

LEGISLATIVE MECHANISMS FOR  
COMBATING VIOLENCE  
AGAINST CHILDREN WITH  
DISABILITIES IN SELECTED  
AFRICAN JURISDICTIONS:  
A CRITICAL APPRAISAL

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### Summary

*Children with disabilities in many African countries suffer violence and abuse that take various forms. Human rights treaties, such as the Convention on the Rights of Persons with Disabilities (CRPD) require state parties to take appropriate legislative, policy, administrative and other measures that conform to international standards to protect children with disabilities from violence. At the African regional level, the CRPD is complemented by the African Charter on the Rights and Welfare of the Child. A number of African countries that are party to the CRPD have adopted disability and child protection legislation. For example, Malawi, Zambia, Tanzania, Uganda and Kenya have adopted disability specific statutes; while South Africa has enacted child protection legislation. The legislative documents are expected to provide for mechanisms for protecting children with disabilities from violence. The study seeks to analyse the extent to which selected African state parties to the CRPD have put in place legislative mechanisms for protecting children with disabilities from violence as envisaged by international standards, such those under the CRPD. The selected countries are expected to have adopted disability-specific statutes and/or child protection legislation. Accordingly, the study focuses as selected case studies on Malawi, Tanzania, Zambia, South Africa, Kenya, Ghana and Uganda. The study observes that African states need to put in place mechanisms in their child protection and disability-specific legislation that will ensure, amongst others, the identification, investigation and prosecution of all forms of violence and abuse, and the existence of legislative provisions that protect children with disabilities from all forms of violence. Such mechanisms could go a long way towards making the domestic legislative frameworks provide the appropriate mechanisms for combating violence against children with disabilities, as envisaged by the pertinent international standards.*

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# 1 Introduction

Children with disabilities in many African countries are often and disproportionately subjected to various forms of violence and abuse.<sup>1</sup> Human rights treaties, such as the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD),<sup>2</sup> require state parties to take appropriate measures to protect children with disabilities from violence. The international standards under the CRPD and other pertinent treaties expect state parties to put in place legislative mechanisms, amongst others, to ensure such protection. At the international level, the CRPD is complemented by the UN Convention on the Rights of the Child (CRC).<sup>3</sup> At the African regional level, the CRPD is complemented by human rights treaties such as the African Charter on the Rights and Welfare of the Child (African Children's Charter)<sup>4</sup> and, where applicable, the African Youth Charter.<sup>5</sup> A number of African countries that are party to the CRPD and other applicable treaties have enacted disability-specific and child protection laws, which serve as crucial legislative tools for combating violence against children with disabilities. For example, Malawi, Zambia, Ghana, Tanzania, Uganda and Kenya have adopted disability-specific statutes, while South Africa has enacted child protection legislation. As will be illustrated by the international standards explored below, these legislative documents are expected to provide for mechanisms for protecting children with disabilities from violence.<sup>6</sup>

The study seeks to analyse the extent to which selected African state parties to the CRPD have put in place legislative mechanisms for protecting children with disabilities from violence, as envisaged by the pertinent international standards such as those under the CRPD. For the assessment, the study has selected African state parties to the CRPD that also have in place disability-specific statutes and/or child protection legislation, as some of the legislative measures taken for realising the rights of children with disabilities.<sup>7</sup>

- 1 See generally African Child Policy Forum (ACPF) *Reasons for hope: Good practices relating to children with disabilities from Kenya, Liberia and Mozambique: A synthesis report* (2014) 13; ACPF *The African report on children with disabilities: Promising starts and persisting challenges* (2014) 99. Both reports highlight that '[t]hroughout Africa, children with disabilities are at acute risk of violence and abuse'. See also ACPF *Breaking the silence: Violence against children with disabilities in Africa* (2010). It is worth noting that the study uses the phrase 'children with disabilities' with reference to children who have disabilities in accordance with contemporary practice.
- 2 Adopted on 13 December 2006, entered into force on 3 May 2008.
- 3 Adopted on 20 November 1989, entered into force on 2 September 1990.
- 4 Adopted on 11 July 1990, entered into force on 29 November 1999.
- 5 Adopted on 2 July 2006, entered into force on 8 August 2009. The Youth Charter applies to youth/children with disabilities falling within the 15-18 years age bracket.
- 6 See 3.4 below.
- 7 See eg CRPD, art 4(1)(a) & (b) as read with art 4(3), which require state parties to, amongst others, enact and implement legislation as one of the measures for implementing the CRPD. Of course, constitutions, policies and any other

The study analyses how such legislation incorporates the pertinent international standards. Accordingly, the study focuses on Malawi,<sup>8</sup> Zambia,<sup>9</sup> Uganda,<sup>10</sup> Kenya,<sup>11</sup> Tanzania,<sup>12</sup> Ghana<sup>13</sup> and South Africa.<sup>14</sup> The study assumes that efforts to protect children with disabilities in Africa from violence could bear fruits if African countries put in place appropriate legislative mechanisms as envisaged under CRPD standards. In accordance with its scope, the study proceeds on the premise that, as a first step, African states must ensure that the disability-specific and child protection legislation (in addition to other implementation measures) that they adopt must conform to the pertinent international standards in order to provide the appropriate framework for combating violence. The actual implementation of such statutes on the ground forms the second crucial step, a discussion of which does not fall within the scope of the study.

With regard to the disability statutes, it is worth noting that Malawi, Zambia and Tanzania enacted their disability statutes after the three countries had already ratified the CRPD. On their part, Ghana, Kenya and Uganda enacted their disability statutes before the adoption of the CRPD, but during the period when advocacy for the adoption was rife (in the case of Kenya), and in the year that the CRPD was (being) adopted, in the case of Ghana and Uganda. Nonetheless, as explained above, these three jurisdictions subsequently ratified the CRPD. Since the study appraises the conformity of these disability statutes to the CRPD's standards for combating violence against children with disabilities, it is relevant to examine the disability laws in the selected jurisdictions as they are expected to reflect the CRPD's standards.<sup>15</sup> Accordingly, the study looks at disability legislation enacted by the selected African countries before and after the adoption of the CRPD.

In achieving its objectives, the study briefly gives an overview of the forms of violence experienced by children with disabilities in Africa. Thereafter, it analyses the standards under the CRPD and other applicable treaties for eradicating violence against children with disabilities. The study also assesses the extent to which the disability and child protection

implementation measures are also expected to have provisions or mechanisms that could be used to address issues relating to violence. However, in accordance with its scope, the study limits its attention to the identified legislative measures.

