Chapter 8

Disability, poverty and human rights in Africa: Opportunities for poverty reduction from the UN Convention on the Rights of Persons with Disabilities

*Enoch M Chilemba**

Abstract

Many persons with disabilities in the world, including in Africa and in developing countries at large, live in situations of higher poverty levels than those of people without disabilities. Persons with disabilities also face discrimination and various obstacles to accessing crucial basic services such as education and employment – a situation that perpetuates their poverty. Thus, the obstacles that hinder persons with disabilities from enjoying and exercising rights such as equality and non-discrimination, employment, social protection and education play a significant role in perpetuating or causing this situation of poverty. Many African countries are state parties to the Convention on the Rights of Persons with Disabilities. Several of these countries have enacted disability-specific legislation. This chapter explores the opportunities for poverty eradication that the CRPD provides to African state parties through its human rights guarantees, especially socio-economic rights. It analyses the legal interventions that exist in selected African disability statutes for implementing the rights of equality, employment, education and social protection. The chapter also assesses the extent to which the provisions in such statutes conform to the principal standards set by the CRPD. The chapter finds that several gaps weaken the potential of disability statutes to utilise the opportunities that the CRPD provides for eradicating poverty among persons with disabilities in Africa.

1 Introduction

Persons with disabilities live in situations of higher poverty levels than those of people without disabilities. This trend prevails in developing countries, including on the African continent. It has been established that there is a link between poverty and disability,[1] whereby disability and poverty reinforce each other. This explains the fact that many persons with disabilities are found in developing countries, while at the same time high poverty levels are found in such developing countries. Many factors account for the high poverty levels among persons with disabilities.

* LLB (Hons) (Malawi) LLM (Pretoria) LLD (Western Cape); Lecturer in Law and Coordinator of the Disability and Human Rights Clinic at the Faculty of Law, University of Malawi; Advocate of the High Court and Supreme Court of Malawi; Post-doctoral researcher at the Community Law Centre (Social-Economic Rights Project) at the University of the Western Cape (January-June 2015); echilemba137@gmail.com

1 See generally ST Tesema 'Economic discourse of disability in Africa: An overview of lay and legislative narratives' (2014) *African Disability Rights Yearbook* 122.

It has been documented that persons with disabilities in Africa and in developing countries broadly face discrimination and encounter various obstacles to access crucial services such as education and employment.[2] These obstacles in turn perpetuate the poverty situation. It is worth noting that the rights to freedom from discrimination, education and employment are recognised as substantive rights under several human rights treaties, including the Convention on the Rights of Persons with Disabilities (CRPD).[3] It follows that the failure by persons with disabilities to exercise these and other rights contributes significantly to this poverty situation. Thus, there is a link between poverty and disability, on the one hand; and the enjoyment of human rights, on the other.

Many African countries have ratified CRPD and other applicable treaties. A number of such countries, which include Malawi,[4] Zambia,[5] Uganda,[6] Kenya,[7] Tanzania)[8] and Ghana,[9] have disability-specific laws.[10] (This chapter focuses on the disability statutes of Malawi, Zambia and Tanzania as these were enacted after the entry into force of CRPD and after the states had ratified the Convention. For this reason, these three states were expected to adhere to or, at the very least, to have in mind the standards set by CRPD when enacting the disability-specific legislation). The disability laws serve as crucial legislative tools for implementing the rights of persons with disabilities. This chapter explores the opportunities for poverty eradication that CRPD provides to African state parties through its human rights guarantees for persons with disabilities. The chapter argues that the appropriate implementation of the rights, especially the socio-economic rights, guaranteed under the CRPD would play a significant role in eradicating poverty among persons with disabilities in Africa.

African state parties to CRPD can only find themselves in a 'better' position to achieve the implementation of the Convention if the domestic disability-specific laws or statutes, in addition to other implementation tools,[11] that they put in place conform to CRPD's standards for

2 See eg Tesema (n 1) 122, where it is noted that '[d]isability often leaves people without education and employment'.

3 Convention on the Rights of Persons with Disabilities, UN Doc/ A/RES/61/106 (2006), adopted 13 December 2006, entered into force 3 May 2008. The applicable treaties are discussed below. Thyis chapter focuses on CRPD.

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

5 Signed on 9 May 2008 and ratified on 1 February 2010.

6 Signed on 30 March 2007 and ratified on 25 September 2008.

7 Signed on 30 March 2007 and ratified on 19 May 2008.

8 Signed on 30 March 2007 and ratified on 10 Nov 2009.

9 Signed on 30 March 2007 and ratified on 31 July 2012.

10 See eg Malawi's Disability Act 8 of 2012; Zambia's Persons with Disabilities Act 6 of 2012; Kenya's Persons with Disabilities Act, Ch 133; Uganda's Persons with Disabilities Act 20 of 2006; Tanzania's Persons with Disabilities Act 9 of 2010; and Ghana's Persons with Disabilities Act 715 of 2006.

11 The national implementation measures could include other statutes that are not disability specific, policies, programmes, action plans, budgetary allocation, appropriate institutional or administrative mechanism, and others. See art 4 of CRPD. However, the chapter focuses on disability-specific legislation as one of the legislative tools for implementing the rights of persons with disabilities at the domestic level.

implementing the rights. In addition, it is only when states ensure the actual implementation of such disability-specific statutes and other implementation measures (in practice) that they will be able to fully utilise the opportunities for poverty eradication that CRPD provides. Accordingly, the chapter proceeds on the premise that, as a first step, African state parties to CRPD must ensure that the disability-specific legislation that they enact (in addition to other implementation measures that they take) must conform to CRPD's standards in order to be in 'a feasible' position to make use of the opportunities for poverty eradication provided by CRPD. The second and equally crucial step requires states to actually implement in practice the disability-specific statutes and any other measures taken that conform to CRPD standards. However, in accordance with its aims and scope, the chapter deals only with assessing the extent to which the three African states that the chapter has selected (Malawi, Zambia and Tanzania) can be said to have taken this first step, namely, enacting disability-specific statutes that conform to the CRPD's standards for implementing the selected socio-economic rights.

In setting out to achieve its objectives, the chapter briefly explains the link between poverty and disability, on the one hand, and the enjoyment of human rights, on the other. It thereafter analyses the opportunities that CRPD's substantive socio-economic rights of equality and non-discrimination (which is both a civil and political right and a socio-economic right), education, employment and social protection provide for eradicating poverty among persons with disabilities.[12] In this regard the chapter outlines some of the principal standards that CRPD sets for implementing these rights. It further discusses the obstacles that persons with disabilities face in exercising these rights and analyses the legal interventions that exist in selected African disability-specific statutes for implementing these socio-economic rights. The chapter also makes an assessment of the extent to which the provisions in such statutes conform to the pertinent principal standards under CRPD. It concludes with the pertinent findings and proposed recommendations.

2 Poverty, disability and human rights link in Africa

2.1 Persons with disabilities in Africa: Among the poorest of the poor

The Committee on the Rights of Persons with Disabilities (CRPD Committee), which monitors the implementation of CRPD, on various occasions has bemoaned the fact that persons with disabilities throughout

12 The choice of this set of rights is explained in 2.2 below.

the world live in conditions of abject poverty.[13] The Committee has highlighted this, among others, through the various Concluding Observations it has issued following the examination of state party reports submitted to it. For example, the Committee has raised the following concerns, following observations, regarding the poverty situation in a number of countries:

- Over 80 per cent of persons with disabilities live in poverty or extreme poverty and very few receive the solidarity allowance according to the Observations on Bolivia.[14]
- Almost 15 per cent of persons with disabilities in Canada live in poverty or extreme poverty.[15]
- The rate of employment of persons with disabilities in Ethiopia is very low, which increases the risk of poverty and segregation.[16]
- In Ethiopia 95 per cent of persons with disabilities live in poverty, and there are only a few programmes that specifically target persons with disabilities and cover disability-related expenses.[17]
- A high number of persons with disabilities live in poverty, especially women, children, Afro-Hondurans and indigenous people in Honduras.[18]
- The situation of poverty is deplorable in households with persons with disabilities both in rural and urban areas and in particular among persons with disabilities in ethnic minority groups in Kenya.[19]
- The majority of persons with disabilities live in poverty, especially in rural and remote areas in the Republic of Moldova, and the available social allowances are insufficient to cover the minimum necessary for an adequate standard of living.[20]
- There is a lack of support services of any kind for persons with disabilities in Portugal who, as a result of the implementation of austerity measures, are forced to live in poverty or extreme poverty in the absence of family support or assistance networks.[21]
- Large numbers of persons with disabilities live below the poverty line in Slovakia, including Roma and ethnic minority families who have a family member with a disability.[22]
- Large numbers of persons with disabilities live in situations of poverty in Thailand, particularly those belonging to ethnic minority groups, those in single parent-headed households and in families where parents on a full-

