

Children, disabilities and poverty: Enforcing the human right to inclusive education in sub-Saharan Africa

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In sub-Saharan Africa, millions of children with disabilities are left out of educational opportunities. Although disability and poverty are strongly correlated, access to quality inclusive education can help reduce chronic poverty and improve economic and social well-being in the medium and long term for children with disabilities. Under international and regional human rights legislation, children with disabilities have a right to inclusive education that requires states to develop and implement policies to ensure fulfillment of this right. Despite, however, these legal obligations, many sub-Saharan African countries have failed to develop comprehensive and effective inclusive educational legislation and strategies. In the context of child poverty, education and disability, this chapter analyzes the challenges in sub-Saharan Africa for using the regional African Commission and Court on Human and People's, as well as national legal systems, to provide access to justice for holding states accountable because of a failure to fulfill the Right to Inclusive Education for children with disabilities. The chapter has particular relevance because of the recent adoption of the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa, which codifies inclusive education, and could provide an important legal tool for children with disabilities, and their families, to enforce their rights.

Keywords: Disability, human rights, inclusive education, pan-African, legislation

[A]Introduction:

Having a disability is a significant driver of poverty and lower levels of economic and social well-being. People with disabilities lag behind people without disabilities in every Sustainable Development Goal indicator (UN, 2018). This is particularly true for children with disabilities in developing countries, who are often unable to access schooling and other educational resources that may contribute to a trajectory out of poverty. Despite a strong international legal framework providing protection for children with disabilities and a recognition of the positive relationship between education and poverty for persons with disabilities, the development agenda has only minimally given attention to advancing disability rights. States have an obligation to develop and implement inclusive educational policies in accordance with the Convention on the Rights of the Child (CRC) (UN, 1989), the Convention on the Rights of People with Disabilities (CRPD) (UN, 2006), and other international, regional, and national frameworks. Ultimately, this is in order to integrate children with disabilities into mainstream schools and combat prejudices, and other social mores, which limit their future socio-economic potential. With the recent passage of the Protocol to the African Charter on the Rights of People with Disabilities in Africa (The African Union Commission, 2018) in January 2018, children with disabilities and their families now have an important regional legal tool to enforce their right to inclusive education against states which fail to fulfill the obligation of this right.

Because of the lack of data available, there is no clear estimate in sub-Saharan Africa as to the number of children with disabilities, but the World Health Organization estimates that between 10–15% or 300 million children have some form of disability (University of Leiden, 2018). According to the World Bank (2018), only ten percent of these children with disabilities receive any type of schooling. Equally as troubling, children with disabilities in sub-Saharan Africa are three times less likely to complete primary education (World Bank, 2018).

Children with disabilities are left out of educational opportunities for multiple reasons, including stigmatization, traditional mores, lack of financial resources, few specialized schools and limited teaching professionals. The consequences of low levels of education are well established in development literature as impacting overall economic and social – well-being and contributing to chronic poverty. Research shows that having a disability is a driver of chronic poverty, especially in sub-Saharan Africa, where evidence demonstrates lower levels of employability, school attendance rates, reduced health care access and overall levels of economic well-being for people with disabilities (Rohwereder, 2015).

Recognizing the inextricable link between poverty and disability, this chapter analyzes the judicial and legislative challenges across Africa in recognizing the human right to inclusive education for children with disabilities and explores methods for ensuring its fulfillment. Through a discussion of the African Commission and Court of Human and People’s Rights, as well as state human rights mechanisms, the chapter explores the steps necessary to ensure the right to inclusive education is fulfilled by empowering children, and families of children with disabilities, to use judicial and legislative instruments in order to enforce their rights, and improve economic and social well-being.

The chapter begins with a discussion about the intersection between poverty, education and disability. It then shifts to an overview of inclusive education as a human right and then analyzes the legislative and juridical limitations of enforcing inclusive education rights throughout Africa. It concludes with a discussion about a number of best practices taking place in Kenya, Zambia and South Africa.