8 Malawi signed the CRPD on 27 September 2007 and ratified it on 27 August 2009.

9 Signed the CRPD on 9 May 2008 and ratified it on 1 February 2010.

10 Signed the CRPD on 30 March 2007 and ratified it on 25 September 2008.

11 Signed the CRPD on 30 March 2007 and ratified it on 19 May 2008.

12 Signed the CRPD on 30 March 2007 and ratified it on 10 November 2009.

13 Signed the CRPD on 30 March 2007 and ratified it on 31 July 2012.

14 South Africa signed the CRPD on 30 March 2007 and ratified it on 30 November 2007.

15 The disability laws that had been enacted before the countries concerned ratified the CRPD were expected to be reviewed to be aligned with the CRPD within a reasonable time after the states had ratified the CRPD. Alternatively, or in addition, the drafters of these statutes had to draw inspiration from the advocacy and negotiations surrounding the adoption process of the CRPD by containing provisions that, to an extent, reflected the CRPD's standards.

statutes enacted by the selected African jurisdictions reflect, or adhere to, the pertinent international standards. Lastly, the study suggests concrete recommendations based on the findings.

## 2 Disability, violence and children with disabilities in Africa

Children with disabilities in Africa face many challenges that impede the enjoyment of their human rights on an equal basis with other children.<sup>16</sup> A number of studies have established that these children often live in conditions of abject poverty, are victims of violence, exploitation, abuse and harmful traditional practices, lack access to health, rehabilitation and welfare services, are neglected by parents, and that little action is taken to meet their needs.<sup>17</sup> For example, in certain African societies, children with disabilities are killed, neglected or not sent to school to attain an education, due to negative stereotypes.<sup>18</sup> Similarly, it has been found that children with disabilities are also at the risk of being locked up by parents or guardians who seek to hide them from society due to, amongst others, the fact that certain communities consider having a child with a disability as a taboo.<sup>19</sup> This illustrates the deplorable situation relating to violence facing a large majority of children with disabilities in Africa.

Indeed, certain studies have found that several children with disabilities in Zimbabwe are killed immediately after birth,<sup>20</sup> and are abandoned by their fathers as disability is perceived as a curse on the family.<sup>21</sup> Likewise, in certain African societies, including Malawi, Tanzania, Kenya and Uganda, persons and children with albinism are often attacked, abducted and killed on the basis that their body parts could be used for certain traditional rituals.<sup>22</sup> In addition, studies have found that children with disabilities in South Africa suffer from harmful practices, such as violence, including sexual assault, in addition to abuse and neglect

16 See generally ACPF *The African report on children with disabilities* (n 1 above) 1-6. See also ACPF *Children with disabilities in Africa: Challenges and opportunities* (2011).

17 See ACPF *The African report on children with disabilities* (n 1 above) 1-6; ACPF *The lives of children with disabilities in Africa: A glimpse into a hidden world* (2011); B Ransom *Missing voices: Children with disabilities in Africa* (2008).

18 See eg ACPF *The African report on children with disabilities* (n 1 above) 2; D Filmer 'Disability, poverty, and schooling in developing countries: Results from 14 household surveys' (2008) 22 *World Bank World Economic Review* 141; N Marongwe & R Mate *Children and disability: Their households' livelihoods and experience in accessing key services* (2007) 25; T Choruma *The forgotten tribe: People with disabilities in Zimbabwe* (2006) 7 & 16.

19 See eg R Lang & G Charowa *DFID scoping study: Disability issues in Zimbabwe* (2007) 19.

20 E Mandipa 'A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe' (2013) *African Disability Rights Yearbook* 74; 'Woman drowns disabled toddler' *Chronicle* 22 August 2013.

21 Marongwe & Mate (n 18 above) 25; Choruma (n 18 above) 7.

22 See eg Human Rights Council, Report of the UN Independent Expert on the enjoyment of human rights by persons with albinism (2016); 'Albinos "hunted like

by the family and the community.<sup>23</sup> In this regard, it has been established that children with disabilities are more likely to be beaten or bullied than children without disabilities,<sup>24</sup> and are also at a greater risk of experiencing sexual abuse.<sup>25</sup> For example, a study conducted in nine Southern African countries observed that persons or children with disabilities are often sexually abused due to certain misconceptions, such as the belief that having sex with a person with a disability will cure HIV/AIDS. In addition, the study observed that persons or children with disabilities are 'easy targets for rapists, because a mobility-impaired person cannot run away ... and so on'.<sup>26</sup>

Similarly, in various African societies/countries children with disabilities are hidden or prevented from engaging with the rest of the community as they are perceived as 'a "disgrace" to their families' and are regarded as symbolising a 'punishment from the gods on the family'.<sup>27</sup> Above all, harmful practices against children with disabilities, such as hiding them or locking them up, also result in their exclusion from society, further perpetuating the violation of their human rights.<sup>28</sup> This confirms the link between disability and violence as regards children with disabilities in Africa. As will be explained below,<sup>29</sup> the pertinent international standards expect African state parties to the CRPD, CRC and African Children's Charter to address this situation by taking measures aimed at protecting children with disabilities in their jurisdictions from all forms of violence.

animals" for body parts in Malawi' *News 24* 3 March 2015 <http://www.news24.com/Africa/News/Albinos-hunted-like-animals-for-body-parts-in-Malawi-20150303-4> (accessed 25 March 2016); 'Albinos hunted for body parts in Africa' *The Telegraph* 10 April 2011.

- 23 See generally ACPF *Children with disabilities in South Africa: The hidden reality* (2011) 36-37.
- 24 See generally World Health Organisation (WHO) & World Bank *World report on disability* (2011) 3; ACPF *Breaking the silence* (n 1 above) 1-2.
- 25 See generally ACPF *Breaking the silence* (n 1 above) 2; Handicap International and Save the Children *Out from the shadows: Sexual violence against children with disabilities* (2011).
- 26 H Kotzé *Status of disability rights in Southern Africa* (2012) 30.
- 27 See SAD Kanga 'Forgotten or included? Disabled children's access to primary education in Cameroon' (2013) *African Disability Rights Yearbook* 27-48 46. See also H Combrinck 'The hidden ones: Children with disabilities in Africa and the right to education' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 302; J Biegon 'The promotion and protection of disability rights in the Africa human rights system' in I Grobbelaar-Du Plessis & T van Reenen (eds) *Aspects of disability law in Africa* (2011) 83.
- 28 See e.g. I Grobbelaar-du Plessis & T Van Reenen 'Introduction to aspects of disability law in Africa' in Grobbelaar-du Plessis & Van Reenen (eds) (n 27 above) xvi.
- 29 The discussion is contained in 3 below.

