

REGIONAL DEVELOPMENTS

DISABILITY RIGHTS IN THE SUB-REGIONAL ECONOMIC COMMUNITIES DURING 2013

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1 Introduction

Although the core purpose of the sub-regional economic communities is the pursuit of economic integration, certain key opportunities have been identified for the inclusion of human rights, and particularly disability rights, in the purview of these Communities. This subsection reports on recent events relating to disability rights in one of these, namely the East Africa Community (EAC); there have been no notable developments in the Southern African Development Community (SADC) and the Economic Community of Western African States (ECOWAS) during the period under review.

2 The East Africa Community

This subsection builds on the discussion of the legal, policy, and institutional frameworks of the EAC, as well as entry points for the promotion and protection of the rights of persons with disabilities in the sub-region, which was undertaken in the 2013 volume of this Yearbook.¹ The subsection is therefore an update on developments relative to disability rights that have taken place in the period between 2013 and part of 2014. Indeed, there have been only a few, but nevertheless noteworthy, developments in the policy, programmatic and implementation aspects of disability rights at the EAC.

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1 LN Murungi et al 'Regional developments: Disability rights in the sub-regional economic communities during 2011 and 2012' (2013) 1 *African Disability Rights Yearbook* 375.

2.1 Developments during 2013-2014

2.1.1 Ratification of the Convention

One significant development is that Burundi finally ratified the CRPD in May 2014.² The ratification effectively means that all countries in the EAC are now states parties to the CRPD,³ and therefore that a common and coordinated advocacy effort targeting the domestication and implementation of the CRPD is feasible. In addition, whereas the primary role for the implementation of the CRPD rests with states parties,⁴ the Convention envisages a limited role for regional integration organisations such as the EAC in its implementation, through cooperating in a range of ways for the advancement of the rights of persons with disabilities.⁵ The EAC Treaty does not bestow the Community with a mandate to ratify treaties, and indeed, the stage of integration at which the EAC is at does not allow the Community to ratify the Convention as an organisation.⁶ Nevertheless, a uniform position on the Convention amongst partner states is conducive to push a common agenda for the implementation of the Convention in the sub-region.

2.1.2 Disability policy

In 2012, the Secretariat of the EAC embarked on a process of drafting a Disability Policy. In 2013, the Draft Policy was confirmed by the Council of Ministers, which is the ultimate policy making institution of the Community.⁷ The Policy has since been adopted by the Sectoral Committee of the Council in 2013 and can now be formally applied as a reference and coordination point for action on disability rights within the EAC.⁸

2 See UN Enable 'Convention and Optional Protocol Signatures and Ratifications' <http://www.un.org/disabilities/countries.asp?navid=12&pid=166> (accessed 20 June 2014).

3 Although it has ratified the CRPD, Kenya is the only country in the EAC that is yet to ratify the Optional Protocol to the CRPD on a communications procedure under the CRPD.

4 CRPD, art 32(2)

5 CRPD, art 32(1)

6 CRPD, art 44. The EAC is at the third stage of integration, that is, a common market. See Murungi et al (n 1 above) 376. The competencies of the Community at this stage are largely on the freedom of movement of goods, services and people, as opposed to treaty making on behalf of partner states.

7 East Africa Community Treaty, art 14(1).

8 East Africa Community, Report of the 2nd Meeting of the 2nd Session of the East African Legislative Assembly, Bujumbura, Burundi 20 October-1 November 2013, available at http://www.google.com.et/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CD4QFjAF&url=http%3A%2F%2Fwww.eala.org%2Fkey-documents%2Fdoc_download%2F433-2nd-meeting-of-the-2nd-session-of-the-3rd-assembly-.html&ei=4MKnU7v2Equet0QWB5YQCQDg&usq=AFQjCNEqQX9fMfGBjytTzevq5iSueICPzg&bvm=bv.69411363,d.d2k (accessed 20 June 2014).

2.1.3 Case law

In a decision of 2011, the East Africa Court of Justice (EACJ) found the Secretary General of the EAC to be in contravention of the Treaty for the delay in adopting a Protocol to extend the mandate of the Court to various other issues including human rights.⁹ In 2012, the applicant in that case filed a follow-up case to push for the implementation of the decision. In 2013, the EACJ delivered its verdict on the follow up matter, finding that in terms of the EAC Treaty, the Council of Ministers has a 'determining' mandate on the jurisdiction of the EACJ. Accordingly, the EACJ could not question the decision of the Council of Ministers to exclude human rights from the jurisdiction of the EACJ.¹⁰ This decision will, unfortunately, limit the potential of the EACJ as a platform for the enforcement of human rights, including disability rights.

2.1.4 Conferences

The EAC regularly holds high level stakeholder conferences as one of the platforms to disseminate its policies and to push action amongst partner states on various issues. A biennial conference on disability is one such representative forum organised to monitor the implementation of the CRPD by EAC partner states. The inaugural EAC disability conference was held in Kampala-Uganda in the year 2010.¹¹ One of the key outcomes of that conference was a call for the adoption of an EAC policy on persons with disabilities.¹² The second conference was held in Nairobi-Kenya in June 2014, on the theme of 'Empowerment: The disability concern in the EAC regional integration agenda'.¹³ The 2014 conference assessed partner states' progress in the implementation of the CRPD, the integration of disability and participation of persons with disabilities in the post – 2015 United Nations agenda, an evaluation of progress by partner states towards attaining the Millennium Development Goals (MDGs) in relation to people with disability, as well as addressing partner states' participation in the post-2015 development agenda.¹⁴

9 *Sitenda Sibalu v The Secretary General of the EAC & 4 Others* Ref No 10 of 2010.