[A]Poverty, Education and Disability in sub-Saharan Africa

Having a disability is a significant driver of the multidimensionality of chronic poverty caused by social exclusion and other forms of marginalization, income loss and, particularly in sub-Saharan Africa, a compounding of weak institutions, limited resources and already high levels of poverty. It is well established in the development literature that poor health and poverty are positively correlated and intersected. Oyaro (2015: 352) notes, “a majority of persons with disabilities in Africa live in dire conditions... As such, poverty is not merely a challenge for persons with disabilities but may also exacerbate their respective maladies.”

The reasons for the positive correlation between poverty and disability is often due to an “adverse impact” on education, employment, earnings and increased expenditure in relation to the disability. Palmer (2011: 212) argues that disability and poverty are closely linked and that disability can “restrict a person’s capabilities in various ways.” He cites to study in India which shows that in Tamil Nadu, India, the illiteracy rate of persons with disabilities is four times higher than persons without disabilities and another in Uganda demonstrating that disabled householders were more likely to have mud floors, use wood for cooking, and have less access to tap water and flush toilets.

Disabilities create added economic strains on already poor families that make it often impossible for children with disabilities to obtain education, contributing to continued cycles of poverty. According to a World Bank (2015) study, primary education in Africa has a significant impact on positive social and economic change and is associated with reductions in adult poverty. A study by Haverman and Wolfe (2002) found 19 nonmarket benefits of education, such as better health for one’s self and family and more efficiency in decision-making. In another study by Barnett and Nores (2010: 272, 279) of early intervention in 23 developing countries, educational interventions at an early age was found to have a large cognitive effect on children’s development, emphasizing the importance of educational attainment for long term gain.

The cost of non-education of children with disabilities therefore leads to reduced economic opportunities and a higher likely of chronic, long term poverty both for the non-educated child as an adult but also for the family which will have greater care taking and financial responsibilities towards

the dependent child (Saebønes, et al., 2015). For example, a study by UNICEF (Malungo, et al., 2018) in Zambia highlighted parents who complained of not being able to pay transport fees to send their children to specialized schools or cover the associated costs of these schools. Similar to many states in sub-Saharan Africa, the gap between people with disabilities who never attended any school versus people without disabilities who never attended school is as much as 25 percentage points in Zambia, demonstrating the educational inaccessibility or abandonment of much of this demographic, particularly those who are poor. A study by UNESCO (2017) found that in Uganda, adolescents with disabilities are twice as likely to be out of school as adolescents without disabilities.

Alternatively, when investment is made in education for children with disabilities, this is positively correlated with improved economic well-being. It helps to alleviate some of the indirect costs associated with having a disability, such as lower long-term productivity loss. For example, Lamichchane (2015) argues that the returns on educational investment for people with disabilities can be as high as 26%. Another study echoes a similar sentiment, stating that “Educating children with disabilities reduces welfare costs and future dependence; releases other household members from caring responsibilities, allowing them to engage in employment and other productive activities; and increases children’s potential productivity and wealth creation which in turn helps to alleviate poverty” (Saebønes 2015: 4).

[A]International Legislative Human Rights Framework of Inclusive Education

UNESCO defines inclusive education as an approach by which policy makers and managers focus on the barriers and their causes within the education system to determine how they can be removed. This may include accessible classrooms, specialized teachers, sensitivity trainings and inappropriate curriculums (open file on inclusive education). Its end goal is to eliminate social exclusion of people with disabilities and provide an education system where all children regardless of disability learn together in an inclusive environment, recognizing the importance of peer environments towards learning and de-stigmatization. Tosi et al. (2016: 137) notes that, “Inclusive education is a process that permits a responsiveness to educational diversity, allowing for their active participation in school and society, reducing social exclusion both within and outside the classroom.”

Inclusive education, notes Dreyer, “has its roots in the disability movement” (2017: 385). The Universal Declaration of Human Rights (1948: Article 25), the first in a series of rights documents, requires states to ensure an adequate standard of living and security in the event of disability. The subsequent International Covenants in 1969 specifically point to equality as a transversal element of all other rights contained in these frameworks, including the Right to Education.