### 3 International standards for combating violence against children with disabilities in Africa

#### 3.1 Convention on the Rights of Persons with Disabilities

The CRPD is the global disability-specific human rights treaty. It contains provisions on the rights of children with disabilities and the rights of persons with disabilities broadly,<sup>30</sup> including provisions that provide protection from violence. For example, article 16 of the CRPD guarantees the right to freedom from all forms of exploitation, violence and abuse. The provision has five separate sub-articles outlining the obligations of the state to be discharged when implementing the right.<sup>31</sup> The first sub-article obliges states to take legislative, administrative, social, educational and other measures to protect persons or children with disabilities from all forms of exploitation, violence and abuse.<sup>32</sup> The second sub-article requires the provision of appropriate forms of gender- and age-sensitive assistance and support for persons or children with disabilities and their families and caregivers, which should include the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse.<sup>33</sup> The third sub-article mandates states to ensure that all facilities and programmes designed to serve persons or children with disabilities are effectively monitored by independent authorities.<sup>34</sup>

The fourth sub-article obliges states to take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons or children with disabilities who become victims of any form of exploitation, violence or abuse, which should include the provision of protection services.<sup>35</sup> Lastly, the fifth sub-article requires states to have effective legislation and policies, including child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons or children with disabilities are identified, investigated and, where appropriate, prosecuted (and, by implication, punishing perpetrators when convicted).<sup>36</sup> This obligation under the CRPD, as clarified by the Committee on the Rights of Persons with Disabilities (CRPD Committee), expressly requires states to identify, investigate and prosecute instances of exploitation, violence and

30 See eg art 7, which sets out the rights of children with disabilities.

31 See art 16. Other provisions of the CRPD such as art 10 on the right to life and art 14 on the right to liberty and security of the person are also applicable and significant since certain forms of violence result in killings of children with disabilities.

32 Art 16(1) CRPD.

33 Art 16(2) CRPD.

34 Art 16(3) CRPD.

35 Art 16(4) CRPD.

36 Art 16(5) CRPD.

abuse through implementing legislation and policies, which must include child-focused laws.<sup>37</sup>

The CRPD Committee in its Concluding Observations, adopted after having examined various state parties' reports, has further elaborated on the obligations of states and the standards to be adhered to in implementing the right to freedom from violence guaranteed under article 16 of the CRPD. For example, it has urged states to diligently investigate the situations/allegations of violence, exploitation and abuse and to take appropriate measures on the findings, such as prosecuting (and, by implication, punishing upon conviction) the perpetrators, and ensuring that victims can testify.<sup>38</sup> It is submitted by the author that states are required to have a legislative framework that provides the enabling environment for discharging these obligations.<sup>39</sup>

The CRPD Committee further expects states to set up protocols for, and training in, the investigation of cases of violence, and to adopt measures to prevent the exploitation of children with disabilities for the purpose of begging, and to establish programmes to promote their integration in society,<sup>40</sup> to collect and compile systematic disaggregated data and information on violence and abuse,<sup>41</sup> and establish institutional mechanisms for the early detection of situations in which violence may occur;<sup>42</sup> to identify incidents of violence and abuse and make available the necessary support;<sup>43</sup> to set up a complaints mechanism and to conduct mandatory training for the police force on violence;<sup>44</sup> and to take the necessary steps for protection, such as alternative housing for those who have been neglected or are making a living by begging, and the creation of reception centres where victims of trafficking in persons can obtain psychosocial care and legal assistance.<sup>45</sup>

The CRPD Committee has also taken a stand against corporal punishment and the exploitation of children with disabilities for the purpose of begging.<sup>46</sup> It has further appreciated the initiatives taken by states, such as providing specific disability-related provisions in legislation

37 See art 16(5) of the CRPD; CRPD Committee Concluding Observations on Australia (2013) para 38; Concluding Observations on El Salvador (2013) para 36(a).

38 CRPD Committee Concluding Observations on Australia (2013) para 38; Concluding Observations on Argentina (2012) para 30; Concluding Observations on China (2012) para 30; Concluding Observations on Hong Kong, China (2012) para 66; Concluding Observations on Hungary (2012) para 32.

39 See generally art 4 of the CRPD, which requires state parties to adopt or modify legislation to deal with practices and customs that negatively affect the realisation of the rights set out in the CRPD.

40 Concluding Observations on El Salvador (2013) paras 36(a), (b) & (e).

41 Concluding Observations on China (2012) para 30; Concluding Observations on Tunisia (2011) para 17(a).

42 Concluding Observations on Argentina (2012) para 30.

43 Concluding Observations on Sweden (2014) para 42.

44 Concluding Observations on Macao, China (2012) para 91.

45 Concluding Observations on Paraguay (2013) para 42.

46 Concluding Observations on El Salvador (2013) paras 35(d) & (e).

and policies for the prevention of exploitation, violence and abuse.<sup>47</sup> It is further worth noting that the CRPD, in article 8, imposes the obligation of awareness raising regarding disability, which should be used to 'combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life'.<sup>48</sup> Thus, awareness-raising measures can also be used as a way of combating violence against children with disabilities in Africa, in particular the violence that is influenced by negatives or harmful beliefs and attitudes towards children with disabilities as is often the case with attacks on children with albinism.

### 3.2 Convention on the Rights of the Child

The CRC is the global child-specific human rights treaty which guarantees the rights of children, including children with disabilities. The CRC in article 19 sets out the right to freedom from all forms of violence, exploitation and abuse.<sup>49</sup> The provision also requires states to identify, report and investigate all instances of violence and abuse and to involve the judiciary (through the prosecution of perpetrators of violence), in addition to providing the necessary support to the child and care givers.<sup>50</sup> It may be observed that the framework under the CRC also singles out the obligations to provide support and to carry out investigations and to prosecute instances of violence.<sup>51</sup>

The Committee on the Rights of the Child (CRC Committee), which monitors the implementation of the CRC, has further issued a specific General Comment on the rights of children with disabilities.<sup>52</sup> In the General Comment, the Committee has highlighted the need for state parties to address the situation by taking all necessary measures for the prevention of abuse and violence against children with disabilities.<sup>53</sup> It has also urged states to take measures that should include the following: establishing an accessible, child-sensitive complaints mechanism and a functioning monitoring system;<sup>54</sup> taking all necessary legislative measures to punish and remove perpetrators of violence and abuse;<sup>55</sup> and ensuring

47 Concluding Observations on Hungary (2012) para 31.

48 Art 8(1)(b) CRPD.

49 See art 19(1), which requires states to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.

50 Art 19(2) CRC.

51 The CRC also dedicates a provision to the rights of children with disabilities in art 23, but the provision does not mention the issue of violence. It also expressly prohibits discrimination against children on the basis of disability in art 2(1).

