatics" and "idiots") was dehumanizing, in violation of the right to be free from torture and cruel, inhuman and degrading treatment (Article 5), noting in particular that "human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities [are entitled]."⁴⁸ It also found that there was a violation of the right to fair trial in this case because the LDA did not contain review or appeal procedures nor remedies for the wrongly detained (Article 7)⁴⁹ and a violation of the right to participate in government (Article 13) for those with mental health conditions who were deprived of the right to vote without being deprived of legal capacity.⁵⁰

Notably, the African Commission, declined to find a violation of the right to liberty (Article 6) in this case, noting that this provision was not intended to prohibit detention in situations "where persons in need of medical assistance or help are institutionalized."⁵¹

Jurisprudence of the ACERWC

■ General Comments to the ACRWC

General Comment on Article 6 of the ACRWC – Right to Birth Registration, Name and Nationality

This General Comment provides that States parties must take special measures to ensure that children born with disabilities, as well as children born to parents with disabilities, are duly registered without discrimination.⁵² It also urges States parties to amend their laws to remove discrimination between the rights of men and women to transmit their nationality to a child.⁵³

General Comment No. 5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection”

This General Comment recommends that States parties adopt a “system-strengthening approach” to implementing the ACRWC, including by “identifying, establishing and strengthening the (coordinated) response to violations relating to abuse, neglect, maltreatment and exploitation,” which aims to protect all the rights of all children including children with disabilities and girls and “would also take into account the different gender- and age-based needs of girls and boys.”⁵⁴ The General Comment also provides that States parties must develop fiscal policies that will ensure access to essential services for the most excluded children, including girls and children with disabilities.⁵⁵

■ Concluding Observations by the ACERWC

The ACERWC has expressed concern that some groups of children, including children with disabilities and girls, still face discrimination in various sectors,⁵⁶ particularly in education⁵⁷ and access to health and social services.⁵⁸ In this regard, the ACERWC has called upon States parties to take practical and tangible measures to ensure that children who are historically marginalized, including girls, children with disabilities, and children with albinism, are not discriminated against by all sectors of society and all organs including the private sector.⁵⁹ The ACERWC has recommended in particular that States parties repeal discriminatory laws and implement equality laws and policies,⁶⁰ build the capacity of specialized institutions and associations to support children with disabilities,⁶¹ sensitize parents and society about non-discrimination for all children,⁶² fulfill the special needs of children with disabilities,⁶³ provide and make accessible to all children free education and health services including psycho-social support where necessary to vulnerable children,⁶⁴ create a conducive and accommodating environment for children with disabilities in schools and health care facilities,⁶⁵ and provide incentives for girls to attend schools.⁶⁶

Equality in Marriage and Family

The ACERWC has urged States parties to ensure that girls are not discriminated against on the basis of sex or any other status in marriage.⁶⁷ It has also found that traditional and customary laws may discriminate between men and women when it comes to inheritance and property rights.⁶⁸ The ACERWC has urged at least one State party to ensure that family responsibility is assigned equally between mothers and fathers.⁶⁹

Gaps in Standards

The African human rights treaties have developed a comprehensive legal framework on the right to non-discrimination and equality for women and persons with disabilities. However, the human rights bodies have yet to pay significant attention to discrimination that occurs at the intersection of disability and gender, so as to address the situation of women and girls with disabilities in Africa. While both the Maputo Protocol and the newly-adopted Disability Protocol contain articles concerning women with disabilities, the African Commission has not addressed the particular barriers to equality that women with disabilities face. And while the ACRWC contains an article on “handicapped children” (Article 13), it lacks a specific article on girl children or girls with disabilities and also lacks a specific focus on girls with disabilities in its jurisprudence.

Furthermore, until recently, persons with disabilities had rarely been addressed in the African Commission’s concluding observations. This may be partly due to long-term marginalization of persons with disabilities in the society and the fact that the Disability Protocol has only recently been adopted (and has not yet gone into effect). The ACERWC has paid more attention to children with disabilities. However, where there are recommendations concerning rights of persons with disabilities, the recommendations are too general and broad to address the real needs of persons with disabilities, in particular women and girls with disabilities. Also, the Commission has failed to address the diversity within women as a group, for example, by excluding subgroups of women such as women with disabilities. The African Commission could instruct States parties to focus on intersectionality and substantive equality and to ensure that women in all their diversity, including women with disabilities, are properly represented.⁷⁰

Treaty Provisions

■ The Banjul Charter

The Banjul Charter does not contain a specific prohibition on violence against women. However, it contains a series of rights and freedoms necessary to prevent violence against women and provide remedies, such as the rights to non-discrimination (Article 2), to equality before the law and to equal protection of the law (Article 3), to be free from torture, and cruel, inhuman and degrading treatment or punishment (Article 5), and to health (Article 16).

■ The Maputo Protocol

The Maputo Protocol defines violence against women as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war” (Article 1).

The Maputo Protocol provides that States parties should ensure that all women enjoy the right to respect for their dignity and should adopt and implement appropriate measures to prohibit, prevent, punish and eliminate all forms of violence against women (Articles 3, 4, and 5). The Protocol specifically requires protection of older women and women with disabilities from violence, including sexual abuse (Articles 22 and 23).

The Protocol also enumerates that States parties should provide “accessible services for effective information, rehabilitation and reparation for victims of violence against women” (Article 4) and specifically prohibits abuse and sexual harassment of women and girls in educational settings (Article 12). Finally, the Protocol prohibits and condemns all forms of harmful and traditional practices and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men which negatively affect the human rights of women, such as female genital mutilation (Article 5).

■ The Disability Protocol

The Disability Protocol requires that States parties protect persons with disabilities from all forms of exploitation, violence, and abuse (Article 9). In particular, it requires that women with disabilities be protected from sexual and gender-based violence and be provided with rehabilitation and psychosocial support (Article 27). The Protocol further provides that States parties should offer appropriate support and assistance to victims of harmful practices, including legal sanctions and educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including related to witchcraft, abandonment, concealment, ritual killings or the association of disability with omens (Article 11).

■ The ACRWC

The ACRWC provides that children, defined as below the age of 18 years (Article 2), should be protected from all forms of abuse and sexual exploitation (Articles 16 and 27). The ACRWC requires that States parties eliminate harmful customary, traditional, cultural, or religious practices affecting the “welfare, dignity, normal growth and development” of children, particularly child marriage (Articles 1(3) and 21).

Cases before the African Court

■ *The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali (2018)*⁷¹

(Please refer to the [Non-Discrimination and Equality section](#) for more details about this case.)

Minimum Age of Marriage

The Family Code of Mali allowed marriage for girls from the age of 16 and in some circumstances 15, while the minimum age for marriage for boys was 18.⁷² The African Court found that this law violated Article 6(b) of the Maputo Protocol, which guarantees equal rights of women in marriage and sets the minimum age of marriage for women as 18, and Articles 2, 4(1) and 21 of the ACRWC, which defines a child as a person under the age of 18 and requires States parties to primarily consider the best interests of the child and take measures to eliminate harmful and discriminatory practices towards children.⁷³ The African Court also found that this law violated Article 2(2) of the Maputo Protocol, Articles 1(3) and 21 of ACRWC, and Article 5(a) of CEDAW, which provide that States parties should eliminate harmful, discriminatory social and cultural practices against women and children.⁷⁴

Jurisprudence of the African Commission

■ **General Comments**

General Comment No. 4 on Article 5 of the Banjul Charter – The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment

In its General Comment No. 4, the African Commission recognized that several acts of sexual and gender-based violence may amount to torture and other ill-treatment, including rape, domestic violence, forced marriage, trafficking for sexual exploitation, and forced or coerced reproductive health interventions, among many others.⁷⁵ According to the African Commission, as part of their obligation to ensure freedom from torture or ill-treatment, States parties must remove barriers for victims of sexual and gender-based violence to access redress, including by criminalizing all forms of this violence, ensuring accountability for perpetrators, taking all necessary measures to prevent and eradicate this violence, providing unimpeded access to needed health care, including sexual and reproductive health care, and ensuring victim safety and confidentiality, among other tasks.⁷⁶

