

#RatifyADP
Roadmap to ratification:
Protocol to the African
Charter on Human and
Peoples' Rights on the Rights
of Persons with
Disabilities in Africa

The Centre for Human Rights strongly urges member states of the African Union that have not ratified the African Disability Protocol to do so without delay.



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1. BACKGROUND TO THE AFRICAN DISABILITY RIGHTS PROTOCOL

The African Union Assembly adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Africa Disability Protocol) on 28 January 2018. The African Commission on Human and Peoples' Rights (African Commission) prepared this document, through a collaborative process involving state representatives, civil society and disabled persons organisations to complement the African Charter on Human and Peoples' Rights (African Charter). The African Charter does not make provision for persons with disabilities. The ADR Protocol addresses the continued exclusion of persons with disabilities, affecting persons with disabilities. The Protocol contextualises the rights of persons with disabilities in Africa and provides for the specific protection of rights that are violated on the continent. The ADR Protocol also aims to provide a foundation that enables the African Union Member States to formulate or amend laws that impact persons with disabilities,¹ thus curing the existing gap in constitutional and legislative protection of the rights of persons with disabilities.²

2. STATUS OF RATIFICATION ON ADR PROTOCOL

The Protocol requires the deposit of 15 instruments of ratification by AU Member States to come into force. This target has not yet been reached, so the Protocol is not yet in force. So far, only Mali, Kenya, and Rwanda have ratified the African Disability Protocol. The countries that have signed the protocol are: Angola, Burkina Faso, Cameroon, Central African Republic, Gabon, Mali, Malawi, Mozambique, Rwanda, South Africa, and Togo.

1 International Justice Resource Center (n 1 above). International Justice Resource Center 'African Commission adopts draft protocol on persons with disabilities' rights' 20 April 2016 (accessed 20 May 2022).

2 F Viljoen & J Biegon 'The Feasibility and Desirability of an African Disability Rights Treaty' (2014) *South African Journal on Human Rights* 30 346.

3. REASONS TO RATIFY THE ADR PROTOCOL

The following are reasons why States should ratify the African Disability Rights Protocol:

- (a) Ratification by 12 more states will ensure that the Protocol enters into force. At the regional level, the requisite number of ratifications will bring the Protocol into effect, allowing persons with disabilities on the continent to enjoy its protection.
- (b) States that are already party to African Charter should extend existing protection to include disability rights. The ADR Protocol merely confirms and extends the rights under the African Charter to persons with disabilities who did not enjoy recognition when the African Charter was drafted. Moreover, the protection of the rights of persons with disabilities under the African Charter is not comprehensive.
- (c) 47 African states already are party to the CRPD. The ADR Protocol adds value to and is premised on the provisions of the CRPD. By ratifying the ADR Protocol, States will largely be confirming the provisions of the CRPD but placing them in an African context and making them more relevant to the African people. The ADR Protocol takes into account the lived realities of persons with disabilities in the continent while maintaining the core values and principles as set out in the CRPD. Some of the Africa disability related concerns include; harmful practices, HIV/AIDS, rights of older persons, duties of persons with disabilities, and right to communal living.
- (d) States would also, by ratifying the ADR Protocol, strengthen the African human rights framework. The ADR Protocol will improve the monitoring mechanisms for the protection of persons with disabilities under the African Union. This is because African Countries will be under an obligation to report on the progress of their implementation process. Prior to the ADR Protocol, most disability issues were dealt with in non-binding instruments such as Grand Bay (Mauritius) Declaration and Plan of Action (dealt with HIV/AIDS). The binding nature of the ADR Protocol will strengthen the enshrined rights and monitoring mechanisms as seen above.



- (e) Ratifying the ADR Protocol will also lead to the mainstreaming of disability rights around the continent, thus creating more awareness. Raising public awareness on disability can have multifold objectives such as sharing information to citizens without disabilities, including employers, about the rights and abilities of persons with disabilities and the existence of prejudices, which are difficult to eradicate and often based on myths.
- (f) Ratification of the ADR Protocol will encourage domestic protection of the rights of persons with disabilities: Despite the wide ratification of the CRPD, the treaty is often not fully implemented in domestic law. The CRPD Committee continues, in its concluding observations on reports submitted by different African countries, to urge States Parties to strengthen their efforts to give full effect to the CRPD in domestic law and ensure its direct application in domestic courts. The ADR Protocol will encourage the full incorporation and implementation of the rights of persons with disabilities into domestic law.
- (g) The ADR Protocol offers an opportunity for African States to show that they are serious about protecting the human rights of persons with disabilities in Africa. African States were very active in the negotiations and drafting of the ADR Protocol. In addition, the African Charter recognises the indivisibility of all human rights – civil, cultural, economic, political and social – and the need for them to be protected to the same degree. Ratifying the ADR Protocol would correspond well with the gains made so far at the regional as well as national levels to protect the rights of persons with disabilities.
- (h) The ADR Protocol offers enhanced regional assistance and cooperation in the protection of the rights of persons with disabilities. The ADR Protocol provides guidance about cooperation measures already included in the African Charter. Article 33 of ADR Protocol notes that States Parties must take steps to cooperate through sharing research, technical, human and financial resources in order to achieve the full realisation of the rights in the ADR Protocol.

4. PROCESS OF RATIFICATION

- (a) The procedures through which states become bound to international human rights treaties, such as ADR Protocol, has internal and external dimensions.
- (b) At the external level, the state may sign, ratify or accede to the treaty.
- (c) Often, immediately after a treaty has been adopted, states that are present may sign the treaty. States may however also sign the treaty at a later stage. Signature does not bind a state to apply the treaty provisions. It merely indicates that they state has taken note of the treaty and sets out its intention at a later stage to be bound by the treaty by ratifying it.
- (d) States may then at any stage ratify the treaty. Ratification has to follow the prescribed internal (domestic) process. Once this process has been completed, it is of crucial importance that the state prepares an 'instrument of ratification' and deposits this with the office of the AU Legal Counsel in Addis Ababa. Without the deposit, the state's ratification does not take effect.
- (e) Sometimes a state may also 'accede' to a treaty. Accession takes place when a state has not signed a treaty, but decided to become bound. Put very simply, accession is when signature and ratification coincides. Accession has the same legal effect as ratification. In other words, a state that has not yet signed, need not first sign and later ratify the Protocol, but can do it 'all at once' by acceding to the Protocol.
- (f) At the internal level, the process through which the state become bound to a treaty depends on the relevant constitutional and other legal requirements.
- (g) In most states, it is standard that the text of the instrument is submitted to the line ministry/department responsible for Justice and Constitutional affairs for scrutiny to ensure that it is consistent with domestic law. It is also standard that the text of the Agreement is submitted to the Department/ministry responsible for International Relations and Cooperation for scrutiny to ensure that it is consistent with international law. A cabinet memorandum is often prepared by the line ministry/department responsible, and submitted to the cabinet secretariat. The process then mostly proceed to parliament.

- (h) Once the domestic process has been completed, the relevant department/ministry develops the ratification instrument.
- (i) The relevant department then ensures that the Instrument of Ratification or Accession is deposited with the AU Legal Counsel.