52 CRC Committee, General Comment 9 'Children with disabilities' (2006).

53 CRC Committee, General Comment 9, para 43.

54 General Comment 9, para 43(a).

55 General Comment 9, para 43(g).



the treatment and re-integration of victims of abuse and violence with a special focus on their overall recovery programmes.<sup>56</sup>

It should be noted that the CRC also recognises the right to survival and development of a child in article 6.<sup>57</sup> On its part, the CRC Committee has identified the child's survival and development as one of the four cardinal principles for the implementation of the CRC.<sup>58</sup> The concept of a child's survival and development recognises that the child is entitled to live, survive and develop.<sup>59</sup> It is related to the right to life and to other rights, such as the right to health, ensuring the survival and development of children to self-sustenance and independent living.<sup>60</sup> The principle requires states to identify and address all challenges that threaten the life, survival and development of children.<sup>61</sup> The CRC Committee has observed that this principle 'warrants particular attention where children with disabilities are concerned'.<sup>62</sup> This is the case because, as highlighted above,<sup>63</sup> children with disabilities often suffer many forms of violence which also threaten their survival and development.<sup>64</sup> In this regard, it will be appreciated that protecting children with disabilities from violence will also ensure their survival and development.

### **3.3 African Children's Charter**

The African Children's Charter makes specific provision for the rights of all African children, including children with disabilities, to be protected from violence, abuse, exploitation and torture in two separate articles.<sup>65</sup> First, article 16 guarantees the right to freedom from torture and abuse. In terms of this provision, states should take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially abuse, neglect or maltreatment.<sup>66</sup> In addition, states have the obligation to put in place effective procedures for identifying, preventing, reporting and investigating all instances of violence and abuse and to provide the

56 General Comment 9, para 43(i).

57 Art 6(2) of the CRC, which provides that '[s]tates Parties shall ensure ... to the maximum extent possible the survival and development of the child'.

58 The other three cardinal principles are the best interests of the child; child participation; and non-discrimination. See eg CRC Committee General Comment 5 'General measures of implementation of the Convention on the Rights of the Child' (2003) para 12; CRC Committee 'Guidelines for initial reports' (1991) para 13.

59 The principle is derived from CRC, art 6.

60 WHO & World Bank (n 24 above) 10.

61 J Karp 'Concepts underlying the Convention on the Rights of the Child' (1998) 4 *Loyola Poverty Law Journal* 123.

62 General Comment 9, para 31.

63 See section 2 above.

64 See eg General Comment 9, para 31.

65 Arts 16 & 21.

66 Art 16(1).

necessary support to the child and care givers, including through establishing special monitoring units.<sup>67</sup>

On its part, article 21 sets out the right to protection against harmful social and cultural practices. This provision, amongst others, requires states to take all appropriate measures to eliminate harmful social and cultural practices, which include customs, discrimination and prejudices affecting the welfare, dignity, normal growth and development of the child.<sup>68</sup> Above all, the African Children's Charter outlaws 'any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations' contained in the Charter.<sup>69</sup> Lastly, the Charter reflects the cardinal principles of the CRC by, amongst others, providing in article 5 for the right of the child to life, survival and development.<sup>70</sup>

### 3.4 Detecting the pertinent international standards for combating violence

The survey of the applicable human rights law above gives insights into the international standards African states must adhere to in setting out the domestic framework for combating violence against children with disabilities.<sup>71</sup> In particular, the standards require states to ensure that the domestic framework incorporates the following: first, the existence of effective legislation for combating all forms of violence against children with disabilities, including prohibiting exploitation and harmful practices;<sup>72</sup> second, legislation for identifying, investigating, prosecuting and punishing instances and perpetrators of violence against children with disabilities;<sup>73</sup> third, the provision of forms of gender- and age-sensitive assistance and support for children with disabilities and their families and caregivers, including information on identifying, preventing and dealing with all forms of violence and abuse;<sup>74</sup> fourth, appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of children with disabilities who become victims

67 Art 16(2).

68 Art 21(1)(a) & (b).

69 See African Children's Charter, art 1(3).

70 See art 5(2). See generally D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 129.

71 See sections 3.1, 3.2 and 3.3 above.

72 See eg CRPD art 16(1); African Children's Charter arts 16(1) and 21(a) & (b). It is worth noting that the African Commission on Human and Peoples' Rights has also emphasised such obligation in the context of the protection of the right to life. See General Comment No 3 on the African Charter on Human and Peoples Rights: The Right to Life (Article 4) (2016).

73 See eg CRPD art 16(5); African Children's Charter art 16(2); CRC art 19(2); CRPD Committee Concluding Observations on Australia (2013) para 38; Concluding Observations on El Salvador (2013) para 36(a).

74 See eg CRPD art 16(2); Concluding Observations on Sweden (2014) para 42.

of any form of exploitation, violence or abuse,<sup>75</sup> fifth, independent monitoring of all facilities and programmes designed to serve persons or children with disabilities.<sup>76</sup> In addition, states must take additional measures, such as data collection on violence,<sup>77</sup> and awareness raising,<sup>78</sup> in addressing violence. Lastly, states must protect the right to survival and development of children with disabilities.<sup>79</sup>

It is thus relevant to examine the extent to which the selected African state parties to the CRPD have put in place a domestic framework for combating violence against children with disabilities that adheres to the standards identified above. These include Malawi, South Africa, Kenya, Uganda, Tanzania, Ghana and Zambia. Although the standards identified above are all crucial, for the purposes of the analysis the study focuses on assessing compliance with three standards, namely, protecting the right to survival and development; legislative provisions that prohibit violence, including harmful practices and exploitation; and putting in place a legal (legislative) mechanism for identifying, investigating and prosecuting instances of violence against children with disabilities. The requirement to protect survival and developmental rights has been identified as it is not only one of the cardinal principles of the CRC and, by extension, the African Children's Charter, but the CRC Committee has also highlighted its significance in so far as the protection of children with disabilities is concerned.<sup>80</sup> In addition, in a study commissioned by the African Child Policy Forum (ACPF) on best practices relating to children with disabilities in Africa, it was highlighted that a domestic framework is considered to be 'disability friendly' with regard to children with disabilities if, amongst others, it ensures the rights to survival, protection and development of children with disabilities.<sup>81</sup> On their part, the obligations to have legislative provisions that prohibit violence, including harmful practices and exploitation, and putting in place a legislative

75 See eg CRPD art 16(4); Concluding Observations on El Salvador (2013) para 36(e); CRC Committee General Comment 9, para 43(i).