13 See eg CRPD Committee 'Concluding Observations on the Initial Report of Ethiopia' (UN Doc CRPD/C/ETH/CO/1(4 November 2016) para 61.
14 CRPD Committee 'Concluding Observations on the Initial Report of Plurinational State Bolivia' UN Doc CRPD/C/BOL/CO/1 (4 November 2016) para 63.
15 CRPD Committee 'Concluding Observations on the Initial Report of Canada' UN Doc CRPD/C/CAN/CO/1 (8 May 2017) para 49.
16 CRPD Committee 'Concluding Observations on Ethiopia' (n 13) para 59.
17 CRPD Committee 'Concluding Observations on Ethiopia' (n 13) para 61.
18 CRPD Committee 'Concluding Observations on the Initial Report of Honduras' UN Doc CRPD/C/HND/CO/1 (4 May 2017) para 59.
19 CRPD Committee 'Concluding Observations on the Initial Report of Kenya' UN Doc CRPD/C/KEN/CO/1 (30 September 2015) para 49.
20 CRPD Committee 'Concluding Observations on the Initial Report of the Republic of Moldova' UN Doc CRPD/C/MDA/CO/1 (18 May 2017) para 50.
21 CRPD Committee 'Concluding Observations on the Initial Report of Portugal' UN Doc CRPD/C/PRT/CO/1 (20 May 2016) (2017) para 53.
22 CRPD Committee 'Concluding Observations on the Initial Report of Slovakia' UN Doc CRPD/C/SVK/CO/1 (17 May 2016) para 75.

time basis care for a child with disabilities.[23]

It thus is evident that the problem of poverty affects persons with disabilities across the globe – it is a universal problem, a situation that is of great concern to the CRPD Committee, as explained above. The situation is worse when it comes to persons with disabilities in Africa, a position highlighted by the CRPD Committee[24] where, for example, 95 per cent of persons with disabilities in Ethiopia live in poverty, as observed above.[25] Indeed, various studies have found that poverty is prevalent among persons with disabilities in Africa, as it is in developing countries at large.[26] A research study conducted in nine Southern African countries, namely, Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe, revealed that in these countries 'poverty is the frame within which the entire discussion of disability and disability rights must be set' since most persons with disabilities 'fall into the category of the poorest of the poor'.[27]

Generally, studies have confirmed that '[i]n low-income countries, persons with disabilities belong to the poorest of the poor'.[28] The Committee on the Rights of the Child (CRC Committee) has noted that over 80 per cent of persons with disabilities in the world live in developing countries with little or no access to services.[29] The United Nations Children's Fund (UNICEF) (originally known as the United Nations International Children's Emergency Fund) also reported that '[a] disproportionate number of all persons living in poverty in developing countries are persons with disabilities'.[30] Finally, the World Bank through its studies reported that half a billion persons with disabilities are 'indisputably amongst the poorest of the poor and are estimated to comprise 15-20% of the poorest in developing countries'.[31] Various explanations have been given

23 CRPD Committee 'Concluding Observations on the Initial Report of Thailand' UN Doc CRPD/C/THA/CO/1 (12 May 2016) (2016) para 55.

24 The CRPD Committee has also decried this poverty situation in its Concluding Observations issued after examining states party reports submitted by a number of African countries. See eg 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 61; 'Concluding Observations on the Initial Report of Kenya' (n 19) para 49; CRPD Committee 'Concluding Observations on the Initial Report of Uganda' UN Doc CRPD/C/UGA/CO/1 (12 May 2016) para 24.

25 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 61.

26 See Infocus Programme on Skills, Knowledge and Employability/Disability Programme and International Labour Office 'Disability and poverty reduction strategies: How to ensure that access of persons with disabilities to decent and productive work is part of the PRSP Process' (2002) 168 *Gladnet Collection Paper* 4, http://digitalcommons.ilr.cornell.edu/gladnetcollect/168 (accessed 27 April 2014); S Mitra et al *Disability and poverty in developing countries: A snapshot from the World Health Survey* (2011) iv; S Mitra et al 'Disability and poverty in developing countries: A multidimensional study' (2013) 41 *World Development* 2 11.

27 H Kotzé (Commissioned by OSISA) *Status of disability rights in Southern Africa* (2012) 5 6.

28 Infocus Programme (n 26) 1.

29 CRC Committee General Comment 9 'The rights of children with disabilities' UN DOC CRC/C/GC/9 (7 February 2007) para 1.

30 UNICEF *Children and young people with disabilities: Fact Sheet* (2013) 16.

31 See SJ Peters 'Review of marginalisation of people with disabilities in Lebanon, Syria

for this poverty situation, including the fact that as a category of people persons with disabilities experience multiple deprivations at higher rates and severity than persons without disabilities.[32] This explanation points towards a link between disability and poverty. For its part, the CRPD Committee in its Statement on the UN Sustainable Development Goals (SDGs) highlighted that '[t]here is ample evidence that persons with disabilities are more likely than persons without disabilities to experience poverty as well as disadvantage, exclusion and discrimination, in all spheres of life'.[33] Furthermore, in its General Comment 5, on independent and community living, the Committee acknowledged that CRPD in its Preamble recognises that many persons with disabilities live in poverty. The Committee highlighted the need to address the impact of poverty on persons with disabilities.[34] This link between poverty and disability is worth further exploration.

2.2 Poverty, disability and human rights linkage

Disability and poverty constitute a vicious cycle as there are instances where disability leads to poverty and poverty also leads to disability.[35] Poverty might lead to factors that cause 'preventable' impairments such as diseases, including maternal and prenatal diseases, malnutrition, injuries and a failure to afford quality healthcare services.[36] In addition, persons with disabilities face obstacles that lead to or perpetuate poverty such as discrimination and marginalisation in society, and a lack of access to crucial services such as education, employment and healthcare facilities.[37] In this regard, UNICEF has observed that 'poverty and disability reinforce each other, contributing to increased vulnerability and exclusion'.[38] With regard to children, UNICEF has found that poor children 'are more likely to become disabled through poor healthcare, malnutrition, lack of

and Jordan. Background paper prepared for the Education for All Global Monitoring Report' (2010) 6, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Beirut/pdf/Background%20paper%20EFA%202010-Marginalization%20in%20Jordan%20Syria%20and%20Lebanon.pdf (accessed 27 April 2015).

32 Mitra et al (n 26) 11.

33 CRPD Committee 'Statement on Sustainable Development Goals, Addressed to the Eighth Session of the Open Working Group on Sustainable Development Goals by the Committee on the Rights of Persons with Disabilities' (2014), https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14211&LangID=E (accessed 9 August 2019).

34 See CRPD Committee General Comment 5: 'Living independently and being included in the community' UN Doc CRPD/C/GC/5 (27 October 2017) para 5, where the Committee highlights that '[s]tates parties recognise that many persons with disabilities live in poverty and stress the need to address the impact of poverty'.

35 See General Comment 9 (n 29) para 3; UNICEF (n 30) 6 16; Tesema (n 1) 122-123; S Mitra (Disability World) 'Disability: The hidden side of African poverty', http://www.disabilityworld.org/01-03_04/news/africa.shtml (accessed 27 April 2015).

36 See UNICEF (n 30) 6 16; Mitra et al (n 26) 10; N Groce et al *Poverty and disability: A critical review of the literature in low and middle-income countries* (2011) 4; Mitra (n 35).

37 See UNICEF (n 30) 6 & 16; Tesema 'Economic discourse of disability in Africa: An overview of lay and legislative narratives' (2014) *African Disability Rights Yearbook* (n 1 above) 122.

38 See UNICEF (n 30) 6.

access to clean water and basic sanitation, dangerous living and working conditions' and that, after acquiring the disabilities, 'they are more likely to be denied basic resources that would mitigate or prevent deepening poverty'.[39] Accordingly, poverty is both a major cause and consequence of disability.[40] As a result, where there are higher poverty levels, there will also be higher disability rates and *vice versa*.

