

# REGIONAL DEVELOPMENTS

## THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA: A COMMENTARY ON IMPLEMENTATION AND MONITORING

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### 1 Introduction

The advent of contemporary disability rights discourses within the African human rights landscape dates back to the 1980s, alongside the evolution of global disability rights movements led by persons with disabilities themselves that eventually reframed disability as a social construct and a human rights issue.<sup>1</sup> The idea of an Africa-specific, binding legal instrument on disability rights, however, only came about two decades later. It prominently ensued at the African Union (AU) Ministerial Conference on Human Rights in Africa, held in 2003, in Kigali, Rwanda.<sup>2</sup>

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- 1 For example, the first African regional disability rights conference was held in Addis Ababa, Ethiopia, in October 1980 by the erstwhile Organisation of African Unity (OAU). See the United Nations Economic Commission for Africa (UNECA), Regional Seminar on the International Year of Disabled Persons (IYDP), Organised under the Joint Auspices of the Organisation of African Unity, the United Nations Economic Commission for Africa and the IYDP Secretariat, in cooperation with the Government of Socialist Republic of Ethiopia (UNECA: 6-7 October 1980, Addis Ababa, Ethiopia). Full proceedings available at <http://repository.uneca.org/pdfpreview/bitstream/handle/10855/5312/Bib-36376.pdf?sequence=1> (accessed 16 December 2025).
- 2 SAD Kamga 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law* 219. In the Kigali Declaration, 2003, African leaders recognised 'the broad violation of the rights of vulnerable groups including persons with disability in general' and called for the adoption of 'a Protocol on the protection of the rights of people with disabilities and the elderly.' Available at <https://achpr.au.int/index.php/en/node/880> (accessed 3 May 2019).

Although pre-dating the UN Convention on the Rights of Persons with Disabilities (CRPD), this notion only gained momentum following the latter's adoption in 2006.<sup>3</sup> African states contributed significantly to the drafting and fast-tracked signature of the CRPD<sup>4</sup> and played a notable role in its rapid entry into force.<sup>5</sup>

As is the case with other international treaties, the CRPD, too, was a result of negotiations and compromise among states; meaning, that it did not necessarily reflect the priorities presented by each state party. Additionally, the final text left some key African disability rights contextual nuances and concerns under-addressed, including the rights of persons with albinism,<sup>6</sup> harmful traditional practices and beliefs, potential contributions of African philosophies such as ubuntu,<sup>7</sup> and the specific needs of youth and older persons with disabilities.

Against this backdrop, African disability advocates soon reinitiated calls for a standalone, binding disability rights instrument. Rooted in African contexts and philosophies, the Protocol would be designed to complement rather than diverge from the CRPD.<sup>8</sup> Such a treaty, experts argued, could galvanise action, provide contextualised normative

- 3 See inter alia Mutua, who notes that a motion officially calling for the UN to elaborate and adopt an international convention on disability began in September 2001 when President Vicente Fox of Mexico gave voice to this effect, followed by establishment of an ad hoc committee for this purpose, and, in June 2002, an inter-regional disability expert group meeting hosted by Mexico in collaboration with the UN – M wa Mutua 'Standard setting in human rights: Critique and prognosis' (2007) 29 *Human Rights Quarterly* 547, 624.
- 4 LO Oyaro 'Africa at crossroads: The United Nations Convention on the Rights of Persons with Disabilities' (2015) 30 *American University International Law Review* 347, 363-364. The seven African countries represented in this Working Group were: Cameroon, Comoros, Mali, Morocco, Sierra Leone, South Africa and Uganda – one of the highest continental representations in the Working Group.
- 5 MA Stein & JE Lord 'Prospects and practices for CRPD implementation in Africa' (2013) 1 *African Disability Rights Yearbook* 97, 98-99. The first signatory states from Africa were: Algeria, Cape Verde, Republic of the Congo, Ethiopia, Gabon, Ghana, Kenya, Liberia, Morocco, Mozambique, Niger, Nigeria, Sierra Leone, South Africa, Sudan, Tunisia, Uganda and Tanzania. To date, nearly all African states are parties to the CRPD. For status of ratification, see [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD) (accessed 16 December 2025).
- 6 See eg Human Rights Council, Resolution 23/13: Attacks and discrimination against persons with albinism, 24 June 2013, UN Doc A/HRC/RES/23/13 (2013) <https://undocs.org/A/HRC/RES/23/13> (accessed 16 December 2025) and Resolution 28/6: Independent Expert on the enjoyment of human rights by persons with albinism, 10 April 2015, UN Doc A/HRC/RES/28/6 (2015) <https://undocs.org/A/HRC/RES/28/6> (accessed 16 December 2025) referring to albinism and persons with albinism as a part of the disability constituency.
- 7 The word ubuntu is derived from a Nguni (isiZulu) aphorism: *Umntu Ngumuntu Ngabantu*, which can be translated as 'a person is a person because of or through others'. See G Fraser-Moleketi 'Towards a common understanding of corruption in Africa' (2009) 24 *Public Policy and Administration* 331.
- 8 *Communique by Secretariat of the African Decade of Persons with Disabilities (SADPD) to the African Commission* (March 2011) as quoted in J Mureriwa 'The Draft African Disability Protocol and socio-economic justice for persons with disabilities' (2011) 3 *Economic and Social Rights Review* 3, 6.