76 See eg CRPD art 16(3).

77 See eg Concluding Observations on China (2012) para 30; Concluding Observations on Tunisia (2011) para 17(a).

78 See eg CRPD art 8(1)(b).

79 See eg CRC art 6; African Children's Charter art 5(2); CRC Committee General Comment 9 para 31; Karp (n 61 above) 123; Olowu (n 70 above) 129. It is worth noting that the report by ACPF on best practices relating to children with disabilities observed that a domestic framework designed to protect children with disabilities must also ensure the 'development of both disability-specific and comprehensive child-rights legislation that explicitly prohibits discrimination and ensures survival and developmental rights, including education, health ...' See ACPF *Reasons for hope* (n 1 above) 16. The report further highlights that 'legislation ... should explicitly ... recognise survival and developmental rights, including education, health and alternative care'. See ACPF *Reasons for hope* (n 1 above) 24.

80 See generally General Comment 9 para 31.

81 ACPF *Reasons for hope* (n 1 above) 5. The report further observes that a domestic framework will be able to provide protection to children with disabilities if it, amongst others, facilitates their survival and development. See ACPF *Reasons for hope* (n 1 above) 6.

mechanism for identifying, investigating, prosecuting and punishing instances of violence against children with disabilities have been specifically isolated, for two particular reasons. First, these obligations will ensure the criminalisation of all acts of violence against children with disabilities, thereby providing higher standards of protection from violence. Second, the regimes under the CRPD, CRC and African Children's Charter have all emphasised these obligations.<sup>82</sup>

## 4 Appraising legislative mechanisms in selected African jurisdictions

### 4.1 Malawi

Malawi enacted the Disability Act in 2012 as the jurisdiction's contemporary principal disability legislation.<sup>83</sup> The Disability Act contains a number of survival and developmental rights, such as healthcare.<sup>84</sup> However, it does not set out the right to protection from violence, abuse or exploitation. Therefore, it does not impose any obligation to identify, investigate and prosecute incidents of violence or abuse against children with disabilities. The Act does not even prohibit harmful practices against persons or children with disabilities.

Malawi also enacted the Child Care, Protection and Justice Act (CCPJA) as its child protection legislation.<sup>85</sup> The CCPJA sets out a number of obligations that could facilitate the survival and developmental rights of children with disabilities. For example, the Act requires local authorities to provide shelter, within their areas, to children who are lost, abandoned or in need of refuge, and to trace the parents of such children.<sup>86</sup> In addition, the Act criminalises acts relating to child neglect or desertion.<sup>87</sup>

The Act also imposes duties on the parent or guardian to take care of children.<sup>88</sup> Amongst others, these responsibilities include 'non-deprivation' or the provision of welfare and primary responsibility for

82 See eg CRPD arts 16(1) & (5); African Children's Charter arts 16(1) & (2); CRC art 19(2); CRPD Committee Concluding Observations on Australia (2013) para 38; Concluding Observations on El Salvador (2013) para 36(a). The African Commission on Human and Peoples' Rights has emphasised the state obligation to exercise due diligence by effectively investigating and prosecuting cases resulting in killings as a significant obligation for protecting the right to life. See General Comment No 3 (n 72 above).

83 Act 8 of 2012.

84 Sec 6.

85 Act 22 of 2012.

86 Secs 73 & 74 CCPJA.

87 See sec 22.

88 See CCPJA sec 3.

raising children.<sup>89</sup> The parental duties further extend to protection from neglect, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards; the provision of proper guidance, care, assistance and maintenance for the child's survival and development, including adequate diet, clothing, shelter and medical attention; and ensuring that there is always a competent person to care of the child.<sup>90</sup> Furthermore, the Act makes provision for the protection of children from undesirable practices, which include child abduction; child trafficking; harmful cultural practices; forced marriage or betrothal; and the pledging of a child as security.<sup>91</sup>

It can be observed that the protection of these rights would address the glaring gaps in the Disability Act in providing legal protection from violence for against children with disabilities. For example, section 80 expressly prohibits subjecting a child to a social or customary practice that is harmful to the health or general development of the child, while section 83 criminalises such acts. On its part, section 84 requires a social welfare officer, who has reasonable grounds to believe that a child has been trafficked, abducted, subjected to a harmful cultural practice, or used for the purposes of prostitution or immoral practices, to remove and temporarily place the child in a place of safety. The drawback is that the Act does not expressly impose the duty to identify and investigate incidents of violence or abuse. Nonetheless, these duties might be implicit in the responsibility to prosecute such incidents and the duty to remove affected children to a place of safety. Above all, the Act expressly domesticates the CRC and the African Children's Charter.<sup>92</sup> Consequently, the provisions in the two treaties that protect all children, including children with disabilities, from violence form part of domestic law and can be enforced before local courts.<sup>93</sup> The domestication would address most of the gaps in the national framework explained above.

## 4.2 South Africa

South Africa has not as yet enacted disability-specific legislation, but it has child protection legislation in place, namely, the Children's Act.<sup>94</sup> The Act contains a number of provisions setting out mechanisms that could protect

89 Secs 3(1)(a) & (b)(iv).

90 Sec 3(1)(b)(i)(ii) & (iii).

91 See Part II Division 6 of the Act (eg secs 78-82).

92 Sec 4(c) of Third Schedule.

93 The express domestication is significant as Malawi essentially has a dualist legal system that requires, on the one hand, the transformation of treaties Malawi ratified in 1995 through an incorporation by an Act of Parliament while, on the other hand, it appears not to require such transformation for treaties ratified before 1995. See the 1995 Malawian Constitution, secs 211(1) & (2); DM Chirwa *Human rights under the Malawian Constitution* (2011) 29-30; EM Chilemba 'Malawi' (2014) 2 *African Disability Rights Yearbook* 211. The express domestication removes any doubt about the domestic applicability of the CRC and the African Children's Charter in Malawi.

94 Act 38 of 2005.

children with disabilities from violence. For example, section 11 of the Act is dedicated to children with disabilities and children with chronic illnesses. Amongst others, the provision guarantees every child with a disability ‘the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity’.<sup>95</sup> Furthermore, the Children’s Act sets out a number of developmental and survival rights in addition to the general rights of children. These include the right to freedom from harmful practices, such as those based on culture, society or religion.<sup>96</sup> Thus, the Act expressly provides protection from harmful practices against children, including children with disabilities.