The foregoing discussion further shows that the failure by persons with disabilities to access basics services such as education and employment and social protection amenities, coupled with discrimination against them exacerbates the poverty situation. Education, employment; social protection and equality (non-discrimination) are recognised as substantive rights of persons with disabilities under CRPD, as is discussed in part 3 below. Therefore, the failure to exercise these rights by persons with disabilities contributes to this poverty situation. Indeed, CRPD Committee expressed concern over the very low rate of employment of persons with disabilities in Ethiopia, a development which according to the Committee 'increases the risk of poverty and segregation'.[41]

For its part, the recently-adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) in its Preamble expressly states that the Protocol was also adopted on 'noting that persons with disabilities experience extreme levels of poverty'.[42] The African Disability Protocol further in its Preamble states that African Union (AU) member states were '[c]oncerned at the multiple forms of discrimination, high levels of poverty and the great risk of violence, exploitation, neglect and abuse that women and girls with disabilities face'.[43] It is thus acknowledged that AU member states by adopting the African Disability Protocol had realised the link between poverty, disability and human rights. They thus sought to utilise the realisation of the human rights of persons with disabilities in Africa in order to address the poverty situation facing persons with disabilities in Africa. Indeed, the Disability Protocol also contains rights such as equality and non-discrimination,[44] inclusive quality education,[45] work[46] and social protection.[47] Consequently, it will be appreciated that there is a strong link between poverty, disability and the enjoyment of human rights by persons with disabilities.

It is crucial that African countries such as Malawi, Zambia and Tanzania

39 As above.
40 See General Comment 9 (n 29) para 3; KJ Alam 'Impact of the global economic crisis and disability and poverty in developing countries', www.un.org/disabilities/documents/COP/alam.doc (accessed 27 April 2015).
41 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 59.
42 See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted on 29 January 2018, Preamble para 15.
43 African Disability Protocol (n 42) Preamble para 16.
44 Non-discrimination (art 5); equality (art 6); equal recognition before the law (art 7).
45 Art 16(3).
46 Art 19.
47 Arts 20(1) & (2)(b).

that are party to CRPD must ensure the appropriate implementation of the rights of persons with disabilities that are contained in CRPD. The implementation must be done in the way required by CRPD. This would increase the likelihood of having poverty reduced. Indeed, as will be demonstrated below,[48] CRPD provides opportunities for eradicating poverty among persons with disabilities through its rights guarantees. These three African states that are parties to CRPD can achieve this by, among others, using their disability-specific legislation to implement the human rights guarantees under CRPD, in particular the four socio-economic rights identified in this chapter. It is thus relevant to explore the extent to which the provisions in selected African disability statutes reflect the principal standards that CRPD sets for these rights in order to utilise these opportunities.

3 Utilising the opportunities from CRPD in countering obstacles relating to disability and poverty in Africa

A number of African countries, including the three states mentioned above, have ratified CRPD.[49] As explained above, these three African states also have disability-specific legislation. The three countries enacted their disability-specific legislation after 2008 when the CRPD entered into force. The focus of the chapter is on such disability-specific statutes, enacted post-2008 after the adoption of CRPD. The chapter therefore examines disability-specific legislation in Malawi (the Disability Act of 2012);[50] Zambia (the Persons with Disabilities Act of 2012); and the Tanzanian Persons with Disability Act of 2010.[51] It is expected that the legislation must conform to CRPD's standards for implementing equality and non-discrimination, education, employment and social protection.[52] This is the case since, as explained above, and as will be highlighted below, the appropriate implementation of these rights could play a crucial role in addressing the poverty debacle in Africa, including in the three

48 The explanation is contained in 3 below.

49 See the countries listed in Part 1 above.

50 Malawi is in the process of enacting new consolidated disability legislation that will replace the Disability Act of 2012 and the handicapped Persons Act of 1971. The Disability Bill 2018 has been drafted for this purpose. See Malawi government's Ministry of Gender, Children, Disability and Social Welfare, Persons with Disabilities Bill, 2019, version of 8 November 2018. When enacted into law, the Bill will address most of the shortfalls explained below.

51 It is worth noting that of these three countries, only Malawi has submitted its initial state party report to CRPD Committee. The initial report was combined with the second state report. See CRPD Committee 'Combined initial and second periodic reports submitted by Malawi under article 35 of the Convention, due in 2016' UN Doc CRPD/C/MWI/1-2 (18 March 2019). The report, among others, lists national polices such as the Vision 2020, the Malawi Poverty Reduction Strategy Paper (MPRSP) and the Malawi Growth and Development Strategy (MGDS), which aim at reducing poverty. See para 10 of the state report. The Committee was yet to adopt the Concluding Observations on the report as of March 2020.

52 CRPD also recognises the right to an adequate standard of living alongside the right to social protection.

countries mentioned. The appropriate rights implementation could also address the obstacles faced by persons with disabilities with regard to non-discrimination, employment, education and earning a livelihood.[53] These obstacles exacerbate the poverty conundrum.

3.1 Fostering equality and non-discrimination to reduce poverty

3.1.1 Equality standards under CRPD

CRPD guarantees the right to equality and non-discrimination in article 5 where it sets out four obligations. First, it obliges state parties to ensure equality under the law and equality as a social goal.[54] Second, it obliges states to, among others, provide legal protection against discrimination in legislation.[55] Third, it requires the provision of reasonable accommodation to achieve substantive equality for persons with disabilities.[56] It is worth noting that the CRPD Committee, through its Concluding Observations, emphasises that state parties must explicitly recognise the failure to provide reasonable accommodation as constituting disability-based discrimination in their national laws.[57] In its General Comment 6, which

53 The explanation with respect to each of these four substantive rights is respectively contained in 3.1, 3.2, 3.3 & 3.4 below.

54 Art 5(1); M Schulze *Understanding the UN Convention on the Rights of Persons with Disabilities* (2010) 61.

55 Art 5(2). See eg CRPD Committee 'Concluding Observations on the Initial Report of Armenia' UN Doc CRPD/C/ARM/CO/1 (8 May 2017) para 8; CRPD Committee 'Concluding Observations on the Initial Report of Thailand' (n 23) para 14; CRPD Committee 'Concluding Observations on the Initial Report of Australia' UN Doc CRPD/C/AUS/CO/1 (21 October 2013) para 15.

56 Art 5(3); CRPD Committee Communication 3/2011, *HM v Sweden* (2011); R Kayess & P French 'Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 1 9.

57 See eg CRPD Committee 'Concluding Observations on the Initial Report of Italy' UN Doc CRPD/C/ITA/CO/1 (6 October 2016) para 10; 'Concluding Observations on the Initial Report of Armenia' (n 55) para 8; 'Concluding Observations on the Initial Report of Honduras' (n 18) para 14; CRPD Committee 'Concluding Observations on the Initial Report of Bosnia and Herzegovina' UN Doc CRPD/C/BIH/CO/1 (2 May 2017) para 11(c); CRPD Committee 'Concluding Observations on the Initial Report of Colombia' UN Doc CRPD/C/COL/CO/1 (30 September 2016) para 15(a); 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 10; CRPD Committee 'Concluding Observations on the Initial Report of Jordan' UN Doc CRPD/C/JOR/CO/1 (15 May 2017) para 1a; 'Concluding Observations on the Initial Report of Kenya' (n 19) para 10(b); CRPD Committee 'Concluding Observations on the Initial Report of Mauritius' UN Doc CRPD/C/MUS/CO/1 (30 September 2015) para 10; 'Concluding Observations on the Initial Report of Portugal' (n 21) para 14; 'Concluding Observations on the Initial Report of Slovakia' (n 22) para 18; 'Concluding Observations on the Initial Report of Thailand' (n 23) para 14; 'Concluding Observations on the Initial Report of Uganda' (n 24) para 9(c); CRPD Committee 'Concluding Observations on the Initial Report of United Arab Emirates' UN Doc CRPD/C/ARE/CO/1 (3 October 2016) para 12(a); CRPD Committee 'Concluding Observations on the Initial Report of Argentina' UN Doc CRPD/C/ARG/CO/1 (8 October 2012) para 12; CRPD Committee 'Concluding Observations on the Initial Report of El Salvador' UN Doc CRPD/C/SLV/CO/1 (8 October

relates to equality and non-discrimination, the Committee also highlights the significance of the duty to provide reasonable accommodation.[58] Lastly, it (CRPD) expects states to take specific measures, which include 'temporary (affirmative action) special measures', to foster *de facto* equality.[59] Thus, CRPD in article 5 emphasises substantive equality.[60] In terms of the benchmark to be complied with by African state parties in taking poverty reduction measures, the chapter focuses on the prohibition of all forms of disability-based discrimination, the requirement to provide reasonable accommodation and the obligation to take temporary specific measures, including affirmative action, as CRPD's crucial standard(s) relating to substantive equality.

It must be highlighted that the CRPD Committee has explained the significance of ensuring equality and non-discrimination in the quest to reduce poverty among persons with disabilities within the framework of the SDGs.[61] The Committee's statement requests the Open Working Group on Sustainable Development Goals to 'stress that equality and non-discrimination are reflected as cross-cutting issues in the post-2015 development framework'.[62] In its General Comment 3, relating to women and girls with disabilities, the Committee highlighted that 'poverty is both a compounding factor and the result of multiple discrimination'.[63] Hence, ensuring equality and non-discrimination would play a crucial role in addressing poverty. Indeed, the CRPD Committee has highlighted the role played by equality in the realisation of Goal 10 of the Sustainable Developmental Goals (reducing inequality within and among countries).[64]

2013) para 14; CRPD Committee, 'Concluding Observations on the Initial Report of Azerbaijan' UN Doc CRPD/C/AZE/CO/1 (12 May 2014) para 14.