The African Commission also acknowledged the unique experience of persons with disabilities who are victims of violence, emphasizing the need for equal treatment of gender-based violence victims that are women or persons with disabilities and requiring that States parties provide reasonable accommodations to persons with disabilities seeking redress.⁷⁷

General Comment on Article 14(1)(d) and (e) of the Maputo Protocol

Under this General Comment, the African Commission recognized that States parties must take caution when individuals exercise their right to be informed on the health status of one's partner, especially in cases of HIV, as revealing this status may result in violence.⁷⁸ Additionally, the African Commission called on States parties to ensure that sexual and reproductive services are provided free from coercion, discrimination, and violence.⁷⁹

■ Concluding Observations

Adoption and Effective Implementation of Legislation Addressing Various Forms of Violence against Women and Girls

In its reviews of States parties, the African Commission has expressed concern about the prevalence of domestic violence and has commended and recommended the adoption of Domestic Violence Acts and other legal measures to combat domestic violence.⁸⁰ It specifically has commended a State's actions to include marital rape as a punishable offence in the Domestic Violence Act,⁸¹ has recommended that another State expedite investigations of cases of domestic violence,⁸² and recommended that another State establish offices and departments to provide counseling services to victims of domestic violence.⁸³ The Commission has also commended and urged the adoption of legislation addressing trafficking in persons and children⁸⁴ and recognized sexual harassment as misconduct.⁸⁵

Regarding women in prison, the African Commission has expressed concern that there are no separated female prisons in some countries.⁸⁶ It has welcomed the separation of male from female prisoners and recommended the recruitment of female prison guards to guard prisons for women.⁸⁷

Institutional Development

The African Commission has noted with satisfaction when States parties have established special units in prosecution offices, police offices, and courts to handle sexual and gender-based violence against women and children, including human trafficking, to ensure prompt investigation and prosecution of such cases, as well as effective support to victims of violence.⁸⁸

Support and Services for Victims

The African Commission has highlighted good practices of States parties in providing support and relevant services to victims of sexual and gender-based violence, including specialized care centers, gender-based violence helplines, multi-purpose shelters, victim support units in police stations that provide counselling, assistance with legal redress and referrals to hospitals, as well as one-stop facilities established in hospitals or communities where police officers, social welfare officers, and health officers offer all required assistance to victims of violence.⁸⁹

Training and Awareness Raising

The African Commission has recommended that States parties strengthen and institutionalize a gender-specific mandatory training course for all legal and law enforcement officials and health service personnel to ensure their full capacity in responding to all forms of violence against women and children, The Commission has also recommended that States establish educational and public awareness raising programs which, among other things, emphasize the importance of reporting suspected cases of violence against women and children.⁹⁰

Protecting Children from Violence

The African Commission has recommended that at least one State undertake legislative, administrative, social welfare and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect and exploitation or maltreatment, including sexual abuse by persons or institutions including those entrusted with their care.⁹¹

Protecting Older Women from Abuse

The African Commission has recommended that at least one State ensure stepped-up efforts to protect older women by adopting concrete measures to address abuses committed against older women who are suspected of witchcraft.⁹²

Harmful Practices

The African Commission has frequently expressed concern that harmful practices based on social and cultural traditions may contribute to violations of human rights, in particular the rights of women and girls, and impede their full participation in society.⁹³ The Commission has recommended that States parties combat harmful practices by introducing national legislation, ensuring effective implementation, and enhancing institutional capacity.⁹⁴ The Commission has also urged States parties to adopt legislation criminalizing sexual violence such as corrective rape⁹⁵ and ritual killings,⁹⁶ and outlawing “Ukuthwala” which is the practice of abducting young women as unwilling brides into forced marriages.⁹⁷ It has further recommended that States parties protect women against harmful traditional practices by increasing awareness among parents and community leaders to demystify these practices, empowering women with information and skills, and allocating resources to prevent and eliminate such practices.⁹⁸

The African Commission has expressed concern in situations where dual legal systems, which allow statutory and customary law to co-exist, apply customary law when it comes to personal matters and where there is lack of information as to the domestic application of the Banjul Charter in courts.⁹⁹ It has recommended that States parties harmonize the formal and customary justice systems, and ensure compliance with regional and international standards.¹⁰⁰

Concerning child marriage, the Commission has urged States parties to end child marriage and set a minimum age of 18 years for marriage by adopting or harmonizing their laws in line with the Maputo Protocol.¹⁰¹ It has also recommended that States parties empower girls with information, skills, and support networks, and educate and rally parents and community members on the dangers of child marriage.¹⁰² The Commission has further called on States parties to hold those responsible for child marriage judicially accountable.¹⁰³

■ Individual Communications

Egyptian Initiative for Personal Rights and Interights v. Egypt (2011)¹⁰⁴

The petitioners submitted that during a demonstration, the riot police committed gender-based violence against female journalists by calling them abusive names, stripping off their clothes, molesting them, and exposing their bodies. The African Commission found that Egypt had violated several articles of the Banjul Charter and in particular, the Commission found that the victims of the violence during the protest were exclusively women and that the violence was perpetrated on them specifically because of their gender, showing differential treatment by Egypt against the protestors based on their sex or gender.¹⁰⁵ It further found that the language used in the verbal abuse against the protestors was meant to degrade women specifically, and that the physical assaults—such as “breasts fondling” and touching “private and sensitive parts”—were unjustifiable and also could only be directed to women.¹⁰⁶ The Commission also found that Egypt failed to take the necessary security measures to provide effective and satisfactory protection to the women victims, as compared to male protestors, and also did not conduct adequate investigations to bring the perpetrators of these abuses to justice.¹⁰⁷

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan (2009)¹⁰⁸

The petitioners submitted that Sudan carried out gross, massive, and systematic violations of human rights against the indigenous Black African tribes in the Darfur region and used methods including rape of women and girls in order to repress suspected insurgents. The African Commission found that the violations committed by Sudan, including the rape of women and girls, amounted to “both psychological and physical torture, degrading and inhuman treatment, involving intimidation, coercion and violence,” in violation of Article 5 of the Banjul Charter.¹⁰⁹

Equality Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia (2007)¹¹⁰

Petitioners submitted that a 13-year-old girl was kidnapped by a man who abused and raped her. The girl was subsequently freed and the perpetrator arrested after the rape was reported to the police. Unfortunately, after fulfilling bail conditions and being released, the perpetrator abducted the victim again and this time was able to coerce her to sign a marriage contract. The victim managed to escape. Although the perpetrator was rearrested and handed a ten-year sentence, on appeal, the perpetrator was released on the grounds that there was insufficient evidence to prove that the girl had not given consent.

The African Commission found that the rape of the victim constituted a serious infringement of the victim’s dignity, integrity, and personal security as captured under Articles 5, 4, and 6 of the Banjul Charter, respectively. In making its decision, the African Commission pointed out that Ethiopia as a State party to the Banjul Charter had “failed in its ‘duty to protect’ as captured under article 1 and 2.” In addition, the Commission found that Ethiopia had failed to prevent the rape, particularly by failing to enact and implement laws and take other proactive steps to prevent infringements including by private actors as well as provide for reparations when an infringement has occurred.

Jurisprudence of the ACERWC

■ General Comments

Joint General Comment of the African Commission on Human and People’s Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage¹¹¹

This General Comment reiterates that child marriage constitutes discrimination based on sex, is a harmful practice, and poses disproportionate risk and impact on girls including domestic violence and early and frequent pregnancy which in turn is associated with significantly higher rates of maternal morbidity, maternal mortality, and infant mortality. The ACERWC outlines that States parties should take legislative and institutional measures to prohibit marriage of boys and girls under the age of 18, ensure full free consent to marriage, access to education and health services, in particular for pregnant girls, among other obligations.