guidance tailored to Africa's realities,<sup>9</sup> and strengthen litigation and advocacy before continental judicial and quasi-judicial bodies.<sup>10</sup> It could also create a stronger framework for monitoring the implementation of disability rights by African states.<sup>11</sup>

Following sustained advocacy endeavours by African disability rights advocates, the African Commission on Human and Peoples' Rights (African Commission) in 2009 adopted Resolution 143/09 establishing a Working Group on the Rights of Older Persons and Persons with Disabilities. This marked the formal beginning of the development of an additional protocol on disability rights pursuant to article 66 of the African Charter on Human and Peoples' Rights (ACHPR), which permits the adoption of supplementary protocols.<sup>12</sup> After several iterations and revisions, the process finally culminated in the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) by the AU in Addis Ababa in January 2018.<sup>13</sup> After obtaining the required 15 ratifications, the Protocol came into operation on 3 May 2024.<sup>14</sup>

The ultimate power of any human rights treaty rests in its built-in mechanisms for implementation and monitoring. In this regard, the CRPD, as a global treaty, has laid out multi-pronged, mutually-inclusive procedures. These include, but are not limited to: the obligation of states parties to designate governmental 'focal points' for matters relating to the implementation of the Convention;<sup>15</sup> to establish or designate a coordination mechanism to facilitate implementation across government sectors;<sup>16</sup> and to designate or establish independent national mechanisms

9 Stein & Lord (n 5) 226.

10 L Mute *Concept on the list of issues to guide preparation of a Protocol on the Rights of Persons with Disabilities in Africa* (2012) (unpublished manuscript on file with authors). It was, for example, notable that the African Commission on Human and Peoples' Rights (African Commission) – the body mandated to promote and protect human rights and interpret the African Charter on Human and Peoples' Rights (the ACHPR) – has hitherto addressed no further than one disability-related case in its jurisprudence, ie the matter of *Purohit and Moore v Gambia* Communication 241/2001 (2003) AHRLR 96 (ACHPR 2003).

11 B Lindqvist, 'All means all' Keynote speech by UN Special Rapporteur on Disability, Osaka Forum, Japan, October 2002, as quoted in Mutua (n 3) 625.

12 ACHPR, art 6.

13 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol), adopted in January 2018 in Addis Ababa. Note that the drafting history of the African Disability Protocol, while indispensable to a complete understanding of the document as adopted, is beyond the scope of this commentary and hence not thoroughly explored here.

14 African Commission, Resolution on the entry into force and implementation of the Protocols: Rights on the Rights of Older Persons and Persons with Disabilities in Africa, ACHPR/Res.617 (LXXXI) 2024 <https://achpr.au.int/en/adopted-resolutions/617-implementation-protocols-rights-rights-older-persons> (accessed 15 December 2025).

15 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution/adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007), art 33(1).