The concept of inclusive education is relatively new. Countries such as the U.S. and European countries first entered into the debate about inclusive education in the early 1970s for many of the same reasons why inclusive education would be warranted in sub-Saharan Africa. Firstly, there was the recognition that segregation of the disabled can be harmful and that one way to fight against prejudice is through a more inclusive educational approach. Also, that students with disabilities, with the right support, learned better along with their peers than in isolated, segregated classrooms or schools. Finally, inclusive education was introduced partly as a cost-effective consideration in comparison to having to build new schools or train a new set of teachers, which is partly what makes it important to implement in sub-Saharan Africa to expand access for children with disabilities. Numerous studies have pointed to the cost effectiveness of inclusive education as a means of guaranteeing education to children with disabilities. A study by researchers at Cambridge notes, “the desire to place pupils in mainstream classes rather than special schools was driven, in part, by the Treasury’s desire to reduce [education] costs.” MacBeath et al., 2006)

In 1994, 92 governments and other organizations came together in Salamanca, Spain to develop a declaratory legal framework to expand quality educational access for children with special needs. The

outcome of the meeting was the Salamanca Statement and Framework for Action on Special Needs Education, which helped bring inclusive education to the forefront of the disability and education dialogue, and culminated with its codification as a human right under Article 24(2) of the CRPD, which provides this definition of inclusive education:

The fundamental principle of an inclusive school is that all children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, resource use, and partnerships with their communities. There should be a continuum of support and services to match the continuum of special needs encountered at every school (Statement Paragraph 7).

Non-African regional treaties, as well, have incorporated inclusive education and non-discrimination measure into their human rights frameworks. In Europe, for example, the European Union Charter of Fundamental Rights under Article 26 there is an obligation to integrate, protect, and support persons with disabilities, and the European Pillars of Social Rights also specifically recognize inclusive education. In the Americas, Article III of the Inter-American Convention the Elimination of All Forms of Discrimination Against People with Disabilities specifically calls on states to develop legislation and other measures to ensure the integration of people with disabilities and develop educational campaigns towards the greater co-existence of people with disabilities.

[A] Inclusive Educational Legislative Framework in sub-Saharan Africa

Historically, the African Union has only scarcely made disability rights a priority of its human rights and development agendas. The work of African states towards improving inclusive education has largely happened without support from the pan-African institutions and has led to mixed results. A 2013 study across five African countries found that while some states had adequate policies on inclusive education, implementation was lacking, ranging from lack of teacher preparedness to non-accessibility of schools (Tchombe, 2013).

The African frameworks for development have scarcely recognized persons with disabilities as fundamental to achieving broader development goals, despite their recognition in multiple Sustainable Development Goals, including in Goal 4, which calls for inclusive education for children with disabilities. Under the Agenda 2063: The Africa We Want, there is no reference to disability despite the importance given to other collectives such women and refugees. Similarly, in the Common Africa Position on the Post-2015 Development Agenda, there brief reference to ensuring the rights of people with disabilities, but no reference to their inclusive education despite fairly lengthy discussions on educational advancements across Africa (Lang et al., 2017).

There are a number of educational frameworks within Africa that have paid more attention to advancing the educational rights of children with disabilities. In the Continental Plan of Action for the African Decade of Persons with Disabilities 2010–2019, inclusive education is one of the identified priority areas. In addition, the African Union developed the 2016–2025 Continental Education Strategy for Africa, which provides for a broad swath of priorities across Africa to advance education at all levels, from primary to higher education. Amongst its priorities is inclusive education and a recognition that despite economic growth, persons with disabilities and other disadvantages collectives have been left out of many economic and social opportunities across Africa. However, the document contains minimal concrete policy to support state initiatives for developing inclusive education, nor is there a financial or technical commitment, towards broader inclusive educational initiatives across the region; the

responsibility has fallen primarily on States to develop inclusive educational policies, with external support coming mainly from international institutions.