■ Concluding Observations by the ACERWC

Sexual Abuse and Violence

The ACERWC has expressed concern to at least two States about high incidences of sexual violence against girls,¹¹² including rape.¹¹³ It has also expressed concern to at least one State that sexual harassment and rape are particularly prevalent in military or educational settings.¹¹⁴ The ACEWRC has further expressed

concern about the threat posed on the life of girls as a result of sexual violence,¹¹⁵ impunity for perpetrators,¹¹⁶ as well as the practice of forcing girls to marry the perpetrators.¹¹⁷

The ACERWC has recommended that States parties fight against sexual violence by collecting data and research on the root causes of sexual violence,¹¹⁸ amending or adopting laws or action plans aimed to combat sexual violence,¹¹⁹ sensitizing girls and the community about the negative impact of sexual violence,¹²⁰ training law enforcement to investigate and prosecute perpetrators of sexual abuse,¹²¹ setting up child friendly reporting mechanisms,¹²² ensuring early and effective identification and punishment of perpetrators,¹²³ and providing victim support including rehabilitation and reintegration services, sexual and reproductive education and services.¹²⁴ As to imprisoned girls, the ACERWC has recommended that at least one State establish detention facilities to specifically accommodate girl children, in order to protect them from violence.¹²⁵

Child Marriage

The ACERWC has expressed significant concern that child marriage for girls is permitted in many African countries in law or in practice.¹²⁶ The ACERWC has recommended that States parties harmonize their legislation with the ACRWC, which sets the minimum age of marriage for girls at 18.¹²⁷ Furthermore, it has recommended that States parties strictly implement laws and allocate resources to fight against child marriage and related harmful practices including betrothal of girls and virginity tests,¹²⁸ take measures against persons who marry children and those who force girls to marry,¹²⁹ undertake awareness raising campaigns on ending child marriage,¹³⁰ and provide financial, medical, and psychological support to victims of child marriage.¹³¹

Female Genital Mutilation (FGM)

Given the high prevalence of FGM among girls in many African countries,¹³² the ACERWC has recommended that States parties strengthen laws and institutions addressing FGM and other forms of harmful practices against girls.¹³³ It has further recommended that States parties take necessary measures to raise awareness about the adverse effects of FGM among all relevant stakeholders with the aim of eliminating the practice,¹³⁴ and provide financial, medical and psychological assistance to victims of FGM.¹³⁵

Trafficking

The ACEWRC has recognized that girls are trafficked for the purpose of sexual exploitation or as domestic workers,¹³⁶ and children with disabilities are at times forced by their parents or trafficked for the purpose of begging.¹³⁷ It has urged States parties to prevent and combat trafficking by raising awareness about trafficking in children;¹³⁸ entering into bilateral and multilateral treaties with other countries to ensure that children are not subjected to any form of exploitation in those countries while facilitating the return, rehabilitation, and reintegration of children;¹³⁹ innovating to create other ways of earning livelihoods to address the poverty of the society;¹⁴⁰ capacity building for law enforcement officers to facilitate effective investigation, prosecution, and conviction of perpetrators including family members;¹⁴¹ and increasing availability of protective services to identify and protect victims of trafficking.¹⁴²

■ Communications before the ACERWC

Michelo Hunsungule and Others (on behalf of children in Northern Uganda) v. Uganda (2013)¹⁴³

Petitioners alleged that, among other violations, girls in Northern Uganda had been abducted and sexually abused during rebel attacks of girls, which is prohibited by Articles 27 and 29 of the ACRWC.¹⁴⁴ While the ACERWC acknowledged that the systematic use of abducted girls as “bush wives” as well as raping and sexually abusing them by the rebels were extreme violations of the rights of girl children,¹⁴⁵ it found no violation of the ACRWC because there was no evidence that Ugandan soldiers were involved in the sexual abuse or that the government did not take measures to investigate, prosecute, and punish perpetrators of sexual abuse against girl children.¹⁴⁶

■ Thematic Reports by the ACERWC

The Impact of Conflict and Crises on Children in Africa¹⁴⁷

This 13-country study examines the impact of conflicts and crises on the rights of children, finding that violence against children, girls in particular, in the form of rape, bodily mutilation, use for suicide bombing, and forced marriage are widespread, causing severe traumatization and disabilities among the children.¹⁴⁸ The ACERWC recommended that States establish effective systems to prevent and respond to violence against children, effectively condemn sexual and gender-based violence, ensure prosecution of perpetrators, and provide recovery and reintegration services for children.¹⁴⁹

Cases before the Economic Community of West African States (ECOWAS) Community Court of Justice

The ECOWAS Community Court of Justice is the judicial organ of the Economic Community of West African States and is charged with resolving disputes related to the Community’s treaty, protocols, and conventions. The ECOWAS Community Court of Justice has competence to hear individual complaints of alleged violations of international human rights standards, including the Banjul Charter, and its decisions are legally binding on ECOWAS Member States.¹⁵⁰ This briefing paper includes this case here because it helps interpret the Banjul Charter, and advocates can submit complaints concerning the Banjul Charter before this Court against ECOWAS Member States.¹⁵¹ Though this court is sub-regional and not technically part of the African human rights system, its jurisprudence may prove influential within the African human rights bodies.

■ **Mani v. Niger (Judgment No. ECW/CCJ/JUD/06/08 of 27 October 2008)**¹⁵²

Petitioners submitted that Ms. Mani was 12 years old when sold into sexual and labor-related slavery within the context of the “wahiya” practice in the Republic of Niger.¹⁵³ The Court decided that Niger failed to fulfill its obligation to protect people from slavery, in violation of Article 5 of the Banjul Charter (torture and ill-treatment), by not adopting appropriate measures to eradicate this practice and by not immediately denouncing this practice. The Court added that even if this practice arose from a supposedly customary or personal context, there should be administrative or judicial procedures in place to protect victims.¹⁵⁴

The Court recognized that the claimant was subject to the “wahiya” system, where young women are sold to men as concubines and was a practice “exclusively affecting women and thus constitutes a form of discrimination based on sex,” but it decided that the violation was not attributable to Niger but rather the buyer himself.¹⁵⁵ This stance fails to reflect that gender-based violence is a form of discrimination and that States have an obligation to exercise due diligence to prevent and punish instances of gender-based violence against women and girls committed by private actors, including in the form of slavery.¹⁵⁶

■ **Mary Sunday v. Federal Republic of Nigeria (Judgment No. ECW/CCJ/JUD/11/18 of 2018)**¹⁵⁷

Petitioners submitted that victim’s fiancé was a police officer and a State agent who allegedly poured hot oil on her when they quarrelled. The victim was reportedly set on fire and as a result of the vicious assault, the victim was severely hurt and suffered serious burns as well as physical and emotional trauma. The victim had approached the State’s judicial services, but because her files had mysteriously gone missing, State agents failed to conduct an effective investigation. Thereafter, the victim was denied justice as the complaint was erroneously found to be lacking.

In its ruling, the ECOWAS Court held that the State had violated the victim’s rights to access justice and effective remedies.

■ **Dorothy Chioma Njemaze & 3 ORS v. Federal Republic of Nigeria (Judgment No. ECW/CCJ/JUD/08/17 of 2017)**¹⁵⁸

This petition was based on the unlawful abduction of three women believed to be “prostitutes” and “ashawos”† by State agents. Upon the abduction, these women were unlawfully detained, physically and verbally brutalized, and sexually assaulted.

In its ruling, the ECOWAS Court held that the State had violated a number of rights of the women. These included the right to life, to integrity and security of the person, to dignity, to be protected from discrimination, and to access appropriate remedies. Specifically, the Court held that labelling the victims as prostitutes was humiliating and derogatory, as the State was unable to provide substantial evidence to prove that the women were prostitutes.

Gaps in Standards

The African human rights bodies have covered many of the aspects of the right to be free from sexual and gender-based violence, including the “due diligence” standard related to violence committed by non-State actors, such as intimate partner violence, familial violence, or rape.

† These are derogatory terms used to describe and shame women who engage in sex work.