16 As above.

to promote, protect and monitor the implementation of the Convention.<sup>17</sup> States parties are also required to submit periodic reports to the Committee on the Rights of Persons with Disabilities (CRPD Committee).<sup>18</sup> An Optional Protocol is also in place as an addendum to the CRPD, stipulating detailed procedures for individual complaints alleging violations of rights enshrined in the Convention applicable on states that have specifically ratified the Optional Protocol other than the main text of the CRPD.<sup>19</sup>

As is the case with in the CRPD, the African Disability Protocol does stipulate that: ‘States Parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.’<sup>20</sup> However, as with the CRPD, states parties to the African Disability Protocol are required to report periodically to the African Commission on their implementation of the Protocol. Yet, under the African Disability Protocol, unlike the more realistic and practical approach of the CRPD, information on the implementation of the Protocol is incorporated into the periodic reports submitted to the African Commission, rather than provided as a stand-alone report.<sup>21</sup>

At the regional level, the broader mandate to interpret the provisions of the African Disability Protocol and monitor its implementation is given to the African Commission in Banjul, The Gambia, ‘in accordance with Article 62 of the African Charter’.<sup>22</sup> In addition to the African Commission, the Africa Court on Human and Peoples’ Rights – based in Arusha, Tanzania – is mandated to interpret the provisions of the African Disability Protocol when such matters are referred to it by the ACHPR, and to hear ‘disputes arising from the application or implementation of the Protocol’.<sup>23</sup> Another rather vague implementation provision is also found under article 33(d) of the Protocol which calls on states parties to support setting up an ‘ad hoc Advisory Council on Disability’ within the African Union Commission (AUC).

Given that the African Disability Protocol has now gained legally binding status, implementation and monitoring of progress must be prioritised, along with normative development in the form of interpretation and monitoring of the Protocol while, to the extent possible, avoiding duplication of efforts focused on disability rights at the African

17 CRPD, art 33(2).

18 CRPD, art 35.

19 UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, UN Doc A/RES/61/106, Annex II (2006).

20 African Disability Protocol, art 34(2).

21 African Disability Protocol, art 34(1).

22 As above.

23 African Disability Protocol, art 34(4)(5).

Union Commission level: case in point, the so-called ‘Africa Disability Architecture’ which has been in place for years without actual impact.

This commentary aims to examine the implementation and monitoring mechanisms incorporated in the African Disability Protocol. It is organised as follows: a brief introduction in section one, followed by section two that provides a critical analysis of implementation and monitoring measures at African regional level, emphasising largely on the mandate of the African Commission and the prospective function of the ad hoc Advisory Council envisaged under article 33(d) of the Protocol. Section three assesses domestic implementation by states parties, with attention to the establishment of national mechanisms under the African Disability Protocol and a comparison with the CRPD domestic implementation structures. Finally, section four offers concluding remarks.

## **2 Implementation and monitoring at the regional level**

### **2.1 The African Commission**

Following the precedent established by the Protocol on the Rights of Women in Africa (the Maputo Protocol),<sup>24</sup> the African Disability Protocol designates the African Commission as its principal monitoring body. Its mandate includes the review of implementation measures adopted by states parties, which they are required to include in their periodic reports submitted to the Commission; the interpretation of the Protocol’s provisions; and the referral of questions of interpretation, enforcement or disputes concerning the application or implementation of the Protocol to the African Court on Human and Peoples’ Rights.

#### ***2.1.1 State reporting***

Article 34(1) of the African Disability Protocol obligates states parties to

indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognised in this Protocol.

However, this provision does not specify the timing, format, and content of the reporting requirements for states. Instead, it references article 62 of the ACHPR, which requires states to submit periodic reports every two

24 African Union, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 11 July 2003, art 26(1).

years. Accordingly, the duty to include information on these reports to the African Commission on measures taken to implement the African Disability Protocol begins two years after the Protocol enters into force. For states that accede to this instrument at a later date, the Commission's monitoring role begins two years after the Protocol enters into force for that specific state.<sup>25</sup>

Since 1988, when the African Commission decided to accept its mandate to receive periodic reports from states parties,<sup>26</sup> it has developed various guidelines outlining the format and content of these reports,<sup>27</sup> as well as the procedures for their review.<sup>28</sup> Notably, the Guideline for National Periodic Reports, adopted in 1988, provides detailed instructions.<sup>29</sup> While this Guideline addresses nearly all provisions of the African Charter, it notably omits any mention of persons with disabilities. This omission is perhaps understandable, given that the ACHPR explicitly addresses states' obligation toward persons with disabilities only once – in a provision requiring the implementation of special measures of protection.<sup>30</sup> Subsequent guidelines adopted by the African Commission have attempted to provide somewhat better coverage of persons with disabilities. Notable in this regard are the Reporting Guidelines for Economic, Social, and Cultural Rights,<sup>31</sup> and Guidelines for State Reporting under the Maputo Protocol.<sup>32</sup> Nevertheless, the treatment of the rights of persons with disabilities within these guidelines remains limited. It may therefore be concluded that the existing state reporting guidelines do not adequately enable the African Commission to obtain comprehensive information on the situation of persons with disabilities in states parties to the African Disability Protocol.