The most important advance in protecting the rights of persons with disabilities in Africa, and supporting a regional right to inclusive education which could be enforceable at both the pan-African and individual state level, is the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa. This was adopted in January 2018 through the work of the African Commission's Working Group on Older Persons and Persons with Disabilities (ACHPR, 2007) in response to the Kigali Declaration of 2003 that called on member states to develop a Protocol on the protection of persons with disabilities. Article 16(3) of the Protocol calls on states to take "effective measures to ensure that inclusive quality educations and skills training for persons with disabilities is realized fully..." (The African Union Commission, 2018: 11). This document, at least in theory, expands access to justice to people with disabilities across Africa who can now rely on this document as the legal basis for claims against states that fail to enforce disability rights.

As a point of comparison, both the European Union and the Council of Europe, which has achieved significant gains in inclusive education has put in place both the policy framework and an accompanying institutional framework to advance education for children with disabilities. As will be discussed later, through the jurisprudence of the European Court of Human Rights, disability rights have formed an important part of the Court's case law and have created obligations on states to enforce rights ranging from accommodations to inclusive education in schools.

The European Union has also adopted a comprehensive framework for advancing the rights of persons with disabilities. Under the 2017 European Pillars of Social Rights, the first principle guarantees inclusive education and under the European 2020 Strategy, Europe specifically sets targets for inclusive educational attainment which is monitored through the European Union's Education and Training Monitor. The African Union's strategies have lacked both firm commitments and the necessary coordinating and monitoring mechanisms to advance inclusive education.

In addition, through a joint project by the European Commission and the Ministries of Education of the individual states, there is a European-wide coordinating mechanism to advance education for children with disabilities. This is The European Agency for Special Needs and Inclusive Education that works with individual states to implement inclusive policies and legislation. There is no Africa-wide equivalent to advance the needs of persons with disabilities and, furthermore, the role of the African Union has largely been about harmonizing and coordinating policies, compared to the European Union which is a primarily a law-making body. This top down approach in Europe has led to important initiatives through Europe, ranging from training teachers on providing a supportive and integrated classroom to online databases to funds for additional teacher support. Over time, enrollment rates across Europe for children with disabilities have increased to approximately 97% in inclusive education.

[A]Pan African and Domestic Legal Institutions to Advance Education for Children with Disabilities

[B]Judicial institutions to Enforce Educational Rights

Legal institutions and access to justice form an important component in maintaining state accountability and ensuring the enforcement of legal frameworks when states fail to meet their obligations to provide educational access to children with disabilities. With the adoption of the African Protocol, there is an important opportunity for the greater enforcement of disability and inclusive education rights across and within African countries.

Unfortunately, unlike in Europe and in the Americas through the Inter-American human rights system, there is a far less utilization overall of the pan- African judicial institutions to enforce rights. The Working Group on the Rights of Older People and Persons with Disabilities of the African

Commission on Human and People's Rights does not have an adjudicative function to hear or investigate violations of rights of disabled people. Its primary function, according to mandate, is to brainstorm, research, collect data, and report to the African Commission (Working Group: African Commission on Human and People's Rights).

Compared to the Inter-American system and the European human rights system, the African human rights system is severely underused and is missing an opportunity to develop important jurisprudence across Africa promoting the socio-economic rights of people with disabilities and providing a legal remedy for those seeking rights enforcement.

Although the Protocol to the African Charter on Human and People's Rights on the Establishment of the African Court on Human and People's Rights has not been signed and ratified by all African countries, the African Charter on Human and People's Rights (OAU, 1981), which provides for the right of an individual to submit a communication against a member state to the Commission, has been signed and ratified by all countries except for South Sudan. To date, the only case to come to the African Commission concerning disability right was in 2003 involving The Gambia (ACHPR, 2003). Otherwise, neither the Commission through its adjudicative function, nor the African Court on Human and People's Rights have heard cases involving disability rights. This suggests that basic access to justice is severely lacking across the Continent, especially when compared to other regional institutions such as the European Court that received upwards of 60,000 cases each year, many involving disability and education rights (European Court of Human Rights Council of Europe Statistics 2018/19: 6). This has permitted the development by the Court of a rich body of jurisprudence and disability guides to aid litigation in domestic contexts. For example, the European Court of Human Rights recently decided a case on inclusive education in Turkey, ruling that inclusive education extended up through university level (ECHR, 2008). This has implications beyond the borders of Turkey and enhances disability rights throughout the Council of Europe. African states need to reevaluate their commitment to the functioning of this Commission and ensure that justice remains within reach.