The Act further makes provision for ‘particular measures’ that could strengthen the protection of children from violence, abuse and exploitation. For example, section 104 provides for a national child protection system that should be properly resourced, co-ordinated and managed. Section 105 provides for designated child protection services for each of the nine provinces of South Africa. In terms of section 105, designated child protection services include the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children.<sup>97</sup> On its part, section 107 provides for the designation of child protection organisation(s) that will be responsible for performing all or any specific designated child protection services in the relevant province. Furthermore, section 110 sets out a mechanism for the reporting of abused or neglected children and those in need of care and protection. In terms of this mechanism, any designated person or officer who, on reasonable grounds, concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, is required to report the conclusion to a designated child protection organisation, the provincial department of social development or a police official<sup>98</sup> who should, upon receiving the report, ensure the safety and well-being of the child concerned if the child’s safety or well-being is at risk.<sup>99</sup> The designated child protection organisation or the provincial department of social development should further cause an investigation to be carried out and, depending on the findings, initiate proceedings in terms of the Act for the protection of the child without delay. The two institutions are also required to report the commission of an offence to a police officer after having carried out the investigation.

The Act further makes provision for a national child protection register.<sup>100</sup> The purposes of the register (in Part A) include having a record

95 Sec 11(3).

96 See generally sec 12.

97 Sec 105(5)(c).

98 Sec 110(1).

99 Secs 110(4)(a) & (5)(a).

100 Secs 111-128.

of abuse or deliberate neglect inflicted on specific children; having a record of the circumstances surrounding the abuse or deliberate neglect; and using the information in the register in order to protect these children from further abuse or neglect.<sup>101</sup> The reports of the neglect of a child contained in the register are also required to indicate whether the child has a disability and, if so, the nature of the disability.<sup>102</sup> The register (in Part B) is further required to have a record of persons who are unsuitable to work with children and to use the information in the register in order to protect children in general against abuse from these persons.<sup>103</sup> In terms of the mechanism, a person whose name is recorded in Part B of the register will not be allowed to do any work, duties or functions that involve dealing with or having access to children.<sup>104</sup>

It can be observed that the national child protection register sets out a mechanism for protecting children, including children with disabilities, from neglect, abuse and other forms of violence or the continuation thereof at the hands of persons with a record of perpetrating such abuses. The Children's Act further contains provisions that prohibit certain acts of violence, exploitation and abuse against children. For example, section 141 prohibits child labour and exploitation. In view of this, South Africa's legislative framework may be regarded as demonstrating many aspects of compliance with the international standards for combating violence against children with disabilities.

### **4.3 Zambia**

In 2012 the Persons with Disabilities Act was enacted as Zambia's contemporary disability legislation.<sup>105</sup> It sets out mechanisms that could address violence against children with disabilities. For example, Part IX of the Act provides for offences and penalties comprising fines and a term of imprisonment.<sup>106</sup> The offences include the concealment of a person with a disability by a parent, guardian or any next of kin.<sup>107</sup> The Act prohibits any such concealment if it will have the effect of denying the concealed person or child with a disability the opportunities and services guaranteed under the Act.<sup>108</sup> It further prohibits exploiting or subjecting any person with a disability to abusive, violent or degrading treatment,<sup>109</sup> and also prohibits

101 Secs 113(a), (b) & (c).

102 Secs 114(1)(a) & (2)(a)(iii).

103 Sec 118.

104 Sec 123.

105 Act 6 of 2012. Zambia is yet to enact generic child protection legislation. Currently it has a number of child-related statutes.

106 Secs 61, 62 & 63.

107 Sec 61.

108 As above.

109 Sec 6(2).

the use of derogatory terms against persons or children with disabilities because of the disability of the person concerned.<sup>110</sup>

The Act makes provision for the continuation of the Zambia Agency for Persons with Disabilities,<sup>111</sup> originally established under the repealed *Zambian Persons with Disabilities Act of 1996*.<sup>112</sup> The Act mandates the Agency to carry out programmes and conduct campaigns to inform the public and raise public awareness on issues relating to disability, and in particular to achieve the following:<sup>113</sup> combating stereotypes, prejudices and harmful practices relating to persons with disabilities in all areas of life;<sup>114</sup> promoting positive perceptions and greater social awareness towards persons with disabilities;<sup>115</sup> and promoting and encouraging the media to portray persons with disabilities in a manner consistent with the purpose of the Act and the CRPD.<sup>116</sup>

The Act also requires the government to develop and implement national strategies and plans which incorporate measures aimed at ensuring, amongst others,<sup>117</sup> the protection of persons with disabilities from all forms of exploitation, violence and abuse, and that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.<sup>118</sup> Lastly, the Act recognises survival and developmental rights, such as healthcare.<sup>119</sup> However, it does not specifically recognise survival and development as a substantive right.<sup>120</sup> In conclusion, it can be stated that the Act incorporates most of the standards for combating violence against children with disabilities, as it almost duplicates the provisions in article 16 of the CRPD, discussed above.<sup>121</sup>

#### 4.4 Tanzania

The *Persons with Disabilities Act* was passed in 2010 as the modern principal disability legislation of Tanzania.<sup>122</sup> It contains a number of provisions that could play a role in curbing violence against children with disabilities. For example, section 20(1) imposes a duty on a local government to safeguard and promote the rights and welfare of a person

110 Sec 6(3).

111 See sec 11(1).

112 The old Act was repealed under sec 67 of the 2012 Act.

113 Sec 17(4).

114 Sec 17(4)(a).

115 Sec 17(4)(d).

116 Sec 17(4)(e).

117 Sec 21.

118 Secs 21(1) & (2)(d).

119 Secs 27 & 28.

120 Perhaps this right could have been included in child protection legislation (which Zambia does not have).

121 See section 3.1 above.

122 Act 9 of 2010.



with a disability within its area of jurisdiction. Section 20(3) requires the local government authority, through a social welfare officer, to provide counselling to parents, guardians, relatives and persons with disabilities for the purpose of reducing or removing the degree of stigma among them.