25 African Disability Protocol, art 39(3).

26 Art 62 of the ACHPR does not specify the body responsible for receiving and reviewing periodic reports from states parties. It was during the 3rd Ordinary Session in April 1988 that the African Commission, in a broad interpretation of its powers and functions as outlined in arts 45 and 46 of the Charter, decided to assign this mandate for itself. African Commission 'State reporting procedures and guidelines' <https://achpr.au.int/en/states/reporting-procedures> (accessed 23 July 2025).

27 These include: African Commission 'Guidelines for National Periodic Reports' (1989) <https://achpr.au.int/en/documents/1989-04-14/guidelines-national-periodic-reports> (accessed 17 December 2025); African Commission 'Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2010) <https://achpr.au.int/en/documents/2010-02-05/state-reporting-under-protocol-rights-women-africa> (accessed 17 December 2025), and African Commission 'State reporting guidelines for economic, social, and cultural rights (Tunis Reporting Guidelines)' (2010) <https://achpr.au.int/en/documents/2010-05-26/state-party-reporting-guidelines-economic-social-and-cultural-rights> (accessed 17 December 2025).

28 'Rules of procedure of the African Commission on Human and Peoples' Rights' (2021) <https://achpr.au.int/en/rules-procedure> (accessed 17 December 2025) rules 78-83.

29 As above.

30 ACHPR, art 18(4).

31 State reporting guidelines for economic, social, and cultural rights (n 27).

32 Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (n 27).

Drawing on its experience with the Maputo Protocol, the Commission could adopt a structured reporting format for the African Disability Protocol. The guidelines on the Maputo Protocol require states to add a dedicated section (Part B) in their periodic reports outlining measures taken to implement the Protocol.<sup>33</sup> A similar framework could be applied to the African Disability Protocol, requiring states parties to include a dedicated section – say, Part C – to detail measures pertaining to the African Disability Protocol. In terms of content, initial reports could include both general background with detailed accounts of legislative and policy measures actions, and challenges faced. Subsequent periodic reports would then focus on progress made, including implementation of recommendations from previous concluding observations.

Given the overlap in the human rights and state obligations under the CRPD and the African Disability Protocol, there is considerable potential for complementarity between the CRPD Committee's reviews and the African Commission's review of states parties. Many African states have already been reviewed by the CRPD Committee, creating an opportunity for constructive synergy. In this regard, the African Commission could draw on the practice of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), whose State Reporting Guidelines permit states parties to draw on reports previously submitted to the UN Committee on the Rights of the Child while foregrounding obligations that are specific to the African Charter.<sup>34</sup> Introducing a comparable approach in the context of the African Disability Protocol would reduce duplication in reporting processes and encourage greater consistency across international and regional monitoring mechanisms. In addition, in this context, civil society organisations (CSOs), including disabled peoples' organisations (DPOs), have a pivotal role to play in tracking states' reporting histories before the CRPD Committee and engaging strategically with the African Commission.<sup>35</sup> Such engagement helps ensure that gaps identified during the CRPD reviews but left unaddressed are brought to the African Commission's attention, thereby enhancing the effectiveness and overall impact of the African Disability Protocol.

A number of states have already begun to include information on measures taken to advance the rights of persons with disabilities in their

33 Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (n 27) Preamble.

34 African Commission, Guidelines on the form, content and consideration of initial and periodic state party reports, adopted during the 35th Ordinary Session of the ACERWC, in September 2020, sec I, Part XI, secs 24 & 25 <https://www.acerwc.africa/sites/default/files/2025-01/Guidelines%20on%20the%20form%2C%20content%20and%20Consideration%20of%20Initial%20and%20Periodic%20State%20Party%20Reports.pdf> (accessed 17 December 2025).