[B]Challenges at the African State Level

At the domestic level, access to justice for people with disabilities is also challenging. Post-colonial legislation concerning disability and education requires reform in order to broaden rights. Some of the individual state legislation is ambiguous and without any tangible efforts to strengthen the rights of people with disabilities, especially children who seek to exercise their right to education.

In the Tanzanian National Education Act of 1978, for example, there is no mention of inclusive education or children with disabilities. The Tanzanian Disability Act of 2010 offers a short section on education and guarantees that children with disabilities can go to an "ordinary school" but without clarifying the mechanisms to ensure compliance or the strategy to push forward these laws. This is also true, for example, in the Ugandan Education Act of 2008 (GoU, 2008), along with the Ugandan Disabilities Act 2006 (GoU, 2006), for example, which focus primarily on the elimination of discrimination without explicit support for structural mechanisms to achieve non-discrimination. In addition, clarification is needed on certain ambiguous terms in many of these acts. For example, in the Disabilities Act of Sierra Leone 2011, it specifies that all schools should have facilities for people with disabilities, but it is not clear from the language if this refers specifically to inclusive education. Similarly, in the Ugandan Education Act 2008 (GoU, 2008), it makes mention of 'disability friendly schools', but without clarifying to what this refers.

Even where good laws do exist, other structural and institutional challenges persist that make it difficult to access to justice. For example, there is ample evidence of families who simply had no knowledge about how to use the legal system to enforce educational or other disability rights or, where they did; the justice system – judges, lawyers and court officers – did not have the proper training or sensitization to provide adequate access to justice. In South Africa, for example, "the lack of political

knowledge, will or coordination...directly translates into an absence of political impetus to destigmatize mental health, regardless of the legal obligations and policy commitments to do so” (Mahomed and Stein, 2017:72). In addition, court and government infrastructure, for example, as reported in Malawi, is often not physically accessible to persons with disabilities, which is a violation of the CRPD, and, according to one author, “takes away the dignity of the person who is physically challenged who has to be carried to access the buildings of the court” (Mulanga et al., 2017:34).

[A]Desegregated Data for Policy and Legislative Development

Efforts to expand child educational disability rights are also hindered by a lack of desegregated data concerning the number of children with disabilities in African countries in order to be able to develop policy accordingly. In addition, birth registration throughout Africa remains a problem, leading to many children who have disabilities to never be registered to receive social protection or other assistance.

The impetus for collecting this data is not only for better policymaking, but also falls under the international and regional human rights frameworks about people with disabilities. Under Article 4 of the CRC, states are obligated to develop effective legislative, policy and other measures. This obligation is elaborated on in General Comment 19, which calls on state to collect data and develop effective and transparent budgeting for child rights. Article 32 of the African Protocol also emphasis a similar obligation, noting that states must “ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability...” (The African Union Commission, 2018). According to a United Nations (UNSD, 2008: 5) workshop report on disability statistics in Africa, the “...lack of accurate statistics about disability continues to obscure the situation”. The report continues by saying that “collecting policy relevant data on these and other special population groups, including children...would provide policy makers with the data necessary to formulate policy and develop programmes aimed at addressing the needs of persons concerned” (UNSD, 2001: 8).

Nearly every study consulted for this chapter makes mention of the poor state of data or limited availability of data concerning persons with disabilities. Desegregated data is needed about children with disability in rural and urban areas, particularly in informal settlements, as well as the different types of disabilities amongst the population in accordance with World Health International Classification of Functioning, Disability and Health (ICF). Some countries, such as Tanzania, have conducted country-wide disability surveys (GoT, 2008) through their Bureau of Statistics, but many of these surveys are either outdated or do not included desegregated data about disability types. Demographic and Household surveys, which are conducted in most African countries, present an opportunity to integrate disability data into these broader surveys. According to one study, only 29 African countries collect data on children with disabilities in schools and only 12 countries have desegregated data by disability type (Wodon et al., 2018).