58 See eg CRPD Committee General Comment 6: 'Equality and non-discrimination' UN Doc CRPD/C/GC/6 (26 April 2018) para 26, where the Committee states in (e) that '[e]nsuring that the reasonable accommodation is suitable to achieve the essential objective of the promotion of equality and the elimination of discrimination against persons with disabilities'.

59 Art 5(4). Schulze (n 54) 63; CRPD Committee 'Concluding Observations on the Initial Report of El Salvador' (n 57) paras 15 & 16.

60 See generally L Waddington 'Breaking new ground: The implication of ratification of the UN Convention on the Rights of Persons with Disabilities for the European Community' in OM Arnardóttir & G Quinn (eds) *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian perspectives* (2009) 116.

61 See eg CRPD Committee Statement on the UN SDGs (n 33).

62 As above.

63 CRPD Committee General Comment 3: 'Women and girls with disabilities' UN Doc CRPD/C/GC/3 (25 November 2016) para 59.

64 See eg CRPD Committee, 'Concluding Observations on the Initial Report of Plurinational State Bolivia' (n 14) para 14 'Concluding Observations on the Initial Report of Colombia' (n 57) para 15(d)*;* CRPD Committee 'Concluding Observations on the Initial Report of Cyprus' UN Doc CRPD/C/CYP/CO/1 (8 May 2017) para 14; 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 12; CRPD Committee 'Concluding Observations on the Initial Report of Guatemala' UN Doc CRPD//C/GTM/CO/1 (30 September 2016) para 18; 'Concluding Observations on the Initial Report of Italy' (n 57) para 12; 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 12(d).

3.1.2 Domestic obstacles and interventions regarding non-discrimination in Africa

A study by Kotzé on countries in Southern Africa has summarised the obstacle(s) relating to discrimination by observing that persons with disabilities in many societies 'suffer neglect and discriminatory attitudes and practices, and frequently find themselves on the very lowest rung of the societal ladder'.[65] Similarly, it has been observed that in South Africa persons with disabilities continue to experience discrimination and are 'pushed to the margins of society'.[66] The Committee on Economic, Social and Cultural Rights (ESCR Committee) in its General Comment 5, relating to persons with disabilities, has observed that disability-based discrimination largely prevails in many crucial sectors, particularly 'in the fields of education, employment, housing, transport, cultural life, and access to public places and services'.[67] Discrimination contributes to a gap in employment between persons with and without disabilities.[68] There is also discrimination in relation to social protection measures. UNICEF has noted in its 2013 fact sheet on children and young people with disabilities that '[m]any health insurance schemes discriminate against persons with disabilities, on grounds of the cost of their health care'.[69]

Discrimination against children with disabilities is also prevalent in many African countries. For example, children with disabilities in Malawi experience discrimination from birth on the grounds of their disability.[70] Similarly, children with disabilities in South Africa constitute one of the specific categories (of persons with disabilities) that are victims of past and existing inequalities due to discrimination on the grounds of disability.[71] Above all, in many jurisdictions in Africa the perception on the basis of culture and religion is also reflected in the attitude towards persons with disabilities and prevalent in legislation, resulting in discrimination against persons or children with disabilities.[72] Accordingly, discrimination against persons/children with disabilities also accounts for the conditions of abject poverty in which they often live. Indeed, a report by Human Rights Watch has highlighted that '[d]iscrimination can both cause poverty and

65 Kotzé (n 27) 14.
66 'Disabled living in poverty – Study' News24 14 May 2010, http://www.news24.com/SouthAfrica/News/Disabled-living-in-poverty-study-20100514 (accessed 2 April 2015).
67 See ESCR Committee General Comment 5 'Persons with disabilities' UN Doc/E/1995/22 (9 December 1994) para 15.
68 S Mizunoya & S Mitra 'Is there a disability gap in employment rates in developing countries?' (2013) 42 *World Development* 29.
69 UNICEF (n 30) 16.
70 See Malawi government National Policy on the Equalisation of Opportunities for Persons with Disabilities (Equalisation Policy) (2005) 4.
71 See eg Government of the Republic of South Africa Integrated National Disability Strategy (INDS) (1997) 12.
72 See eg I Grobbelaar-Du Plessis & T van Reenen 'Introduction to aspects of disability law in Africa' in I Grobbelaar-Du Plessis & T van Reenen (eds) *Aspects of disability law in Africa* (2011) xvi; M Jones & LA Marks 'Law and the social construction of disability' in M Jones & AB Marks (eds) *Disability, divers-ability and legal change* (1999) 3.

be a hurdle in alleviating poverty'.[73]

A glance at the legal interventions contained in the selected domestic disability legislation presents a 'mixed bag' of hope and gloom. First, the Malawi Disability Act prohibits discrimination in the enjoyment of certain specified substantive rights,[74] while not doing the same with regard to other substantive rights.[75] Furthermore, the Act does not impose the obligation to provide reasonable accommodation in ensuring equality and non-discrimination, but only with respect to facilitating 'access for persons with disabilities to the premises or service or amenity' pursuant to a court order.[76] The Act also does not require the taking of specific measures such as affirmative action to achieve substantive equality for persons with disabilities. This contradicts CRPD's standards discussed above. Nonetheless, Malawi has drafted the Persons with Disabilities Bill that seeks to enact consolidated disability legislation.[77] The definition of discrimination in section 2 of the Bill recognises the denial of reasonable accommodation as constituting discrimination. Section 19 provides an umbrella prohibition of discrimination and also imposes the obligation to provide reasonable accommodation. Therefore, the Bill will address some of the drawbacks in the Disability Act 2012 when enacted into law in terms of the standards relating to equality and non-discrimination.

For its part, Zambia's Persons with Disabilities Act 2012 provides for non-discrimination in section 6 of the Act which states that '[a] person shall not discriminate against a person with disability on the basis of disability'.[78] It also recognises non-discrimination as one of the general principles contained in section 4.[79] The Act expressly recognises the denial of reasonable accommodation as constituting disability-based discrimination,[80] thereby complying with the equality standard under CRPD. However, the anti-discrimination provision in section 6 makes no

73 Human Rights Watch *Discrimination, inequality, and poverty: A human rights perspective* (2013), http://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective (accessed 27 April 2015).

74 See sec 7 (prohibition of discrimination in healthcare services); sec 9 (accessibility without discrimination); sec 11 (education without discrimination); sec 13 (employment without discrimination); sec 15 (prohibition of discrimination in social support services); sec 18 (prohibition of discrimination in political or public life); sec 20 (prohibition of discrimination in sporting or cultural activities or recreational services); sec 22 (prohibition of discrimination in housing and land issues).

75 See eg sec 16 (right of association and representation); sec 25 (right to information and communication technologies); sec 11 (education without discrimination); sec 13 (employment without discrimination); sec 15 (prohibition of discrimination in social support services); sec 18 (prohibition of discrimination in political or public life); sec 20 (prohibition of discrimination in sporting or cultural activities or recreational services); sec 22 (prohibition of discrimination in housing and land issues).

76 See Malawi Disability Act (n 10) sec 9(3). See generally EM Chilemba 'The right to primary education of children with disabilities in Malawi: A diagnosis of the conceptual approach and implementation' (2013) *African Disability Rights Yearbook* 21-22; EM Chilemba 'Malawi' (2014) *African Disability Rights Yearbook* 223 226.

77 Malawi government's Ministry of Gender, Children, Disability and Social Welfare, Persons with Disabilities Bill, 2019, version of 8 November 2018.

78 See Persons with Disabilities Act 6 of 2012, sec 6(1).

79 See sec 4(b).

80 See sec 2.

reference to the concept of temporary specific measures such as affirmative action for fostering *de facto* equality.[81]

Finally, the Persons with Disabilities Act of Tanzania in section 6 prohibits all forms of discrimination on the basis of disability.[82] It further requires the provision of reasonable accommodation, to which it refers as reasonable changes,[83] for purposes of promoting equality and eliminating discrimination.[84] It also defines discrimination as including the denial of reasonable accommodation.[85] This complies with the pertinent CRPD standards.[86] Furthermore, the Act defines the term '[to] discriminate' as including the 'failure to effect affirmative action' in section 3(d),[87] thereby recognising the duty to take affirmative action measures to achieve equality. The Act thus complies with all the equality and non-discrimination standards under CRPD. Consequently, the disability laws of Zambia and Tanzania contain a number of positive aspects, while the Malawian Act falls below CRPD's standards relating to equality and non-discrimination.