The “Due Diligence” Standard in African Human Rights Law

The African Human Rights treaties implicitly recognize a “due diligence” standard concerning State responses to violence committed by non-State actors. The due diligence standard consists of an obligation for States to protect, to prevent, to punish, to prosecute and to provide reparations for violence committed by non-State actors. Even though none of the African human rights treaties explicitly include the term “due diligence” in their provisions, States parties’ due diligence obligations are implied or outlined in the following provisions:

- a. Article 60/61 of the Banjul Charter: This provision allows the African Commission to draw inspiration from international law on human and peoples’ rights. This could include drawing insights from the Declaration on the Elimination of Violence against Women from which the due diligence standard originated.
- b. Article 4 of the Maputo Protocol: The Right to Life, Integrity and Security of the Person, including the obligations to enact and enforce laws to prohibit all forms of violence against women (2(a)); to identify the causes of violence against women (2(c)); to adopt various measures necessary to ensure the prevention, punishment, and eradication of violence against women (2(b), (d), & (i)); to punish and prosecute perpetrators (2(e) & (g)); and to provide redress for victims (2(f)).

The Guidelines on Combating Sexual Violence and its Consequences in Africa (the Niamey Guidelines) were adopted by the African Commission on Human and Peoples’ Rights in 2017. The goal of the Niamey Guidelines is to guide and support Member States of the African Union in effectively implementing their commitments and obligations to combat sexual violence and its consequences. The Guidelines explicitly mention the due diligence obligation. They provide the following:

States must ensure that state agents do not commit any act of sexual violence. States are required to enact appropriate laws and regulatory steps to act *with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide remedies to victims.*

There are also, however, a few areas where the African human rights bodies should provide more thorough recommendations to States on how to better protect the right of women with disabilities to be free from sexual and gender-based violence.

With respect to legislative and policy reform, the African human rights bodies should encourage States to ensure that laws and policies to prevent and punish domestic violence and other forms of gender-based violence address the unique forms of gender-based violence that women with disabilities face, such as violence at the hands of caregivers. The African human rights bodies should also better address the need to tackle the factors and root causes that contribute to the heightened vulnerability of women with disabilities to gender-based violence.

For violence in institutional settings, the African human rights bodies should underscore the need for training for institutional personnel on the rights and needs of people with disabilities, especially in light of the high rates of institutionalization (including imprisonment) of women with disabilities, and the fact that women with

disabilities are more likely to experience violence in a range of institutional settings, including in prisons, schools, and mental health facilities.

The African human rights bodies should also strengthen recommendations regarding access to support services, particularly ensuring that those services are available, accessible, acceptable, and of good quality for women and girls with disabilities who are victims of sexual and gender-based violence. In particular, it should recommend that States parties train relevant medical and service providers about the forms of violence that women with disabilities face and their unique needs in the face of sexual gender-based violence. Furthermore, the African human rights bodies should provide specific guidance to States parties about how to make support services accessible, including by ensuring that transportation to and from such services is accessible, that they have physically accessible facilities, that information is provided in a variety of formats (including Braille, easy read, and sign language), and that shelters permit women with disabilities to bring service animals with them into the shelter.

The African human rights bodies should also more consistently call on States to remove specific barriers to accessing justice for women with disabilities, including in cases of sexual and gender-based violence. See the Access to Justice section below for more details.

Given that women and persons with disabilities are also more likely to experience harmful practices that may be governed by customary legal systems, the African human rights bodies should clarify how to harmonize the statutory legal system and the customary legal system to ensure equal rights for women with disabilities. These bodies may wish to refer to the Joint General Comment from the CEDAW and CRC Committees on this topic, or to other jurisprudence from the CEDAW Committee.

African Human Rights Standards on Sexual and Reproductive Health and Rights

Treaty Provisions

■ The Banjul Charter

The Banjul Charter provides that everyone has the right “to enjoy the best attainable state of physical and mental health,” as well as the right to receive medical attention when they are sick (Article 16).

■ The Maputo Protocol

The Maputo Protocol sets out that women have the right to control their fertility and the right to safe abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the woman or the life of the woman or the fetus. It requires that States parties ensure women’s right to health through effective access to information and services (Article 14). In particular, the Protocol enumerates that States parties should ensure the rights of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition, as well as the right to be treated with dignity (Article 24).

■ The Disability Protocol

The Disability Protocol provides that persons with disabilities should have access to quality, free or affordable, and accessible health services, including sexual and reproductive health and disability-related services, on an equal basis with others and on the basis of free, prior, and informed consent, with support in making health decisions when needed (Article 16). It specifically provides that health campaigns and the training of health care providers should include disability-specific issues and should not stigmatize persons with disabilities (Articles 16(h) and (i)).

■ The ACRWC

The ACRWC provides that States parties should take measures to reduce the child mortality rate, ensure provision of adequate nutrition and safe drinking water, ensure provision of health care services, develop primary health care, and provide appropriate health care for expectant and nursing mothers (Article 14). The ACRWC also enumerates that practices prejudicial to the health of children should be eliminated (Article 21).

Jurisprudence of the African Commission

■ General Comments

General Comment No. 3 on Article 4 of the Banjul Charter — The Right to Life

In its General Comment No. 3 to the Banjul Charter, the African Commission called on States parties to prohibit the execution of pregnant or nursing women and people with psychosocial or intellectual disabilities. It also enumerated a broad interpretation of the right to life so as to include the right to be free from preventable maternal mortality and the right to equal access to health care.¹⁵⁹

General Comments No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Maputo Protocol

In its General Comment No. 2 on the Maputo Protocol, the African Commission set out that all women enjoy the right to make decisions about their fertility, whether to have children, the number of children, the spacing of children, and methods of contraception, without interference from the State or non-State actors.¹⁶⁰ The Commission recognized that the biggest barriers to women's access to reproductive health services are traditions and cultural or religious practices, and it noted that States parties are required to remove impediments to health services for women.¹⁶¹ The Commission further noted that all women have the right to access information and education regarding their sexual and reproductive rights, and that this information should be complete, available, and reliable,¹⁶² as well as available in various forms that are accessible to community members using different languages and to all women and girls, including those with disabilities.¹⁶³

Concerning sexual and reproductive health services, the Commission enumerated that all women have the right to access maternal health services as well as safe abortion¹⁶⁴ in cases of sexual violence and incest, and in emergency medical situations.¹⁶⁵ It further noted that these health services should be available, financially and geographically accessible, of good quality, consistent with current international standards, and provided without discrimination, including on the basis of disability.¹⁶⁶ The Commission noted that, though individual health personnel directly involved in the provision of health services may invoke conscientious objection to providing certain medical services in cases of non-emergency, States parties should ensure that women are referred to other health providers in a timely manner, so that they are still able to obtain those services, and medical institutions cannot invoke conscientious objection.¹⁶⁷ The Commission set out that complaint mechanisms should be in place to ensure that these rights are protected in reality.¹⁶⁸

Concerning abortion in particular, the Commissions determined that women who meet the criteria for obtaining an abortion should not incur any legal sanctions on this basis.¹⁶⁹ The Commission also determined that emergency medical care should be provided to anyone in need and that States parties should end the practice of extorting confessions from women seeking emergency medical care as a result of an illegal abortion.¹⁷⁰

General Comments on Article 14 (1) (d) and (e) of the Maputo Protocol

In this General Comment, the African Commission found that the right to be informed about one's health status includes access to adequate, reliable, non-discriminatory, and comprehensive information about health as well as to procedures, technologies, and services for the determination of health status such as testing and counseling services.¹⁷¹ It also determined that this right is applicable to all women without discrimination including women with disabilities.¹⁷² The Commission further found that while disclosing one's health status to a partner should be encouraged, there should be no requirement to reveal one's HIV status or other health information.¹⁷³

■ Concluding Observations

Health Service Provision in General

The African Commission has commended States parties for taking measures to improve health service provision, including setting up health care programs and facilities, adopting national health policies, improving health infrastructure and quality of healthcare, and increasing medical personnel.¹⁷⁴ The Commission has welcomed the creation of mobile clinics in all the regions of one State to cater to various

communities, including the indigenous women in the remote rural areas.¹⁷⁵ The Commission has also expressed concern to at least one State about social determinants of health, including limited access to drinking water and inadequate food, hygiene, and sanitation measures, especially in rural areas.¹⁷⁶ It has further commended at least one other State for the provision of sanitary dignity towels for all the vulnerable members of society in need of such products through an integrated program which promotes women's economic empowerment initiatives on manufacturing and distribution of sanitary pads.¹⁷⁷