In addition to collecting data, African states must do more to supervise the implementation and monitoring of educational policy for children with disabilities. The United Nations, in an assessment of global disability rights, specifically calls on states to develop monitoring mechanisms and institutions to oversee a correct and effective implementation of rights. In Kenya (MoE, 2009), for example, under its disability legislation, it requires the state to develop a comprehensive monitoring framework and, in conjunction with stakeholders, review the law every five years.

[A]Advances in Inclusive Education in sub-Saharan Africa

Despite these challenges, some sub-Saharan African countries have begun to shift towards the introduction and implementation of inclusive education policies in line with human rights and constitutional mandates. This section briefly reviews some of the approaches by sub-Saharan African countries in improving inclusive education programs.

Kenya presents an important case study because of its legislative commitment to advancing the rights of disabled children through the passage of the Special Educations Needs Policy of 2009 which provides a comprehensive policy on a broad range of policy initiatives for special education, including inclusive education policies, awareness campaigns, and gender mainstreaming. What differentiates this law from many others across Africa is that it includes for each section a set of strategies for achieving these policy initiatives, as well as a comprehensive strategy for monitoring implementation

In addition, under the Education Act of 2013, Kenya inaugurated the Institute of Special Education, which has as one of its priorities inclusive education (GoK, 2013). Just last year in 2018, it launched a special three-day forum for mainstream teachers on inclusive education with a comprehensive program ranging from introducing the philosophy of inclusive education to developing competences of professors in assisting children with disabilities.

Another example of advances in inclusive education is South Africa, which, in 2001 launched Inclusive education with the publication of a white paper on the issue that argued for a conceptual shift in learning. Soon after, The Government of South Africa launched an initiative called Universal Design for Learning (UDL) to train public school teachers to develop curriculums that can be useful to students with different capabilities and disabilities, including children with and without disabilities. A study by the African Journal of Disability found that investment in training of inclusive education and UDL had positive outcomes on the teachers who attended and that teachers demonstrated an improved ability to develop more universally oriented teaching curriculums (Dalton et al., 2012).

As a final example, in 2011, the Government of Zambia launched an inclusive education pilot program for blind children. The program had two main strategies towards the goal of improving inclusive educational access: strengthen coordination between the federal government and the districts and provide training and awareness campaigns for educators and communities. A recent evaluation by an external consulting company found that the program exceeded most of its goals, including enrolling more children than stated in its original goal. According to the report, this was accomplished through developing district leadership officials, who received specialized training in inclusive education policy, as well as developing synergies with pre-existing district education programs to expand access for children with blindness (Mulango et al., 2018).

[A]Conclusion

The human rights framework for inclusive education provides a starting point for the duty bearing state and serves as a broad blue print for them to begin developing inclusive education programming. However, the African Union needs to bring inclusive education into the forefront of its education policies and match it with technical and financial support towards the harmonization of disability laws and towards greater implementation of these laws at the domestic levels.

In addition, the African Commission and Court on Human and People's Rights are missing an important opportunity to take the lead on creating jurisprudence across Africa on child disability rights. There needs to be a greater commitment by states and the institutions themselves to ensuring and advancing access to justice and the enforcement of what it is a comprehensive international and pan-African rights framework on people with disabilities.

Lastly, international organizations must support the work of individual states to develop comprehensive data and monitoring mechanisms on children with disabilities. As stated earlier, data is near nonexistent in many African states and the data that does exist is often desegregated and unreliable for the purpose of policymaking.

Inclusive education is still at an early starting point across Africa, as it is in many parts of the globe, but it provides an important vehicle for helping to reduce poverty levels amongst people with disabilities. With the recent passage of the African Protocol, there is an important opportunity for

African countries to harmonize their laws, share best practice and begin implementing important changes to their educational system in order to adequately integrate children with disabilities and ensure access to quality education.

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