3.2 Fostering inclusive education to eradicate poverty

3.2.1 Inclusive education standards under CRPD

CRPD in article 24 makes provision for the socio-economic right to education for persons with disabilities and sets out the pertinent standards. Significantly, the standards emphasise the principle of inclusion through what could be described as the 'inclusive schools approach' to the conceptualisation of inclusive education for persons with disabilities.[88] This is because CRPD expects measures to be taken which ensure that, as a priority, persons with disabilities should attain an education in the general/mainstream education system together with other persons.[89]

81 The provision on employment (discussed in 3.3 below) recognises the role of affirmative action.
82 Sec 6(b). See also sec 5(1)(d).
83 The Act defines reasonable changes as opposed to reasonable accommodation in sec 3 in the manner as the definition of reasonable accommodation in art 2 of CRPD.
84 Sec 6(c).
85 Sec 3.
86 These are briefly explained in the first part of 3.1 above.
87 Sec 3(d).
88 See the text of the opening para of art 24(1).
89 See CRPD art 24(2)(a); Schulze (n 54) 135; CRPD Committee 'Concluding Observations on the Initial Report of Sweden' UN Doc CRPD/C/SWE/CO/1 (12 May7 2014) para 48; 'Concluding Observations on the Initial Report of Azerbaijan' (n 57) para 40; 'Concluding Observations on the Initial Report of Australia' (n 55) para 45; CRPD Committee 'Concluding Observations on the Initial Report of Austria' UN Doc CRPD/C/AUT/CO/1 (30 September 2013) para 40. The inclusive schools approach is the direct opposite of the special schools approach, which broadly advocates the provision of education to persons with disabilities in separate/segregated settings. For further discussion of inclusive education and other approaches to education of learners with disabilities, see WHO & World Bank World report on disability (2011) 210 211; Chilemba (n 76) 8-11; B Byrne 'Hidden contradictions and conditionality: Conceptualisations of inclusive education in international human rights law' (2013)

Thus, a number of the core elements of the right to inclusive education under CRPD's article 24 and, in particular, the elements listed in article 24(2),[90] reinforce the need for persons with disabilities to attend mainstream schools in the communities in which they live together with other persons.[91] The CRPD Committee has emphasised this in its General Comment 4,[92] relating to the right to inclusive education.[93] Consequently, the CRPD Committee has persistently and expressly recommended that state parties should move away from the special schools and integrated education and embrace inclusive schools.[94] In terms of the benchmark to be complied with by African state parties in taking poverty reduction measures, the chapter focuses on the recognition of inclusive education as envisaged under CRPD as a significant standard.

The CRPD Committee has emphasised the relevance of inclusive education guaranteed in article 24 to the issue of poverty among persons with disabilities in General Comment 4. Amongst others, the Committee pointed out that '[i]nclusive education is to be understood as … a means of realising other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty.'[95]

Indeed, the CRPD Committee emphasises that inclusive education would foster the implementation of Goal 4 of the Sustainable Development Goals.[96] This goal, relating to quality education, actually makes reference to inclusive education. The goal seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

28 *Disability and Society* 232.

90 See CRPD, art 24(2)(a)-(e).

91 See eg art 24(2)(a). See also CRPD Committee 'Concluding Observations on the Initial Report of Thailand' (n 23) para 46.

92 CRPD Committee General Comment 4: 'The right to inclusive education', UN Doc CRPD/C/GC/4 (25 November 2016).

93 See General Comment 4 (92) para 8, where the Committee states: 'In accordance with article 24(1), states parties must ensure the realization of the right of persons with disabilities to education through an inclusive education system at all levels.' See also para 11, where it cautions: 'Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organization, curriculum and teaching and learning strategies, does not constitute inclusion.'

94 See eg CRPD Committee 'Concluding Observations on the Initial Report of Kenya' (n 19) para 44(a); 'Concluding Observations on the Initial Report of Mauritius' (n 57) para 43; 'Concluding Observations on the Initial Report of Slovakia' (n 22) paras 68(b) & (e); 'Concluding Observations on the Initial Report of Uganda' (n 24) para 49(a); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 44; 'Concluding Observations on the Initial Report of Argentina' (n 57) paras 37 & 38; CRPD Committee 'Concluding Observations on the Initial Report of China' UN Doc CRPD/C/CHN/CO/1 (15 October 2012) paras 35 & 36. There are a number of obligations listed under art 24 for implementing inclusive education. These include the provision of reasonable accommodation and individualised support. However, a discussion of these obligations does not fall within the scope of this chapter.

95 General Comment 4 (n 92) para 10.

96 See eg CRPD Committee 'Concluding Observations on the Initial Report of Guatemala' (n 64) para 60(d); 'Concluding Observations on the Initial Report of Italy' (n 57) para 56; 'Concluding Observations on the Initial Report of Portugal' (n 21) para 46; CRPD Committee 'Concluding Observations on the Initial Report of Serbia' UN Doc CRPD/C/SRB/CO/1 (23 May 2016) para 50; 'Concluding Observations on the Initial Report of Slovakia' (n 22) para 68.

3.2.2 Domestic obstacles and interventions regarding (inclusive) education in Africa

Persons with disabilities in Africa face many obstacles that prevent them from accessing and attaining an education on an equal basis with others. A study in Southern Africa has revealed that children with disabilities often do not attend school, or they are prevented from doing so due to stigma, discriminatory attitudes and practices.[97] In the same vein it has been found that the majority of children with disabilities in Zimbabwe do not access education.[98] Similarly, it has been documented by the Malawian government that almost 98 per cent of children with disabilities in Malawi do not obtain an education.[99] For its part, the CRC Committee has noted that '[t]he majority of children with disabilities in developing countries remain out of school and are completely illiterate'.[100] The dynamics contributing to this include the fact that 'some countries still have legislation declaring certain categories of children to be "uneducable"'.[101] In addition, UNICEF has observed that '[m]ost schools throughout the world are physically inaccessible ... including inaccessible hygiene and sanitation facilities, systems for enhancing communication, appropriate equipment and materials, and transportation'.[102]

A report by UNICEF on Malawi has observed that the challenges related to access to education for persons/children with disabilities include a failure to send children with disabilities to school for various reasons such as a lack of proper care at school and education being deemed irrelevant to children with disabilities; unfriendly education systems; a lack of specialist teachers and inclusive education-oriented teachers, specific teaching and learning materials; unfair examination systems; unfriendly school environment – inaccessible classrooms, playgrounds and toilets; a lack of assistive devices, guides or assistants; voluntary withdrawal due to, among others, inadequate care in the case of certain disabilities; and a lack of accommodation in 'special needs education' institutions.[103] These obstacles may be attributed to the failure to implement 'inclusive education', discussed above. Indeed, various obstacles, including legal and cultural challenges, impede access to education by children with disabilities in Cameroon – a situation which is compounded by the lack of facilities that could ensure inclusive primary education.[104]

97 Kotzé (n 27) 14.
98 See eg 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* 73 75; R Lang & G Charowa *DFID scoping study: Disability issues in Zimbabwe* (2007) 6.
99 See Malawi government *Equalisation Policy* (n 70) 5.
100 See General Comment 9 (n 29) para 1.
101 See UNICEF (n 30) 21.
102 As above.
103 UNICEF & Malawi government *From exclusion to inclusion: Promoting the rights of children with disabilities in Malawi* (2012) 33.
104 See eg SAD Kamga 'Forgotten or included? Disabled children's access to primary education in Cameroon' (2013) *African Disability Rights Yearbook* 45-47.