The African Commission has expressed concern to at least one State about inadequate measures to address the right to health of people with disabilities.¹⁷⁸ It has recommended that at least one State take measures to address the right to mental health,¹⁷⁹ and that another State provide psychosocial support and health rehabilitation to children with disabilities.¹⁸⁰

Maternal Health

The African Commission has recommended that several States parties adopt appropriate policies to address high rates of maternal mortality.¹⁸¹ The Commission has recommended in particular that States parties recruit and train medical personnel in order to improve the clinical management of obstetric fistula cases;¹⁸² improve the affordability of reproductive health services by provision of subsidies to Caesarean deliveries and free health care to pregnant women and to children below five years;¹⁸³ increase the number of women who give birth at health care facilities;¹⁸⁴ develop effective tools to provide information and services to women on their reproduction rights and health;¹⁸⁵ increase budgetary allocation to the health sector and promote human rights-based and people-centered private-sector investment in the health sector;¹⁸⁶ and enhance the availability and accessibility of maternity services by increasing the number of competent healthcare facilities and health personnel, especially in rural areas.¹⁸⁷ The African Commission has also recognized the disproportionate impact of Ebola on women, in particular its impact on the provision of maternal health services, and called on at least one State to urgently adopt comprehensive measures to address the high maternal and infant mortality rate.¹⁸⁸ In terms of female prisoners, the African Commission has commended at least one State for regulations that allow infants below 18 months who need close maternal care to stay with women serving a prison term and allow the provision of additional food to such mothers and their infant children.¹⁸⁹

Safe Abortion and Family Planning

The African Commission has commended States parties for measures taken to reduce the incidence of unsafe abortion, to repeal laws that criminalized abortion, to adopt or revise laws and policies on abortion to bring them in line with the Maputo Protocol, to improve access to contraceptives and family planning options, and to sensitize religious leaders on the consequences of unsafe abortion.¹⁹⁰ It has also recommended that at least one State ensure that women who develop abortion-related complications receive appropriate post-abortion health care and are not additionally victimized by health care providers and the criminal justice system.¹⁹¹

Adolescent Sexual and Reproductive Health

The African Commission has commended States for the adoption of national strategies on adolescent sexual and reproductive health and rights, and for taking measures to discourage and prevent teen pregnancy through family life and reproductive health education and ensuring accessible, available, and affordable contraceptive methods.¹⁹²

Involuntary Sterilization

The African Commission has commended at least one State for declaring that sterilization of women for any reason without their informed consent is unlawful.¹⁹³

■ Individual Complaints

Purohit and Moore v. The Gambia (Communication. No. 241/01 (2003))¹⁹⁴

(Please refer to the [Non-discrimination and Equality section](#) for a description of other issues raised in this case)

The petitioners in this case were mental health advocates, complaining on behalf of patients detained in a psychiatric unit of a hospital and future mental health patients detained under the Lunatics Detention Act (LDA) of the Republic of The Gambia, which allowed for automatic and indefinite institutionalization of any person described as a “lunatic” without due process.¹⁹⁵

The African Commission held that the right to health includes “the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind;”¹⁹⁶ noting that “mental health patients should be accorded special treatment which would enable them to not only attain but also sustain their optimum level of independence and performance,” and that mental health care includes diagnosis, treatment, and rehabilitation.¹⁹⁷ Recognizing that the Gambia had been making efforts to improve care for mental health patients, the African Commission still found a violation of right to health of persons with mental disabilities, because current health care provided to people with mental disabilities was not enough “for their survival and their assimilation into and acceptance by the wider society.”¹⁹⁸

Jurisprudence of the ACERWC

■ General Comments

Joint General Comment of the African Commission on Human and People’s Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage¹⁹⁹

Through this General Comment, the ACERWC and the African Commission found that child marriage deprives children the full complement of their right to health and increases their risks in regard to sexual and reproductive health.²⁰⁰ The ACERWC and African Commission outlined that States parties should ensure access to comprehensive sexual and reproductive health services that are “integrated, rights-based, women-centered and/or youth-friendly and free of coercion, discrimination and violence.”²⁰¹ They also determined that age-appropriate sexuality education, including information about consent to sex and child marriage, should be provided in school and non-school settings.²⁰² The ACERWC and African Commission further noted that girls in child marriages are at high risk of pregnancy-related health complications and should be provided with safe abortion.²⁰³ (See the “Sexual and Gender-Based Violence” section above for more information about this General Comment.)

■ Concluding Observations

Sexual and Reproductive Health

The ACERWC has expressed concern that access to sexual and reproductive health services for adolescents in at least one State is limited, noting the high incidence of teenage pregnancies as well as the high level of clandestine abortions by adolescent girls.²⁰⁴ The ACERWC has recommended that States develop and adopt national strategies on prevention of teenage pregnancy including adolescent-sensitive and confidential services²⁰⁵ and revise legislation on abortion notably with a view to guaranteeing the best interests of pregnant teenagers and avoiding teenage girls resorting to clandestine abortions that put their lives at risk.²⁰⁶

■ Thematic Reports by the ACERWC

The Impact of Conflict and Crises on Children in Africa²⁰⁷

This 13-country study examined the impact of conflicts and crises on the rights of children and found that violence against children, in particular girls, has caused serious health issues for children,²⁰⁸ including reproductive health problems for girls²⁰⁹ and mental health issues.²¹⁰ The ACERWC recommended that States rebuild and equip accessible health care systems to cater to the needs of children affected by conflict, including provision of psychosocial support.²¹¹ (Please see the “Sexual and Gender-Based Violence” section above for more information about this report.)

Gaps in Standards

The African human rights bodies have covered many of the aspects of sexual and reproductive health and rights. However, there are a few areas where they should more consistently comment on these rights and provide more thorough guidance to States, including regarding the rights of women with disabilities.

In particular, the African human rights bodies should address sexual and reproductive rights violations that disproportionately affect diverse groups of women. For instance, to date, the African human rights bodies have not fully examined rights violations against persons with disabilities in the context of sexual and reproductive health. The African human rights bodies should comment on accessibility and attitudinal barriers that women and girls with disabilities face when accessing sexual and reproductive health care, including physical, financial, communications and informational barriers, as well as stereotypes held by health care professionals and the community about the sexuality and ability to parent of women with disabilities. (see Abuses against Women with Disabilities above for more information). The African human rights bodies should also better address the rights of women and girls with disabilities by recommending that States prohibit forced medical interventions, for example, forced sterilization, and require that the women themselves provide informed consent for reproductive health interventions, protecting their right to be free from torture or ill-treatment. In addressing forced medical interventions, the African human rights bodies should recognize the right of persons with disabilities to legal capacity and to make medical decisions for themselves.

The African human rights bodies have not made any comments related to ensuring consensual access to modern contraceptives for persons with disabilities on an equal basis with others and have made few comments about access to contraceptives for women more generally. Access to contraceptives is an important part of ensuring that women can control their health and fertility, as well as the course of their lives. Given that women with disabilities are frequently denied access to sexual and reproductive health information and services due to physical, informational, and attitudinal barriers and stereotypes about their need for such services, there is an unmet need for contraceptives within this population. As such, it would be helpful for the

African human rights bodies to ask States to provide data on the unmet need for contraceptives among women and girls with disabilities and for advocates to raise this issue with the African human rights bodies.

Finally, the African human rights bodies should provide better context for how violations of sexual and reproductive rights are frequently grounded in discrimination against and harmful stereotypes about women and girls, including diverse groups of women such as women with disabilities.

African Human Rights Standards on Education and Training

Treaty Provisions

■ The Banjul Charter

The Banjul Charter guarantees everyone's right to education (Article 17).