10 *Sitenda Sibalu v The Secretary General of the EAC* Ref No 8 of 2012. It is important to note that in a move akin to retaliation on the EACJ for finding against the Council of Ministers and the Secretary General, the Council of Ministers met soon after the decision and decided to exclude the human rights and appellate mandates of the EACJ altogether, instead of extending the current mandate to these areas. This is a matter that the Court took notice of in its decision.

11 See http://gender.eac.int/index.php?option=com_content&view=article&id=142:pwd-conference-kampala&catid=53:press-room&Itemid=183 (accessed 22 August 2014).

12 EAC Policy on Persons with Disabilities 2012 8.

13 See http://gender.eac.int/index.php?option=com_docman&Itemid=189 (accessed 23 June 2014).

14 EAC Communiqué issued at the 2nd EAC Conference on Persons with Disabilities, Nairobi, Kenya 20 June 2014.

One of the key outcomes of the conference was the adoption of a Communiqué setting out recommendations for action in the aforementioned areas. Some key issues of interest in the Communiqué include its calls for the institutionalisation of the conference as a biennial forum to track progress on the implementation of both the CRPD and of the recommendations emanating from previous conferences. The Communiqué also urges the EAC Secretariat to 'coordinate efforts in all Partner States to generate a common position on the post 2015 development agenda for PWD'¹⁵ and 'to lobby the Africa group to advocate for a standalone Development Goal on PWD in the post 2015 development agenda.'¹⁶ The Communiqué further calls upon EAC partner states to mainstream disability concerns in all post MDGs and international sustainable development frameworks in spheres such as education, health, infrastructure, agriculture and employment,¹⁷ and to lobby for the adoption of an 8th Pillar to the African Union Agenda 2063 focusing on special interest groups including persons with disabilities.¹⁸

The call for inclusion of disability concerns into the post 2015 development agenda is timely. The current international development agenda, as set out in the MDG framework, will end in 2015. States are therefore currently engaged in discussions on the focus of the next development framework for the period after 2015, that is, post 2015.¹⁹ As at the time of developing the MDGs, disability was not a core and visible issue to international policy makers.²⁰ As a result, the MDGs did not specifically address disability, except in as far as non-discrimination was an integral part of the goal's achievement as in the case of universal primary education.²¹ The exclusion of a specific disability focus in the MDGs contributed to the marginalisation of disability concerns in the UN

15 The abbreviation 'PWD' is reproduced here as used in the original text of the Communiqué. The author is aware that the use of this abbreviation is not unanimously accepted within the disability rights movement.

16 EAC Communiqué (n 14 above) para 3.4.

17 EAC Communiqué (n 14 above) para 3.5.

18 EAC Communiqué (n 14 above) para 4.3. The AU Agenda 2063 refers to the AU's vision and roadmap towards an integrated, peaceful and prosperous Africa for the next 50 years. More on the vision can be found at <http://agenda2063.au.int/en/about> (accessed 23 August 2014).

19 Some of the deliberations on the Post-2015 development agenda are available at <http://www.un.org/en/ecosoc/about/mdg.shtml> (accessed 22 August 2014) and <http://www.un.org/millenniumgoals/beyond2015-news.shtml> (accessed 22 August 2014).

20 The 1990s were a particularly active decade for purposes of disability rights. However, as at the time of developing the MDGs, international support for a concrete disability agenda had not galvanised enough support to posit disability as a priority concern in the international development agenda or warranting a common position amongst countries. G Quinn & T Degener *Human rights and disability: The current use and future potential of UN human rights instruments in the context of disability* (2002) 29-46, 293-294 map the global discourse on disability rights before the CRPD, showing the vibrant discussion on the need for a responsive framework on disability at the global level, yet not achieving consensus on the need for a standalone treaty on the issue, even as of the year 2000.

21 United Nations Millennium Development Goals 'Goal No 2: Achieve universal primary education' (2000).

development agenda for the past 15 years. Explicit recognition of disability in the post-2015 framework would therefore be instrumental in ensuring that persons with disabilities benefit from the development agenda, and that the CRPD is implemented.

2.2 Emerging opportunities for the promotion and protection of disability rights in the EAC

The EAC is in the process of developing a child rights policy to act as a basis for the harmonisation of child rights standards in the sub-region, and to establish a framework for coordinated action amongst partner states towards matters affecting children.²² The Policy development process is opportune for ensuring the integration of the rights of children with disabilities into child rights action within the EAC.

In addition, the aforementioned 2nd EAC Conference on Persons with Disabilities (2014) called for the development of an EAC Disability Bill. If this recommendation is implemented, there is indeed an opportunity to integrate CRPD standards into the law of the EAC.

3 Conclusion

Evidently, there has been little change in disability rights in the EAC within the year, hence signalling a slow pace for the realisation of the rights in the sub-region. It is laudable that all EAC partner states are now states parties to the CRPD. It is also commendable that the EAC has adopted measures to anchor the disability rights agenda such as through the final adoption of the Disability Policy, as well as the periodic conference on disability. However, in light of the actions of the Council of Ministers to exclude human rights from the mandate of the EACJ, and the decision of the EACJ adjudging itself helpless in the circumstances, there is potential for the gains made in the protection of human rights, including the rights of persons with disabilities, in the EAC to be eroded.

22 As of June 2013, the policy development process was still in the initial stages, with the initial draft that emerged from an inter-agency working group awaiting consideration by government experts from the partner states.