The matter of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another*[105] highlights the impact of the failure to implement inclusive education. The matter arose out of a provincial education policy and practice which differentiated between children with 'severe or profound' intellectual disabilities and other children, including children with other types of disabilities. The other children with disabilities attended the few available special schools and mainstream schools that had considerable state funding directly provided by the Department of Education. For their part, the children with profound 'intellectual disabilities' would receive an education in certain 'special care centres', which were receiving very low funding channelled through the Department of Health. As a result, many children with profound intellectual disabilities failed to access education. Both the policy and practice were based on the misconception that the affected children (with severe or profound intellectual disabilities) in some cases were 'uneducable'. The Court found that every child with a disability is capable of learning and that the state should provide funding for their education. It thus is not surprising that it has been reported that household surveys in 13 developing countries in Africa, Latin America and Southeast Asia found that children with disabilities between six and 17 years of age were less likely to enrol in schools.[106] Furthermore, a study by the UN has observed that 98 per cent of children with disabilities in developing countries do not attend school.[107]

In light of the foregoing discussion, it may be concluded that there is a link between disability and the lack of access to education; which leads to or proliferates poverty. Indeed, a UNESCO study has observed that 'there is a circular relation between poverty, disability and education'.[108] In this regard it has been highlighted that '[a]n adequate education improves the chances of acquiring gainful employment for a disabled person, which in turn opens up a range of possibilities, the most important of which is the chance to escape from poverty and dependency'.[109] Furthermore, the CRPD Committee has observed, as highlighted above, that '[i]nclusive education is … the primary means by which persons with disabilities can lift themselves out of poverty'.[110]

A glance at the legal interventions set out in the selected domestic disability legislation would suggest whether any hope is in sight. First, section 10 of the Disability Act 2012 of Malawi provides for the right to education on the basis of equal opportunity;[111] the obligation to ensure an inclusive education system and lifelong learning; and the obligation

105 2011 (5) SA 87 (WCC); 2011 JDR 0375 (WCC).
106 Mitra et al (n 26) 36.
107 United Nations *From exclusion to equality: Realising the rights of persons with disabilities: A handbook for parliamentarians on the Convention on the Rights of Persons with Disabilities* (2007) 1.
108 Peters (n 31).
109 Kotzé (n 27) 25.
110 General Comment 4 (n 92) para 10.
111 Malawi Disability Act (n 10) sec 10.

to ensure access to quality primary education.[112] Section 10 further emphasises the inclusive schools approach as it guarantees the right of persons with disabilities not to be excluded from the general education system.[113] The emphasis on mainstream education system for persons with disabilities means that the Act is consistent with CRPD's conceptualisation of inclusive education.[114]

For its part, the Persons with Disabilities Act of Zambia requires the minister (responsible for persons with disabilities) to ensure that the education system is inclusive at all levels in collaboration with the minister responsible for education.[115] The minster is also required, after consultation with the minister responsible for education, to ensure, among others,[116] the non-exclusion of persons with disabilities from the general education system on the basis of disability;[117] and access by persons with disabilities to an inclusive, quality and free primary education, secondary education and higher education on an equal basis with others in the communities in which they live.[118] These obligations are consistent with CRPD's standards relating to inclusive education set out in its article 24, as highlighted above.[119] These standards determine that the education must be conceptualised in terms of inclusive education at all levels by emphasising the non-exclusion of persons with disabilities from the general education system. However, the Act also obliges the government to establish special schools for persons with disabilities who 'cannot be enrolled' in inclusive educational institutions 'by reason of their disability'.[120] This position allows for the retention of special schools,[121] contrary to the recommendations and 'standards' advanced by the CRPD Committee discussed above.[122]

Finally, the Persons with Disabilities Act of Tanzania, which is the country's disability-specific legislation, recognises that persons with

112 As above.
113 See sec 10(a), which obliges government to ensure an inclusive education system by '(a) ensuring that persons with disabilities are not excluded from the general education system at all levels …'
114 The text of the legislative provision (sec 10(a)) is similar to the CRPD provision'.
115 See Zambia's Persons with Disabilities Act (n 10) sec 22(1).
116 The duties are listed in sec 22(2)(a)-(j).
117 Sec 22(2)(a).
118 See sec 22(2)(b).
119 The brief discussion of these standards is contained in the first part of 3.2 above.
120 See sec 23(2). The Act also suggests that learners with intellectual disabilities should only access vocational training as opposed to other forms of education. See sec 22(2)(f).
121 See also sec 25, which allows for the refusal of access to 'inclusive schools' by persons whose disability is assessed as requiring special schools.
122 See the discussion in the first part of 3.2 above. See also General Comment 4 (n 92) paras 8 & 11; CRPD Committee 'Concluding Observations on the Initial Report of Kenya' (n 19) para 44(a); C 'Concluding Observations on the Initial Report of Mauritius' (n 57) para 43; 'Concluding Observations on the Initial Report of Slovakia' (n 22) paras 68(b) & (e); 'Concluding Observations on the Initial Report of Uganda' (n 24) para 49(a); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 44; 'Concluding Observations on the Initial Report of Argentina' (n 57) paras 37 & 38; 'Concluding Observations on the Initial Report of China' (n 94) paras 35 & 36.

disabilities 'have same rights to education, training in inclusive settings'.[123] It therefore requires persons with disabilities to attain an education within the mainstream/general education system. This obligation is consistent with the understanding of inclusive education under CRPD, as discussed above.[124] However, the Act recognises that children with disabilities should attend an ordinary public or private school 'except where a need for special communication is required'.[125] This implies that the Act leaves room for special schools for certain categories of children with disabilities. Indeed, the Act permits the existence or establishment of special schools for persons with disabilities.[126] Nonetheless, it provides that 'special schools should only be "for [a] transitional period towards inclusive schools"'.[127] To this extent, the Act merely demonstrates partial compliance with the standards for inclusive education under CRPD. Therefore, it is only the Disability Act of Malawi that contains the positive aspect for requiring a single track inclusive education system for persons with disabilities as required by CRPD; whereas the Acts of Malawi and Tanzania contain aspects that conceptualise inclusive education in a way that falls below and/or contradicts the CRPD's standard.

3.3 Enhancing employment in the open labour market to eradicate poverty

3.3.1 Open labour market employment standard under CRPD

CRPD guarantees the socio-economic right to employment in article 27 by emphasising the right of persons with disabilities to work in an open labour market that is inclusive and accessible.[128] Thus, CRPD conceptualises the right to employment in terms of the open labour market model. This model stands parallel to the sheltered or 'reserved' employment model, which entails emphasising vocational and/or technical training for persons with disabilities and their employment in factories/industries where they discharge routine or manual jobs.[129] In terms of this model, persons with

123 See Tanzania's Persons with Disabilities Act (n 10) sec 27(1).
124 See discussion in the first part of 3.2 above.
125 Sec 27(3).
126 Sec 29(2).
127 Sec 29(3).
128 See introductory para of CRPD art 27(1), which provides: 'States parties recognize the right of persons with disabilities to work, on an equal basis with others … to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities …'
129 See eg the Landmark Americans with Disabilities Act Settlement Agreement between the US Department of Justice and Rhode Island involving approximately 3 250 Rhode Islanders with intellectual and developmental disabilities whereby the Islanders agreed to close all sheltered workshops. Justice News Department of Justice Reaches Landmark Americans with Disabilities Act Settlement Agreement with Rhode Island' 8 April 2014, http://www.justice.gov/opa/pr/department-justice-reaches-landmark-americans-disabilities-act-settlement-agreement-rhode (accessed 10 August 2019).

disabilities do not have the freedom to make their own choices regarding employment. On the other hand, the open labour market employment model recognises that persons with disabilities have the right to choose their type, nature, place and manner of work (and to compete for jobs) on an equal basis with others. The CRPD Committee has confirmed that state parties must subscribe to the open labour market employment model and has discouraged sheltered employment.[130]

According to the standards under CRPD, the measures that should be incorporated in disability legislation and other mechanism for implementing the right to employment include adhering to the open labour market employment model;[131] prohibiting discrimination;[132] promoting the employment of persons with disabilities, especially in the private sector, through appropriate policies and measures such as affirmative action programmes and incentives;[133] and ensuring the provision of reasonable accommodation in the workplace,[134] among others.[135] In terms of the benchmark to be complied with by African state parties in taking poverty reduction measures, the chapter focuses on ensuring open labour market employment as set out under CRPD. In the same vein the CRPD Committee emphasises the fact that open labour market employment is crucial in the implementation of Goal 8 of the Sustainable Development Goals (to promote sustained, inclusive and sustainable economic growth,

130 See generally CRPD Committee 'Concluding Observations on the Initial Report of Armenia' (n 55) para 48; 'Concluding Observations on the Initial Report of Bosnia and Herzegovina' (n 57) para 49; 'Concluding Observations on the Initial Report of Plurinational State Bolivia' (n 14) para 62; CRPD Committee 'Concluding Observations on the Initial Report of Brazil' UN Doc CRPD/C/BRA/CO/1 (29 September 2015) para 49; 'Concluding Observations on the Initial Report of Canada' (n 15) para 48(a); 'Concluding Observations on the Initial Report of Colombia' (n 57) para 61(a); 'Concluding Observations on the Initial Report of Cyprus' (n 64) para 54; 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 60 (a); 'Concluding Observations on the Initial Report of Kenya' (n 19) para 48; 'Concluding Observations on the Initial Report of Mauritius' (n 57) para 38; 'Concluding Observations on the Initial Report of the Republic of Moldova' (n 20) para 49; 'Concluding Observations on the Initial Report of Serbia' (n 96) para 56; 'Concluding Observations on the Initial Report of Slovakia' (n 22) para 74; 'Concluding Observations on the Initial Report of Thailand' (n 23) para 54(a); 'Concluding Observations on the Initial Report of Uganda' (n 24) para 53(b); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 50(a); 'Concluding Observations on the Initial Report of Austria' (n 89) paras 44 & 47; CRPD Committee 'Concluding Observations on the Initial Report of Hungary' UN Doc CRPD/C/HUN/CO/1 (22 October 2012) para 44; 'Concluding Observations on the Initial Report of El Salvador' (n 57) para 56; 'Concluding Observations on the Initial Report of China' (n 94) paras 41 & 42. A discussion of all the obligations to be discharged in implementing the right to employment does not fall within the scope of this chapter.