■ The Maputo Protocol

The Maputo Protocol requires that States parties eliminate all forms of discrimination against women and guarantee equal opportunity and access to education and training at all levels and in all disciplines; eliminate all stereotypes in textbooks, syllabi, and the media that perpetuate such discrimination; and integrate gender sensitization and human rights education at all levels of education curricula including teacher training. The Maputo Protocol in particular requires States parties to promote literacy among women and girls and their retention in educational institutions (Article 12).

■ The Disability Protocol

The Disability Protocol provides that persons with disabilities should enjoy the right to education on an equal basis with others, requiring States parties to provide inclusive quality education and skills training for persons with disabilities with the goal of effective, full inclusion and full development of potential (Article 16).

■ The ACRWC

The ACRWC provides that every child has the right to an education. In particular, States parties should take special measures to ensure equal access to education for female and disadvantaged children and ensure that pregnant children have an opportunity to continue their education (Article 11).

Jurisprudence of the African Commission

■ Concluding Observations

The African Commission has emphasized that States parties should ensure women and girls' access to education,²¹² including by increasing local school enrollment for girls,²¹³ building more schools to meet the needs of the growing student population and maintaining the quality of education,²¹⁴ improving retention and completion at all levels of education,²¹⁵ and ensuring equal access to all levels of education, especially access in rural areas and to girls and women.²¹⁶

The African Commission has expressed particular concern about the lack of education on women's rights, which has contributed to women's rights violation, and has recommended that at least one State strengthen women's leadership through education.²¹⁷

Jurisprudence of the ACERWC

■ Concluding Observations

Access to Education for Girls

The ACERWC has expressed concern about the low enrollment and high drop-out rate of girls in schools,²¹⁸ lack of appropriate sanitary facilities for girls in schools,²¹⁹ and discrimination against pregnant girls in schools.²²⁰ It has also noted that gender-based violence in schools including sexual harassment by teachers is a grave concern for the education of girls.²²¹ The ACERWC has recommended that States parties increase awareness among parents about the importance of putting their girl children in school,²²² provide free education or assist girls from poor households,²²³ ban child marriage of girls who are still attending schools,²²⁴ take measures to allow and support pregnant and married girls to reenter school,²²⁵ provide life skills as well as sexual and reproductive education with the view to curb the increasing number of pregnancies during school years,²²⁶ provide sanitary materials to girls,²²⁷ and finance teacher trainings on child rights and gender-based violence and ensure that appropriate child protection mechanisms are in place.²²⁸

Access to Education for Children with Disabilities

The ACERWC has expressed concern about discrimination against and unequal access to education for children with disabilities.²²⁹ It has recommended that States parties ensure schools are accessible for children with disabilities²³⁰ and that the education system is inclusive.²³¹ It has found that, until a fully inclusive system is realized, specialized schools for children with disabilities can be provided with the necessary budget, human resources, and teaching materials for their proper operation.²³²

Regarding inclusive education for children with disabilities, the ACERWC has recommended that States ensure that the manner and form of inclusive education is dictated by the individual educational needs of every child,²³³ that teachers are trained in special needs education,²³⁴ that basic infrastructure is suitable to children with disabilities, and that teaching materials are prepared which can be utilized by children with disabilities.²³⁵

Gaps in Standards

The African Commission has not made any comments on access to education for persons with disabilities. While the ACERWC has recommended that States parties improve the accessibility of schools for children with disabilities, it mostly refers to physical accessibility. The African human rights bodies should provide more concrete guidance on how to improve accessibility in educational settings.

The African human rights bodies should also comment on the barriers faced specifically by girls and women with disabilities in accessing education given their gender and disability status, including low rates of enrollment; violence and bullying; physical, geographic, and informational barriers to accessing education; accessibility of toilets for sanitary needs; and financial barriers to education, among others. Further, the African human rights bodies should highlight in particular the need to ensure access to comprehensive sexuality education for girls and women with disabilities, to give them the tools they need to exercise their sexual and reproductive self-determination and protect themselves from abuse. While recommending States parties establish child protection mechanisms in schools to tackle gender-based violence, the African human rights bodies should also recommend that these protection mechanisms are accessible for girls with disabilities.

African Human Rights Standards on Emerging Issues

The issues outlined below are important for ensuring the rights of women and girls with disabilities, but the African human rights bodies have to date developed limited jurisprudence related to these issues. This section provides an overview of these issues as the African human rights bodies have addressed them to date, with the hope that this jurisprudence will continue to develop, including as it impacts the rights of women and girls with disabilities.

Access to Justice

The Banjul Charter provides that everyone has a right to a free trial, including the right to be defended by counsel of his or her choice (Article 7). The Maputo Protocol and the Disability Protocol go further and require that States parties take appropriate measures to ensure effective access to justice for women and persons with disabilities, including access to judicial and legal services such as legal aid, as well as procedural, age-, and gender-appropriate accommodations. They also require training of judicial personnel as well as empowerment of women and persons with disabilities. The Disability Protocol particularly requires that States parties take measures to ensure that customary law systems are inclusive and not used to deny persons with disabilities their right to access justice.²³⁶ However, current jurisprudence of the African human rights bodies mainly focuses on access to legal aid in general, without specific reference to women or persons with disabilities.²³⁷

It is important for the African human rights bodies to recommend that States parties ensure that the justice systems in their countries are accessible to persons with disabilities. The African human rights bodies should also comment on the equal participation of persons with disabilities in all legal proceedings including their right to testify, and ensure that the justice system tackles this issue with both disability and gender discrimination in mind. This is especially important for women with disabilities who are victims of domestic or sexual violence.

Therefore, the African human rights bodies should urge States parties to adopt the Disability Protocol and ensure the justice system is in line with the Protocol. In particular, States parties should ensure that women with disabilities can fully exercise their legal capacity in terms of initiating legal proceedings and testifying. Training should be provided to all justice personnel on the rights of women and girls with disabilities so as that they do not enforce discriminatory stereotypes, and States parties should raise awareness among the general public of the rights and contributions of women with disabilities, so as to avoid stereotypes.

Economic Rights

The Banjul Charter and the two Protocols mainly protect two economic rights of women and persons with disabilities: the right to property and the right to work. The right to property includes the right to acquire, administer, and manage one's own property, in and out of marriage, as well as to inherit and deal with one's own financial affairs.²³⁸ The right to work includes equal opportunities, equal treatment and proper conditions of work.²³⁹ The Disability Protocol also provides that States parties should promote opportunities for persons with disabilities to initiate self-employment and entrepreneurship and to access financial services, promote employment of persons with disabilities through measures such as job quota systems and tax incentives, and ensure provision of reasonable accommodations in the workplace (Article 19). It further provides that women with disabilities should have access to employment, professional and vocational training, and income generating opportunities and credit facilities (Article 27).

The African human rights bodies' recommendations on the right to work mostly focus on measures such as quota systems and the provision of funds to support work.²⁴⁰ In terms of the right to property and other economic rights, the African human rights bodies recommend that States ensure that women can own their own property and have equal access to land,²⁴¹ as well as that States empower women and persons with disabilities economically through capacity building and provision of subsidies.²⁴²

The African human rights bodies should provide more recommendations, in line with the new Disability Protocol, on taking legislative and other measures to address employment discrimination against persons with disabilities, ensuring accessibility and provision of reasonable accommodations in workplaces, and including persons with disabilities in the open labor market, with special attention paid to intersectional discrimination against women with disabilities. It is important for the African human rights bodies to recommend that States parties undertake awareness campaigns to the general public, and public and private employers in particular, to eliminate stereotypes against persons with disabilities and women concerning employment. The African human rights bodies could also ask States parties to focus more on the rights of persons with disabilities in controlling their own financial affairs, for example to ensure persons with disabilities can fully exercise their rights to own and manage their own property and access various forms of financial credit. This may require that States parties remove restrictions on legal capacity for persons with disabilities, in line with Article 7 of the Disability Protocol.