Section 21(1) places the duty on any member of the community who has evidence or information that the rights of a child with disabilities are being infringed or that a parent, guardian or relative having custody of a person or child with a disability who is able to, but refuses or neglects to, provide the right to play, medical care, leisure and education, to report the matter to the local government authority as well as to any other relevant authority in the area. On its part, section 21(2) requires the social welfare officer, upon receiving the report, to summon the person against whom the report was made to discuss the matter and to make a decision in the best interests of the person or child with a disability. In terms of section 23(3), where the person against whom the report was made refuses to comply with the decision made under sub-section (2), the social welfare officer should refer the matter to the court, which should hear the matter and in that respect order the parent, guardian or relative to execute a bond to exercise proper care and guardianship by signing and undertaking to provide a person or child with a disability with any or all of the requirements.

The Act also takes the approach of making provision for offences and penalties comprising a term of imprisonment or a fine. The list of offences includes hiding, concealing or causing a person with a disability not to be accessible to or admitted to schools or training institutions for whatever reason;<sup>123</sup> abandoning or rejecting or denying a person with a disability the right to social support;<sup>124</sup> and denying participation of a person with a disability in social, economic and political activities.<sup>125</sup> It is worth noting that the Act also recognises survival and developmental rights, such as healthcare.<sup>126</sup>

The analysis reveals that the Act does not expressly impose the obligation to protect persons or children with disabilities from violence, exploitation or abuse, nor does it contain a provision prohibiting harmful practices. Therefore, it does not impose a duty to identify, investigate and prosecute incidents of violence. Nevertheless, it prohibits and criminalises acts constituting violence and abuse, such as neglecting, abandoning or concealing a person or child with a disability. It may be submitted that the duty to identify, investigate and prosecute should be covered by the criminalisation of acts that constitute violence and abuse.

123 Sec 62(c).

124 Sec 62(d).

125 Sec 62(i).

126 Sec 26.

Furthermore, Tanzania adopted the Law of the Child Act in 2009,<sup>127</sup> which is applicable in Tanzania Mainland. The Law of the Child Act in section 9(3) places duties and responsibilities on every parent towards his or her child, which include the duty to protect the child from neglect, violence, abuse, exposure to physical and moral hazards and oppression,<sup>128</sup> and to provide guidance, care, assistance and maintenance for the child and the assurance of the child's survival and development.<sup>129</sup> Section 13(1) prohibits any person from subjecting a child to torture or other cruel, inhuman punishment or degrading treatment, including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child. Section 95 places the duty on any member of the community to report incidents of abuse against a child to the local government authority in the area. Section 96 requires a social welfare officer, who has reasonable grounds to suspect child abuse or that a child is in need of care and protection, to enter and search the premises where the child is being kept, in order to investigate in the company of a police officer.<sup>130</sup> The mechanisms provided for in the child protection statute should complement and strengthen the rather inadequate legal protection under the disability legislation.

#### 4.5 Uganda

The Persons with Disabilities Act was enacted in 2006 as the principal disability legislation in Uganda.<sup>131</sup> It sets out a number of mechanisms to address violence against children with disabilities. For example, the Act recognises survival and developmental rights, such as healthcare.<sup>132</sup> In addition, the Act prohibits subjecting a person with a disability to cruel, inhuman or degrading treatment, or medical or scientific experimentation without his or her free and informed consent.<sup>133</sup> However, the Act does not expressly impose the obligation to protect persons or children with disabilities from violence, exploitation or abuse, nor does it contain a provision prohibiting harmful practices. It, therefore, does not impose the duty to identify, investigate and prosecute incidents of violence. Nevertheless, the Act prohibits and criminalises acts that constitute violence and abuse, such as cruel and inhuman treatment against a person or child with a disability. This mechanism may be regarded as inherently implying the duty to identify, investigate and prosecute incidents of cruel and inhuman treatment against a child with a disability.

127 21 of 2009.

128 Sec 9(3)(a).

129 Sec 9(3)(b).

130 Sec 96(1).

131 Act 20 of 2006.

132 Secs 7 & 8.

133 Secs 34(1) & (2).

Furthermore, Uganda enacted child-specific legislation in the Children Act,<sup>134</sup> which contains various provisions that could protect children with disabilities from violence, abuse and exploitation. For example, section 5(2) requires any person having custody of a child to protect the child from violence, abuse and neglect. In addition, section 7 outlaws subjecting a child to social or customary practices that are harmful to the child's health. Similarly, section 8 prohibits employing or engaging a child in any activity that may be harmful to his or her health, education or mental, physical or moral development. These provisions may be regarded as a prohibition of harmful practices.

In addition, the Act imposes a duty on each local government council to provide assistance and accommodation to any child in need (of protection) within its area of jurisdiction, or any child who appears to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge.<sup>135</sup> The Act further requires each local government council to make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she ordinarily resides and, where this is not possible, to refer the matter to a probation or social welfare officer or to the police.<sup>136</sup> Lastly, the Act imposes a duty on any member of the community who has evidence that a child's rights are being infringed or that a parent, guardian or any person having custody of a child is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education, to report the matter to the local government council in the area.<sup>137</sup> These provisions should play a crucial role in protecting children with disabilities from various forms of violence and abuse.

Above all, the Children Act explicitly domesticates the CRC and the African Children's Charter.<sup>138</sup> Consequently, the provisions in these two treaties which protect all children, including children with disabilities, from violence form part of domestic law and can be enforced before local courts. The domestication could address most of the gaps in the national framework identified above.

#### **4.6 Kenya**

Kenya enacted the current Persons with Disabilities Act in 2003.<sup>139</sup> The Act contains a few provisions that could be utilised to protect children with

134 Ch 59 of the Laws of Uganda.

135 Sec 10(6).

136 Sec 10(7).

137 Sec 11(1).

138 Sec 4(3) of the First Schedule.

139 Act 14 of 2003. The Act is in the process of being reviewed, probably to take into account the post-CRPD disability rights standards.

disabilities from violence. For example, the Act sets out survival and developmental rights, such as health.<sup>140</sup> In addition, the Act prohibits and criminalises the concealment of any person with a disability in such a manner as to deny such a person the opportunities and services available under the Act.<sup>141</sup> However, the Act does not expressly impose the obligation to protect persons or children with disabilities from violence, exploitation or abuse, nor does it contain a provision prohibiting harmful practices. It thus does not impose the duty to identify, investigate and prosecute incidents of violence. Nevertheless, it prohibits and criminalises certain acts that constitute violence and abuse, such as neglecting, abandoning or concealing a person or child with a disability. The duty to identify, investigate and prosecute should be understood as being implicit in the prohibition and criminalisation of acts which constitute violence and abuse.