131 CRPD art 27(1).

132 CRPD art 27(1)(a).

133 CRPD art 27(1)(h).

134 CRPD art 27(1)(i).

135 See generally CRPD Committee 'Concluding Observations on the Initial Report of Argentina' (n 57) para 44; CRPD Committee 'Concluding Observations on the Initial Report of Paraguay' UN Doc CRPD/C/PRY/CO/1 (15 May 2013) para 64; 'Concluding Observations on the Initial Report of Hungary' (n 130) para 44; 'Concluding Observations on the Initial Report of El Salvador' (n 57) para 56. A discussion of all the obligations to be discharged in implementing the right to employment does not fall within the scope of this commentary as it focuses on the requirement to ensure the open labour market employment model.

full and productive employment and decent work for all).[136]

3.3.2 Domestic obstacles and interventions regarding open labour market employment

It has been observed that 'persons with disabilities are less likely to be employed'.[137] The causes of the limited opportunities to access employment include: the failure to provide job accommodation; inaccessible work environments; and discrimination.[138] For example, organisations for persons with disabilities (DPOs) in Mozambique have identified as a major hindrance the lack of job opportunities for persons with disabilities.[139] In the case of South Africa, it was reported that '[l]imited work opportunities and discrimination in the labour market are other factors that hampered their access to employment'.[140] Furthermore, it has been observed that in Zambia the 'professional jobs for blind people are only begging and teaching' due to their failure to attain an education, hence they are forced to 'go straight to the streets'.[141]

In Southern Africa, broadly, it has been reported that employers do not ordinarily choose to employ persons with disabilities unless they 'are forced to give preference' to persons with disabilities by affirmative action policies, quotas, the receipt of tax rebates or other economic incentives.[142] This is partly due to the fact that employers are 'likely to be deterred by the idea of spending more on appropriate accommodation' for employees with disabilities.[143]

It thus may be observed that persons with disabilities in Africa do not generally have equal opportunities to access employment in the 'conventional' or open labour market. The major cause of this is the failure to implement 'open labour market employment' for persons with

136 See eg CRPD Committee 'Concluding Observations on the Initial Report of Plurinational State Bolivia' (n 14) para 62; 'Concluding Observations on the Initial Report of Canada' (n 15) para 48(d); CRPD Committee 'Concluding Observations on the Initial Report of Chile' UN Doc CRPD//C/CHL/CO/1 (13 April 2016) para 58; 'Concluding Observations on the Initial Report of Colombia' (n 57) para 61(c); 'Concluding Observations on the Initial Report of Cyprus' (n 64) para 54; 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 60(c); 'Concluding Observations on the Initial Report of Guatemala' (n 64) para 64; 'Concluding Observations on the Initial Report of Honduras' (n 18) para 58;'Concluding Observations on the Initial Report of Italy' (n 57) para 70; 'Concluding Observations on the Initial Report of the Republic of Moldova' (n 20) para 49(b); 'Concluding Observations on the Initial Report of Portugal' (n 21) para 52; 'Concluding Observations on the Initial Report of Serbia' (n 96) para 54; 'Concluding Observations on the Initial Report of Slovakia' (n 22) para 74; 'Concluding Observations on the Initial Report of Uganda' (n 24) para 53(c); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 50(e).

137 Mitra et al (n 26) 36. See also Tesema (n 1) 125.

138 See Mizunoya & Mitra (n 68) 29.

139 Kotzé (n 27) 29.

140 'Disabled living in poverty – Study' (n 66).

141 Kotzé (n 27) 29.

142 As above.

143 As above.

disabilities (explained above). Ultimately, the high unemployment levels among persons with disabilities will lead to increased poverty levels among them. Indeed, it has been acknowledged that the obvious consequence of the failure by persons with disabilities to find jobs 'is a perpetuation of poverty'.[144]

A glance at the existing interventions in the selected disability legislation appears to provide no immediate solution to the conundrum since most of these statutes do not require adherence to the open labour market employment model alone. First, section 12 of the Malawian Disability Act recognises the right of persons with disabilities to earn/gain a living through work that is freely chosen or accepted in a labour market, and to work or obtain employment in an open, inclusive and accessible working environment.[145] The Act thus subscribes to the open labour market employment model.[146] It is worth noting that the Act recognises only the open labour market employment model and does not mention sheltered employment. To this extent it complies with the open labour market employment standard under CRPD. [147]

Second, the Persons with Disabilities Act of Zambia requires the government to, among others, create a labour market and work environment that is open, inclusive and accessible to persons with disabilities.[148] This shows that the Act recognises the open labour market employment model.[149] However, the Act mandates government (through the national disability body) to operate schemes and projects for self-employment or regular or sheltered employment for persons with disabilities.[150] The obligation to promote sheltered employment contradicts the open labour market employment standard under CRPD.

For its part, the Tanzanian Persons with Disabilities Act makes no reference to the open labour market employment model.[151] (It also does not mention the concept of sheltered/reserved employment.) To the extent that the Act does not recognise or advocate open labour market employment for person with disabilities, it does not comply with the employment standard under CRPD.[152] Therefore, it is only the disability-

144 As above.
145 See Malawi Disability Act (n 10) secs 12(1)(a) & (b).
146 See also sec 14(2)(c).
147 In addition, the Act obliges government to promote the employment of qualified persons with disabilities in the public and private sector, through appropriate policies and measures, which should include affirmative action programmes and incentives. See sec 12(3)(f).
148 See Zambia's Persons with Disabilities Act (n 10) sec 35(3)(a).
149 Sec 35(3)(h). In addition, the Act requires government to take measures that include creating and promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures; and the provision of reasonable accommodation to persons with disabilities in the workplace. See sec 35(3)(h) & (i).
150 See sec 14(1) (d).
151 Tanzania's Persons with Disabilities Act (n 10).
152 Nonetheless, the Act imposes a number of obligations, which include the provision of 'job accommodation' in the work place; the promotion of employment for persons with disabilities by applying affirmative action treatment; and the provision of reasonable

specific legislation of Malawi (the Malawian Disability Act) that adheres to the crucial standard of recognising the open labour market employment model alone in conceptualising the right to employment for persons with disabilities; while the Zambian and Tanzanian Acts contain aspects that fall below and contradict the standard of CRPD.

3.4 Ensuring social protection to reduce poverty

3.4.1 Social protection standards under CRPD

Article 28 of CRPD guarantees the socio-economic rights to an adequate standard of living and social protection for persons with disabilities. The right to an adequate standard of living should be enjoyed by persons with disabilities themselves and their families.[153] The right to an adequate standard of living and social protection is crucial as it requires state parties to take measures to ensure the provision of or access to clean water services,[154] adequate housing,[155] adequate food,[156] adequate clothing,[157] assistance with disability-related needs and expenses[158] and retirement benefits and programmes.[159] The right to social protection requires states to ensure the availability of the social security mechanisms or system(s) to provide sustainable income security; adequacy of social security in terms of the amount and duration, guided by the principle of dignity; accessibility in terms of environment, coverage and economic accessibility or affordability, and accessibility to the information provided relating to social protection programmes.[160] The forms of social protection measures recommended by the CRPD Committee include non-contributory pensions; poverty reduction strategies; disability pensions; health care; rehabilitation services; public housing; disability and social allowances; social and health insurance schemes; and subsidies and benefits.[161]

changes (or reasonable accommodation) in the workplace. See secs 34(1)(b); 34(2)(a) & 34(2)(c). .

153 CRPD art 28(1); CRPD Committee 'Concluding Observations on the Initial Report of Paraguay' (n 135) paras 67 & 68;

154 CRPD art 28(2)(a).

155 CRPD art 28(1).

156 As above.

157 As above.

158 CRPD art 28(2)(c).

159 CRPD art 28(2)(e).

160 See generally C Parker & L Clements 'The UN Convention on the Rights of Persons with Disabilities: A new right to independent living?' (2008) 4 *European Human Rights Law Review* 508.