35 African Commission, Guidelines on shadow reports of the African Commission on Human and Peoples' Rights (2022) <https://achpr.au.int/en/documents/2022-10-28/guidelines-shadow-reports-african-commission-human-and-peoples> (accessed 17 December 2025).

periodic reports to the African Commission.<sup>36</sup> Notably, these references appear even though such information is currently submitted under states' general obligations arising from the African Charter, given that the African Disability Protocol has only recently entered into force.<sup>37</sup> A review of the Commission's concluding observations on some of these reports further shows that the Commission has started examining with some details the measures reported, situating its scrutiny within the framework of article 18(4) of the ACHPR.<sup>38</sup> This incipient practice demonstrates that the African Commission has already begun to integrate a disability rights lens into its review procedures. With the entry into force of the African Disability Protocol – and the specific monitoring responsibilities it assigns – the Commission is now required to engage even more systematically and rigorously with disability-related information, much as it does currently with its monitoring of the Maputo Protocol. Such enhanced engagement will not only strengthen the implementation framework of the African Disability Protocol but will also reinforce the regional human rights system's capacity to offer meaningful oversight and support to states in advancing the rights of persons with disabilities.

### 2.1.2 *Communications and standard setting*

The mandate of the African Commission to receive and consider individual and inter-state communications, to interpret treaty provisions, and to issue general comments and other normative guidance<sup>39</sup> are equally relevant for monitoring implementation of the African Disability Protocol, given article 34(3) of the Protocol, which entrusts the Commission with interpreting its provisions.

The Commission's jurisprudence on the rights of persons with disabilities remains comparatively underdeveloped. To date, only one

36 For further on this, see TF Hodgson, M Hamza & W Macharia 'Advancing disability rights in Africa: Leveraging the African human rights mechanisms for implementation and accountability under the African Disability Protocol' Conference paper presented at the 13th Annual Disability Rights Conference organised by the Centre for Human Rights, Faculty of Law, University of Pretoria, 3-4 November 2025.

37 See eg African Commission, Federal Democratic Republic of Ethiopia: 7th to 10th Periodic Country Reports (2015-2023), January 2024, paras 390-395 <https://achpr.au.int/en/state-reports/ethiopia-7th-10th-periodic-reports-2015-2023> (accessed 17 December 2025); and Mauritius, 11th Periodic Report (2019-2024), August 2024 paras 408-418 <https://achpr.au.int/en/state-reports/mauritius-11th-periodic-report-2019-2024> (accessed 17 December 2025).

38 See eg ACHPR, Concluding Observations and Recommendations – Egypt: 9th to 17th Combined Periodic Report, 2001-2017, 31st Extraordinary Session, 19-25 February 2021, paras 32-38 <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-egypt-9th-17th-combined-period> (accessed 17 November 2025); and Concluding Observations on the 7th to 10th Periodic Report of the Federal Democratic Republic of Ethiopia under the African Charter on Human and Peoples' Rights (2015-2023), 84th Ordinary Session, 21-30 July 2025, secs 71-72 <https://achpr.au.int/en/state-reports/coethiopia7th-10thperiodicreports2015-2023> (accessed 17 December 2025).

39 ACHPR, arts 45 & 55-59.

communication has substantively addressed disability-related claims on the merits: *Purohit and Moore v The Gambia* (2003).<sup>40</sup> Although this communication marked an early recognition of the prohibition of discrimination on the basis of disability and the need for safeguards against institutionalisation of persons with intellectual or psychosocial disabilities, the Commission's analysis fell short of engaging comprehensively with the broader normative obligations central to these issues.

With the entry into force of the African Disability Protocol, the African Commission is now positioned to deepen its engagement with disability rights and to ensure that these rights are properly understood, monitored, and enforced across the continent. This moment calls for the Commission to adopt a holistic, disability-responsive interpretive approach across all aspects of its mandates – state reporting, communications, standard setting, and follow-up – and ensuring that these mechanisms function coherently to advance the Protocol's objectives.

A particularly important part of this mandate is the African Commission's authority to develop General Comments. By issuing authoritative interpretive guidance on the rights and obligations contained in the African Disability Protocol, as well as on overarching principles such as reasonable accommodation and accessibility,<sup>41</sup> the Commission can provide much-needed clarity to states parties and other actors. Well-crafted General Comments will promote coherent implementation and fill gaps in understanding regarding the scope and content of African Disability Protocol obligations.