Participation

The Banjul Charter provides that everyone has the right to participate freely in the government of their country, either directly or through freely chosen representatives (Article 13) and every individual may freely take part in the cultural life of their community (Article 17). The Maputo Protocol requires that States parties take positive actions to promote equal participation of women in electoral processes and at all levels of decision-making, through affirmative action and other enabling measures (Article 9), and that States parties enhance the participation of women in the formulation of cultural policies (Article 17). The Disability Protocol outlines that States parties should ensure equal participation in political life for persons with disabilities. It further stresses that laws that restrict the right to vote or to stand for or remain in public office on the basis of disability should be repealed or amended (Article 21). The Disability Protocol also provides that States parties specifically ensure that women and girls with disabilities participate in social, economic, and political decision-making and activities and ensure that barriers that hinder the participation of women with disabilities in society are eliminated (Article 27). It further provides that persons with disabilities and their representative organizations, including women and children with disabilities, should be involved in all decision-making processes (Article 4) and that persons with disabilities have the right to self-representation through forming and participating in the activities of organizations of and for persons with disabilities (Article 22). Finally, the ACRWC provides that every child who is capable of communicating his or her own views should be assured the rights to express and disseminate their opinions (Article 7).

The African Commission has recommended that States parties repeal discriminatory laws and enact laws and undertake concrete steps to enhance the participation of women in government and in key positions.²⁴³ The Commission has further encouraged States parties to promote the representation of women in all areas, including in senior governmental positions,²⁴⁴ in the judiciary,²⁴⁵ in the public and private sectors,²⁴⁶ and as traditional leaders, such as chiefs and Councilors in their communities.²⁴⁷ The Commission has commended States parties' efforts to increase women's representation in decision-making processes through affirmative action and quota systems.²⁴⁸ It has also commended at least one State for measures taken to support civil society organizations through various programs guaranteeing their financial independence.²⁴⁹

The ACERWC has encouraged States parties to facilitate the participation of all children, including children with disabilities and marginalized children, in deliberations and decision-making on issues related to them,²⁵⁰ including through children’s parliaments, where children in vulnerable situations including girls and children with disabilities are represented.²⁵¹

The African human rights bodies should encourage participation not just by women, but by diverse groups of women including women with disabilities, in decision-making matters related to legislation and policy. The African human rights bodies should also instruct States parties to focus more on substantive equality as a means of ensuring that women, especially women with disabilities, are properly represented.²⁵²

Accessibility and Reasonable Accommodation

The Banjul Charter provides that persons with disabilities have the right to “special measures of protection in keeping with their physical or moral needs” (Article 18(4)). Accessibility and reasonable accommodations are two of the general principles of the Disability Protocol (Article 3), which also provides that every person with a disability has the right to barrier-free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public, and States parties should take reasonable and progressive measures to facilitate enjoyment of this right (Article 15). The Disability Protocol defines reasonable accommodation as necessary and appropriate modifications and adjustments where needed in a particular case, to ensure persons with disabilities enjoy or exercise on an equal basis with others, all human and peoples’ rights (Article 1). Finally, the ACRWC provides that States parties should ensure special measures of protection for children with disabilities in terms of physical accessibility and access to training and recreation (Article 13).

The African Commission has welcomed measures taken by States parties related to accessibility, such as passing technical regulations for enhanced accessibility for citizens with physical disabilities or impaired mobility to public buildings and areas, modification of traffic lights to enable the visually impaired to safely cross the streets, provision of accessible buses, and requesting all government buildings to have ramps and elevators in order to facilitate physical access for people with disabilities.²⁵³ The African Commission has further recommended that States parties include reasonable accommodation in non-discrimination laws and intensify efforts to provide reasonable accommodations for persons with disabilities so as to ensure that they enjoy equal access to all public facilities and services.²⁵⁴

The ACERWC has recommended that States parties ensure the accessibility of public schools. Health care services, sports fields, and playgrounds as well as other public facilities for children with disabilities.²⁵⁵

Current jurisprudence of the African human rights bodies mainly focuses on physical accessibility, with limited reference to informational, communications, or financial accessibility measures, and there is little mention of provision of reasonable accommodation. The African human rights bodies should urge States parties to adopt the Disability Protocol and to ensure physical, informational, and communications accessibility and the provision of reasonable accommodations for persons with disabilities in all areas of life, considering the particular accessibility needs of women with disabilities. These bodies should also address these issues more frequently with States parties and reference the CRPD Committee’s General Comment No. 2 for a detailed outline of accessibility and reasonable accommodations measures, including for women and girls with disabilities.

Human Rights Awareness

The Banjul Charter outlines that States parties have obligations to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Banjul Charter (Article 25). The Maputo Protocol provides that adequate educational and other appropriate structures should be in place to sensitize everyone to the rights of women and that human rights education should be integrated to all levels of education (Article 8 and 12). The Disability Protocol further requires training for professionals such as health care and rehabilitation providers, educational professionals, law enforcement and justice personnel on the rights and needs of persons with disabilities (Article 11, 14 and 16).

The African Commission has expressed concern that in some countries there is lack of awareness among the public of the human rights promotion and protection as well as legal instruments and recommends the cultivation of a culture that respects human rights.²⁵⁶ The African Commission has recommended that States parties provide information to women about human rights issues, sensitize traditional leaders and the community at large on gender equality, institutionalize gender-specific training courses for all legal and law enforcement officials and health service personnel, ensure human rights courses are taught in schools and universities, and establish decentralized structures that promote and disseminate the rights of children and women.²⁵⁷ The African Commission has also recommended that at least one State develop a proactive sensitization policy aimed at reducing or eliminating stereotypes and other perceptions which undermine the full realization of the rights of older persons and persons with disabilities.²⁵⁸

Data and Statistics

The Disability Protocol provides that States parties should ensure the systematic collection, analysis, storage and dissemination of disability-related data, which should be disaggregated by gender, age, and other relevant variables and should be disseminated in accessible formats (Article 32). The African Commission has recommended that States parties take measures to establish mechanisms for generating accurate, disaggregated statistical data on gender-related issues, such as the level of female participation in all spheres and tiers of government and on the prevalence of female genital mutilation, and on disability disaggregated by gender, age, type of disability and other elements.²⁵⁹ The ACERWC has recommended that at least one State party adopt a standard definition of disability in statistical data gathering within government ministries and across the country,²⁶⁰ and that another State Party disaggregated its data.²⁶¹

As States ratify and implement the Disability Protocol, it will be important for the African human rights bodies to more consistently address lack of disaggregated data and statistics with States parties. Comprehensive, accurate, and accessible data and information are critical to assessing progress towards the implementation of a State's human rights obligations, understanding the current issues, and developing effective solutions to complex challenges. Without this data and information, a country cannot be held accountable for human rights violations in its territory and cannot make informed policies so as to fulfill its human rights obligations. The unavailability of disaggregated and appropriate data and statistics regarding women with disabilities has left violations of their rights largely invisible. Therefore, it is very important for the African human rights bodies to comment more on the lack of data, and recommend that States generate and collect disaggregated data concerning all human rights issues, particularly those impacting women and girls with disabilities.