Furthermore, Kenya adopted child protection legislation, namely, the Children's Act of 2007 (revised in 2010).<sup>142</sup> The Act contains provisions that could address violence against children with disabilities. For example, the Act protects the inherent right to life of a child, and places a duty on government and the family to ensure the survival and development of the child.<sup>143</sup> Section 10 provides protection to a child from economic exploitation and any work likely to be hazardous to or interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>144</sup> Section 13 provides protection to any child from physical and psychological abuse, neglect and any other form of exploitation, including the sale, trafficking or abduction by any person.<sup>145</sup> Section 14 prohibits subjecting a child to female circumcision, early marriage or other cultural rites, customs or traditional practices likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development. Section 15 protects a child from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials. Section 18(1) prohibits subjecting a child to torture or cruel treatment or punishment.

In addition, The Act establishes a Directorate of Children's Services and Children's Officers, comprising a director and senior children's officers.<sup>146</sup> The functions of the director include providing assistance and procuring accommodation for any child not in proper custody, any child who is abandoned or any child who is in need of refuge or safety,<sup>147</sup> and

140 Sec 20.

141 Sec 45.

142 Ch 141.

143 Sec 4(1).

144 Sec 10(1).

145 Sec 13(1).

146 See sec 37(1).

147 Sec 38(2)(j).

tracing the parents or guardians of any lost or abandoned child, or returning a lost or abandoned child to his or her lawful place of residence.<sup>148</sup> These functions should protect children with disabilities from exploitation, abuse and violence. Thus, the Act contains mechanisms that could protect children, including children with disabilities, from various forms of violence and abuse. However, the Act still is not clear on the duty to identify, investigate and prosecute incidents of violence.<sup>149</sup>

#### **4.7 Ghana**

The Persons with Disabilities Act of Ghana was enacted in 2006.<sup>150</sup> The Act sets out certain mechanisms that could protect children with disabilities from violence. For example, it provides for survival and developmental rights, such as healthcare.<sup>151</sup> Furthermore, the Act contains two different sections that make provision for offences and their penalties in the form of fines or terms of imprisonment.<sup>152</sup> Amongst others, it makes it an offence for any person to contravene the provisions setting out rights relating to family life and social activities,<sup>153</sup> and to exploit a person with a disability.<sup>154</sup> Further, section 4(1) prohibits exploiting or subjecting a person with a disability to abusive or degrading treatment; while section 8 criminalises such acts.

The Act further prohibits and criminalises calling a person with a disability by any derogatory names because of the disability of the person.<sup>155</sup> However, the Act does not expressly impose the obligation to protect persons or children with disabilities from violence or prohibit any harmful practices. It, therefore, does not impose the duty to identify, investigate and prosecute incidents of violence. Nonetheless, it prohibits and criminalises several acts that constitute violence, and it expressly prohibits and criminalises exploitation and abusive treatment. Ghana also enacted child protection legislation, namely, the Children's Act.<sup>156</sup> Section 6 sets out parental duties that include protecting a child from neglect, violence, abuse, exposure to physical and moral hazards and oppression.<sup>157</sup> Section 10(1) prohibits any person from treating a child with a disability in an undignified manner. Furthermore, section 17 sets out a mechanism requiring any person to report child abuse and protection

148 Sec 38(2)(k).

149 Sec 38(2)(g) merely requires the Director of Children's Services to 'make such enquiries and investigations and provide such reports and assessments as may be required by any court or for the enforcement of any order made by a court' under the Act.

150 Act 715 of 2006.

151 Secs 31-35.

152 Secs 8 & 30.

153 Sec 1.

154 Sec 4.

155 Sec 37.

156 Act 560 of 1998.

157 Sec 6(3)(a).

cases to the Social Welfare and Community Development Department of a district assembly. The Department is required to carry out an investigation where there are reasonable grounds to suspect child abuse or a need for care and protection.<sup>158</sup> These provisions should complement the disability legislation by addressing the gaps in the latter.

## 5 Conclusion

The study has revealed that children with disabilities in Africa face various forms of violence despite a number of African state parties to the CRPD having enacted disability-specific and/or child protection legislation. Such legislation is expected to provide legislative mechanisms that adhere to international standards for the protection of children with disabilities from violence. The study has explored international standards, and it has, furthermore, examined the extent to which the disability and child protection laws of selected African state parties to the CRPD incorporate, or adhere to, these standards. Four conclusions may be drawn in relation to the analysis. First, most disability-specific or child protection statutes either protect the right to survival and development, or they recognise rights and/or obligations that could protect the survival and development of children, including children with disabilities. The child protection statutes of South Africa, Malawi and Tanzania and the disability legislation of Malawi, Zambia, Uganda, Kenya, Ghana and Tanzania are cases in point, as discussed above.

Second, certain disability laws still fall short of conforming to the standard of having legal provisions that protect children with disabilities from all forms of violence, abuse and exploitation, including by prohibiting harmful practices. The disability legislation of Malawi, Uganda, Kenya, Ghana and Tanzania falls within this category. Third, most of the disability laws do not conform to the standard that requires states to have a legislative framework expressly imposing the duty to identify, investigate, prosecute and punish incidents of violence and abuse against children with disabilities. The disability statutes that fall within this bracket include those of Kenya, Uganda, Ghana and Malawi. Lastly, a number of jurisdictions have set out elaborate provisions dealing with violence against all children, which includes children with disabilities, in their child protection laws, as opposed to disability-specific legislation. Such jurisdictions include Malawi, Uganda, Kenya, Ghana and Tanzania.

Therefore, it may be concluded from the analysis that African countries need to modify their disability and child protection laws, which are part and parcel of the required legislative implementation measures, in conformity with the CRPD and other international standards. In addition,

<sup>158</sup> Sec 19(1).

the jurisdictions that have not yet domesticated the relevant treaties by means of their statutes can revise the relevant legislation to expressly incorporate the treaties. Such an exercise would enable these legislative measures to provide mechanisms that comply with international standards for combating violence against children with disabilities in their jurisdictions. Indeed, most of the jurisdictions the study has assessed would benefit from this type of exercise. This modification is necessary especially regarding aspects of ensuring the identification, investigation, prosecution and punishment of all forms of violence and abuse, and the existence of legal provisions that protect children with disabilities from all forms of violence. Such modification would go a long way towards making disability and child protection laws provide the appropriate legislative mechanisms for combating violence against children with disabilities in Africa, as envisaged by the relevant international standards. Of course, a jurisdiction could set out anti-violence provisions in penal statutes, such as criminal or penal codes. However, these statutes or codes may not specifically address violence against children with disabilities. Therefore, utilising disability-specific and/or child protection legislation to combat violence against children with disabilities is undoubtedly one of the most appropriate and necessary means of incorporating the requisite international standards.