By developing these, the African Commission can enhance its credibility as a trusted forum for persons with disabilities and DPOs, while contributing to building a robust and coherent regional framework for the protection and promotion of disability rights in Africa.

## **2.2 Ad hoc Advisory Council on Disability**

Article 33(d) of the African Disability Protocol envisions an ad hoc Advisory Council as a continental body to facilitate the implementation of disability rights across the AU's institutional frameworks and processes. The Advisory Council – mandated to be set up by the AU Commission –

<sup>40</sup> n 10.

<sup>41</sup> Unlike the CRPD, the African Disability Protocol expressly identifies 'reasonable accommodation' as one of its general principles (see art 3). Moreover, whereas the CRPD frames accessibility primarily as an obligation of states parties (art 9), the African Disability Protocol goes further by articulating accessibility as a substantive human right held by persons with disabilities themselves (art 15).

serves as a complimentary mechanism to support and follow up on continental policies and plans.<sup>42</sup>

The conceptualisation of the Advisory Council reflects the AU's shift from a welfare-based approach to a human rights-based approach to disability.<sup>43</sup> Initially, efforts at the AU level centred on rehabilitation services, marked by the establishment of the African Rehabilitation Institute (ARI) in 1988, which was framed on the medical model of disability.<sup>44</sup> A turning point came after the 1999 OAU Ministerial Conference on Human Rights, which produced the Grand Bay Declaration and launch of the African Decade of Persons with Disabilities (1999-2009).<sup>45</sup> The transition from the OAU to the AU, through the Constitutive Act of 2000, explicitly mandated the AU with promoting and protecting human rights.<sup>46</sup> This commitment was reinforced by the 2002 Continental Plan of Action, which reflected the human rights model of disability<sup>47</sup> and integrated disability rights into the AU's governance agenda. Agenda 2063 further emphasises the participation and empowerment of persons with disabilities as central to achieving inclusive development and 'an Africa of good governance, democracy, respect for human rights, justice, and the rule of law'.<sup>48</sup>

To further advance the integration of disability rights into the AU's institutional frameworks and ensure that the AU's commitments to inclusion are translated into concrete disability-specific policies and strategies, the ad hoc Advisory Council could thus serve as a vital platform, but its Terms of Reference (ToRs) must necessarily be unpacked as a matter of priority. Such Council would play an indispensable role in, inter alia, institutionalising disability rights within the AU's broader governance and accountability framework by providing expert guidance to the African Union Commission, monitoring implementation at the continental level, and promoting peer learning among member states, including through aligning efforts with the African Peer Review Mechanism.

42 AU 'African model law on disability' (11 October 2019) [https://tanzlii.org/akn/aa-au/statement/model-law/pap/2019/disability/eng%402019-10-11?utm\\_source=chatgpt.com](https://tanzlii.org/akn/aa-au/statement/model-law/pap/2019/disability/eng%402019-10-11?utm_source=chatgpt.com) (accessed 3 August 2025).

43 PO Juma 'Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa: An overview of the implications' (2024) 12 *African Disability Rights Yearbook* 211.

44 As above.

45 J Biegon 'The protection and promotion of disability rights in the African human rights system' in I Grobbelaar-Du Plessis & T Van Reenen (eds) *Aspects of disability law in Africa* (2012); Juma (n 43).

46 Constitutive Act of the African Union, 2000, art 3(h). As Biegon notes, the AU's human rights mandate catalysed the gradual move towards a human rights-based approach to disability. Consequently, key AU instruments such as the Maputo Protocol, the African Charter on the Rights and Welfare of the Child, the African Youth Charter, and the African Charter on Democracy, Elections and Governance began to incorporate provisions on the rights of persons with disabilities – Biegon (n 45).