End Notes

- ¹ Links to the country homepages for all States parties to the Banjul Charter and its Protocols can be found on the website of the African Commission on Human and People's Rights here: <http://www.achpr.org/states/>.
- ² Links to the country homepages for all States parties to the ACRWC can be found on the website of the ACERWC here: <https://www.acerwc.africa/initial-and-periodic-reports/>.
- ³ WHO & WORLD BANK, WORLD REPORT ON DISABILITY 28, 30 (2011). The prevalence of disability among African girls between the age of 0-14 is 6.4% and 54.3% for African women over the age of 60.
- ⁴ CRPD Committee, *General Comment No. 3 on Women and Girls with Disabilities*, ¶ 3, U.N. Doc. CRPD/C/GC/3 (2016).
- ⁵ *Id.*, ¶ 2.
- ⁶ Ereshnee Naidu, Sadiyya Haffejee, Lisa Vetten & Samantha Hargreaves, *On the Margins: Violence Against Women with Disabilities*, CTR. STUD. VIOLENCE & RECONCILIATION 13 (2005), <http://www.csvr.org.za/docs/gender/onthemargins.pdf> [hereinafter Naidu et al, *On the Margins*]; see also Augustina Naami, *Disability, gender, and employment relationships in Africa: The case of Ghana*, 4(1) AFR. J. DISABILITY 95 (2015).
- ⁷ UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY 7 (Aug. 10, 2012), <http://www.state.gov/documents/organization/196468.pdf>. It is worth noting that no global data exists on the incidence of such violence, and studies draw on different sources of data.
- ⁸ Rashida Manjoo (Special Rapporteur on Violence against Women), *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 31, U.N. Doc. A/67/227 (Aug. 3, 2012) [hereinafter SRVAW, *Report on violence against women with disabilities*].
- ⁹ Afr. Comm'n, *Guidelines on Combating Sexual Violence and its Consequences in Africa* 6 (2017), https://www.achpr.org/public/Document/file/English/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf [hereinafter Afr. Comm'n, *Guidelines on Combating Sexual Violence*].
- ¹⁰ K. Davies, *The Emperor Is Still Naked: Why the Protocol on the Rights of Women in Africa Leaves Women Exposed to More Discrimination*, 42(3) VAND. J. TRANSNAT'L L. 949, 971 (2009) [hereinafter K. Davies, *The Emperor*].
- ¹¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), art. 1, July 1, 2003, reprinted in 1 AFR. HUM. RTS. L. J. 40 (2005) [hereinafter Maputo Protocol]; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol), art. 1, Jan. 29, 2018 https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf [hereinafter African Disability Protocol].
- ¹² Afr. Comm'n, *Guidelines on Combating Sexual Violence*, *supra* note 9, at 6.
- ¹³ See, e.g., CRPD Committee, *Concluding Observations: Paraguay*, ¶ 59, U.N. Doc. CRPD/C/PRY/CO/1 (2013); *El Salvador*, ¶ 51, U.N. Doc. CCPR/C/SLV/CO/6 (2010).
- ¹⁴ SRVAW, *Report on violence against women with disabilities*, *supra* note 8, ¶¶ 28 & 36.
- ¹⁵ An NGO based in Kenya, KELIN, has documented instances where women with disabilities have been forcibly sterilized. See generally Afr. Gender & Media Initiative, *Robber of Choice Forced and Coerced Sterilization Experiences of Women Living with HIV in Kenya*, <https://profiles.uonbi.ac.ke/kihara/files/report-on-robbed-of-choice-forced-and-coerced-sterilization-experiences-of-women-living-with-hiv-in-kenya.pdf>.
- ¹⁶ Victoria Nokwanele Mgwili & Brian Watermeyer, *Physically Disabled Women and Discrimination in Reproductive Health Care: Psychoanalytic Reflections*, in DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA 262-266 (Brian Watermeyer et. al. eds., 2006).
- ¹⁷ Naidu et al, *On the Margins*, *supra* note 6, at 37.
- ¹⁸ Kenyan Network Advocating for the Rights of Women and Girls with Disabilities, *NGO Submission on Kenya to the Committee on the Convention on Elimination of Discrimination against Women (CEDAW Committee) for the 68th Session, 23rd October to 7th November 2017*, at 8, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fKEN%2f29055&Lang=en.

- ¹⁹ Cape Mental Health, Ctr. Hum. Rts. Univ. Pretoria, Epilepsy S. Afr., Khuluma Fam. Counselling, Law. Hum. Rts., Port Elizabeth Mental Health, SA Fed'n for Mental Health, Teddy Bear Clinic for Abused Child., & Women Enabled Int'l, *Submission to the CRPD Committee Working Group for South Africa* 12 (July 31, 2018), <https://www.womenenabled.org/pdfs/WEI%20et%20al%20South%20Africa%20CRPD%20Committee%20Shadow%20Report%20Submission%20-%20July%2031,%202018%20Final.pdf>.
- ²⁰ African Disability Protocol, *supra* note 11, art. 1.
- ²¹ CRPD Committee, *General Comment No. 1: Article 12: Equal Recognition before the Law*, ¶¶ 17, 27-28, U.N. Doc. CRPD/C/GC/1 (2014) [hereinafter CRPD Committee, *Gen. Comment No. 1*].
- ²² Int'l Fed'n Gynecology & Obstetrics, *Female Contraceptive Sterilisation*, ¶ 7, Recommendation 5 (June 2011), https://www.womenenabled.org/pdfs/International_Federation_of_Gynecology_and_Obstetrics_Sterilization_Guidelines_FIGO_2011.pdf?attredirects=0.
- ²³ Afr. Comm'n, *Guidelines on Combating Sexual Violence*, *supra* note 9, at 24.
- ²⁴ CRPD Committee, *General Comment No. 2: Article 9: Accessibility*, ¶ 25, U.N. Doc. CRPD/C/GC/2 (2014) [hereinafter CRPD Committee, *Gen. Comment No. 2*].
- ²⁵ CRPD Committee, *Gen. Comment No. 1*, *supra* note 21, ¶ 17.
- ²⁶ Women Enabled Int'l, *accountABILITY: U.N. Standards on Sexual and Reproductive Health and Rights of Women and Girls with Disabilities* 4-5 (2017), <https://womenenabled.org/atk/Women%20Enabled%20International%20accountABILITY%20toolkit%20-%20UN%20Standards%20on%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf>.
- ²⁷ Women Enabled Int'l, *accountABILITY: U.N. Standards on Gender Based Violence against Women and Girls with Disabilities* 3-4 (2017), <https://womenenabled.org/atk/Women%20Enabled%20International%20accountABILITY%20toolkit%20-%20UN%20Standards%20on%20Gender%20Based%20Violence%20against%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf>.
- ²⁸ African Charter on Human and People's Rights, June 21, 1981, 21 I.L.M. 58 [hereinafter Banjul Charter].
- ²⁹ Maputo Protocol, *supra* note 11, art. 1.
- ³⁰ CRPD Committee, *Gen. Comment No. 1*, *supra* note 21, ¶ 8.
- ³¹ *Id.*
- ³² Afr. Union, *African Charter on the Rights and Welfare of the Child* arts. 3, 13, Nov. 29, 1999, OAU Doc. CAB/LEG-24.9/49, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf.
- ³³ Inst. for Hum. Rts. & Development in Afr. (IHRDA) v. Rep. of Mali, Application No. 046/2016 (Afr. Comm'n of Hum. & Peoples Rts., May 11, 2018), <http://en.african-court.org/index.php/55-finalised-cases-details/942-app-no-046-2016-apdf-ihrda-v-republic-of-mali-details>.
- ³⁴ *Id.*, ¶¶ 78-79.
- ³⁵ *Id.*, ¶¶ 90, 94-95.
- ³⁶ *Id.*, ¶¶ 111-112.
- ³⁷ *Id.*, ¶¶ 114-115.
- ³⁸ Afr. Comm. Hum. & Peoples' Rts., *Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter of Human Rights (1995-2013)*, ¶ 20 (2015); *Namibia*, ¶ 14 (2016), *Djibouti*, ¶ 73 (2015); *Liberia*, ¶ 49 (2015); *Nigeria*, ¶ 132 (2015), *Kenya*, ¶ 20 (2015); *Liberia*, ¶ 49 (2015); *Gabonese Republic*, ¶ 66 (2014); *Mozambique*, ¶ 12 (2014); *Burundi*, ¶ 54 (2013); *Cote D'Ivoire*, ¶¶ 12, 23 (2012), *Togo*, ¶¶ 29-30, 73 (2011); *Angola*, ¶ 41 (2011); *Ethiopia*, ¶ 75 (2010).
- ³⁹ Afr. Comm. Hum. & Peoples' Rts., *Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights (2011-2013)*, ¶ 14 (2016).
- ⁴⁰ Afr. Comm. Hum. & Peoples' Rts., *Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter of Human Rights (1995-2013)*, ¶ 47 (2015).

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- ¹⁶² *Id.*, ¶ 28.
- ¹⁶³ *Id.*
- ¹⁶⁴ The original text uses "medical abortion." We believe that the document refers to broader abortion services that are safe and performed by qualified medical personnel, rather than to abortion administered through medication.
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Women Enabled international advances human rights at the intersection of gender and disability to: respond to the lived experiences of women and girls with disabilities; promote inclusion and participation; and achieve transformative equality.

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