47 Juma (n 43).

48 AU 'Agenda 2063: The Africa we want' (2015) Aspirations 3 and 6.

### **3 Implementation and monitoring at national (domestic) level**

Article 34(2) of the Disability Protocol requires states parties to establish or designate national-level frameworks, independent national institutions, to monitor implementation at the domestic level. As for monitoring and implementation (prospects, challenges, and the like) of the Disability Protocol, not much can be said at this point as the Protocol entered into force in May 2024. However, certain provisions of the Protocol, such as the pivotal article 36, ensure that in the event of any ‘contradictions’ between provisions of the Protocol and/or those disability rights stipulated in other treaties such as the CRPD itself, the provision that protects the ‘best interests’ of persons with disabilities prevails.<sup>49</sup> A similar provision is enshrined under the CRPD, article 4(4).

On substantive, institutional, and procedural obligations on states parties to ensure effective national monitoring of the Protocol’s implementation, notably the Disability Protocol’s formulation reflects a broader trend initiated by the CRPD, which explicitly elaborates institutional arrangements for national implementation and monitoring, moving beyond the more general obligation commonly found in earlier human rights instruments that states ‘take all appropriate measures’ to fulfil their treaty commitments.<sup>50</sup>

A closer comparison between article 33 of the CRPD and article 34(2) of the Disability Protocol reveals important differences in how the two instruments structure the national implementation and monitoring duties of states parties. Article 33 of the CRPD adopts a sort of two-tiered approach. First, article 33(1) imposes an obligation to designate one or more ‘focal points’ within government and to create or identify a ‘coordination mechanism’ to facilitate and oversee implementation. Second, article 33(2) separately requires states parties to establish or designate a national framework, including independent mechanisms, for the purpose of monitoring implementation at the national level.<sup>51</sup> In contrast, article 34(2) of the Disability Protocol collapses these different duties into a single obligation focused only on monitoring: the establishment or designation of independent national institutions. As a result, while the CRPD establishes a differentiated institutional architecture that distinguishes implementation and monitoring, the Disability Protocol articulates a narrower obligation.

49 African Disability Protocol, art 36(2).

50 V Aichele ‘Article 33: National implementation and monitoring’ in I Bantekas, MA Stein & D Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (2018) 978-1011.

51 As above.

Article 34(2) of the Disability Protocol establishes a minimum institutional guarantee for independent monitoring. These differences should not, however, be understood as creating inconsistencies between the CRPD and the Disability Protocol but rather as reflecting distinct drafting choices that can be reconciled. States parties should conceptualise at national level, while reading its silence on implementation structures through the interpretive lens of the CRPD's obligations. In practical terms, this means that states implementing the Disability Protocol should not limit themselves to establishing independent monitoring bodies but should also ensure the existence of focal points and coordination mechanisms in accordance with article 33(1)-(3) of the CRPD. It is worth noting here that the Disability Protocol, as with the CRPD, clearly mandates that civil society – and in particular DPOs – should participate in the implementation and monitoring processes at national level.<sup>52</sup>

#### 4 Concluding remarks

All in all, one may validly conclude that while the recent entry into force of the Disability Protocol is a welcome development, it nonetheless comes with its own substantive and procedural complications – or indeed lack of clarity. There is, therefore, a time-sensitive need for an interpretative guideline of the Protocol – emulating already existing good practices in the continent such as, *inter alia*, the Guidelines for State Reporting under the Maputo Protocol on the Rights of Women in Africa and the Guidelines for State reporting adopted by the ACERWC.

Ongoing efforts by several stakeholders on fast-tracking ratifications and domestication of the Protocol by states parties should now also be geared towards possible implementation drawbacks created, and not eased by the Disability Protocol.<sup>53</sup>

Finally, operationalising the Protocol demands – as a matter of urgency – capitalising on the instrument's call for meaningful cooperation (article 33) and clarity of framework between the various partners and stakeholders, led by DPOs with concrete support from states parties, development partners, and organs of the AUC that are already actively engaging disability rights, such as the Pan African Parliament (PAP) which, in recent years, adopted its own Model Disability Law, and the ACERWC, and the not-so-capacitated Working Group on the Rights of

52 African Disability Protocol, art 33(c).

53 Stakeholders should in particular, unpack the pivotal interplay between, for example, the currently existing 'Africa Disability Architecture' and the ad hoc Advisory Council of Experts. The architecture refers to programmatic (policy), legal (the Protocol itself), and institutional (yet to be materialised) components. The Advisory Council should be established sooner rather than later, as per article 33(d) which has been in force since May 2025.

Persons with Disabilities and Older Persons under the African Commission in Banjul.