161 See eg CRPD Committee 'Concluding Observations on the Initial Report of Armenia' (n 55) para 50; 'Concluding Observations on the Initial Report of Bosnia and Herzegovina' (n 57) para 51; 'Concluding Observations on the Initial Report of Plurinational State Bolivia' (n 14) para 64; 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 62; 'Concluding Observations on the Initial Report of the Republic of Moldova' (n 20) para 51; 'Concluding Observations on the Initial Report of Uganda' (n 24) para 55(b); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 52(a); 'Concluding Observations on the Initial

CRPD and its monitoring committee explicitly appreciate the role that the right to social protection could play in reducing poverty by requiring state parties to take measures that target persons with disabilities and their families living in situations of poverty. In this regard, CRPD obliges states to ensure access to state assistance 'with disability-related expenses, including adequate training, counselling, financial assistance and respite care',[162] while the Committee expects the taking of adequate measures 'to compensate persons with disabilities and their families, whose income is reduced because of their disability'.[163] In terms of the benchmark to be complied with by African state parties in making poverty reduction measures, the chapter focuses on the recognition of the right to social protection as a crucial standard.[164]

It is worth noting that the CRPD Committee in its General Comment 6 has highlighted the fact that article 28 of the CRPD (on adequate standards of living and social protection) is important, especially for persons with disabilities, including women, living in extreme poverty.[165] With regard to social protection the Committee in fact highlighted that '[s]tate parties are further required to implement a basic protection floor'.[166] The Committee made reference to poverty four times in paragraph 68 of the General Comment. It is worth noting that despite relating to equality and non-discrimination, the General Comment dedicates paragraph 68 to article 28 of CRPD.

Similarly, in General Comment 3, relating to women and girls with disabilities, the Committee only mentions the term 'poverty' in paragraph 59, which it dedicates to social protection recognised in article 28 of CRPD. This also demonstrates the strong link between ensuring social protection for person with disabilities and eradicating poverty and reducing inequalities among these persons. Above all, the CRPD Committee emphasises the significance of ensuring social protection in the implementation of Goal 10 of the Sustainable Development Goals (reducing inequality within and among countries).[167]

Report of El Salvador' (n 57) para 58; 'Concluding Observations on the Initial Report of Argentina' (n 57) para 45; 'Concluding Observations on the Initial Report of China' (n 94) paras 43 & 44; 'Concluding Observations on the Initial Report of Paraguay' (n 135) para 67.

162 See CRPD art 28(2)(c).

163 CRPD Committee 'Concluding Observations on the Initial Report of Paraguay' (n 135) para 67.

164 Nonetheless, the chapter also appreciates the significance of the right to an adequate standard of living in poverty eradication.

165 General Comment 6 (n 58) para 68.

166 As above.

167 See eg CRPD Committee 'Concluding Observations on the Initial Report of Armenia' (n 55) para 50; 'Concluding Observations on the Initial Report of Plurinational State Bolivia' (n 14) para 64; 'Concluding Observations on the Initial Report of Colombia' (n 57) para 63(d); 'Concluding Observations on the Initial Report of Cyprus' (n 64) para 56; 'Concluding Observations on the Initial Report of Ethiopia' (n 13) para 62; 'Concluding Observations on the Initial Report of Guatemala' (n 64) para 66(d); 'Concluding Observations on the Initial Report of Italy' (n 57) para 72; 'Concluding Observations on the Initial Report of Jordan' (n 57) para 52; 'Concluding Observations on the Initial Report of Portugal' (n 21) para 54(d); 'Concluding Observations on

3.4.2 Domestic obstacles and interventions regarding livelihood

It has been noted that the 'socio-cultural barriers that resulted in chronic poverty and economic deprivation of persons with disabilities have left many of them with no economic options other than begging'.[168] Thus persons with disabilities often find themselves with limited livelihood opportunities. In this regard, a study by Kotzé which focused on Southern African countries has found that situations arise where a parent would stay at home to look after a child with a disability, thereby not earning a living.[169] In addition, where persons with disabilities do not engage in economic activities, they might also not access social protection schemes, thereby having no means to earn a livelihood.[170] For example, studies have found that the majority of persons with disabilities in South Africa could not access disability grants and many of them did not know how to apply for the same or that the grant existed.[171] In any case, UNICEF has observed that social protection mechanisms often do not address the plight of persons with disabilities by, among others, failing to take account of the additional costs associated with disability, 'resulting in families being driven into poverty'.[172]

The link between disability and livelihood stems from society's negative perceptions about the ability of a person with a disability to interact in educational, economic, or social spheres, as the Southern African study has found.[173] As a result, many persons with disabilities in several African countries have limited livelihood opportunities. For example, a survey conducted by the National Association of Societies for the Care of the Handicapped (NASCOH) in Zimbabwe has found that 'close to 42%' of persons with disabilities in Zimbabwe have no income at all.[174] In Malawi the main activities of persons with disabilities aged five years and above are farming/fishing (38,8 per cent); household duties/heading livestock (26 per cent); brewing beer (2 per cent); and other businesses and pottery/handicraft (1 per cent); with the rest 'not doing anything at all'.[175] In addition, more households with one or more members with disabilities might have no one employed as compared to households without a person

the Initial Report of Serbia' (n 96) para 57; 'Concluding Observations on the Initial Report of Slovakia' (n 22) para 76; 'Concluding Observations on the Initial Report of Thailand' (n 23) para 56; 'Concluding Observations on the Initial Report of Uganda' (n 24) para 55(c); 'Concluding Observations on the Initial Report of United Arab Emirates' (n 57) para 52(b).

168 Tesema (n 1) 124.

169 Kotzé (n 27) 26.

170 See eg 'Disabled living in poverty' (n 66), where it was stated that '[f]or those not employed, they expressed great frustration with their lack of capability to secure a livelihood'.

171 'Disabled living in poverty' (n 66).

172 UNICEF (n 30) 16.

173 Kotzé (n 27) 12.

174 Kotzé (n 27) 21.

175 C Munthali & Centre for Social Research *Situational analysis of persons with disabilities in Malawi* (2011) 19.

with a disability.[176]

The obstacles to finding employment or to earning a livelihood by persons with disabilities in Malawi include a lack of skills training that could empower persons with disabilities; a lack of jobs; mobility challenges; a lack of access to credit for small-scale businesses; and a lack of awareness among employers about disability rights.[177] Therefore, there is a link between disability and the limited opportunities for earning a livelihood, which causes or propagates poverty among persons with disabilities in Africa. Accordingly, social protection mechanisms could economically empower persons with disabilities who do not have opportunities for earning a livelihood.

On a brighter note, a quick glance at the social protection provisions in the selected disability legislation appears to bring forth considerable hope for persons with disabilities. First, the Disability Act of Malawi provides for the right to adequate standards of living (guaranteed to persons with disabilities themselves, and their families)[178] and social protection.[179] It further obliges the government to ensure, among others, access to adequate food, clothing and housing, and a continuous improvement in living conditions in realising the right to adequate standards of living.[180] With regard to social protection, it requires the government to ensure equal access to appropriate and affordable social services, to ensure access to social support programmes, and to develop national guidelines to enable persons with disabilities that are receiving social benefits to move into self or open labour market employment.[181] Therefore, the Act conforms to CRPD's standards requiring guarantees of or right to social protection for persons with disabilities. It is worth noting that the Malawi Disability Act in section 23 also sets out the right of persons with disabilities to economic empowerment, which requires government, among others, to ensure that persons with disabilities are able to access loans and credit facilities for purposes of carrying out income-generating activities.[182] The implementation of these rights would similarly induce poverty reduction.

The Persons with Disabilities Act of Zambia guarantees to persons with disabilities the right to adequate standards of living, a continuous improvement in living conditions and social protection.[183] The section requires the responsible minister, in consultation with the minister responsible for labour, to take measures that ensure that persons with disabilities have equal access to appropriate and affordable services,

176 As above.
177 Munthali & Centre for Social Research (n 175) 20.
178 Malawi Disability Act (n 10) sec 14(1).
179 See sec 14 (2)(b), which obliges the government to ensure access by persons with disabilities to social support programmes.
180 Sec 14(1)(a).
181 Secs 14(2)(a), (b) & (c).
182 Malawi Disability Act (n 10) sec 23.
183 See Zambia's Persons with Disabilities Act (n 10) sec 36. (The Act/section does not provide that the right is guaranteed to the families of persons with disabilities as well). This is at variance with the CRPD provision as explained above.

devices and other assistance for disability-related needs; access, especially by women and girls with disabilities, to social protection programmes and poverty reduction programmes; access to public housing programmes; and access to retirement benefits and programmes.[184] The Act thus goes a long way towards incorporating the right to adequate standards of living and social protection contained in article 28 of CRPD, thereby expanding the potential of the Act to play a role in reducing poverty among persons with disabilities in Zambia.

The Persons with Disabilities Act of Tanzania recognises the rights of persons with disabilities to social protection.[185] In realising the right, the Act requires the responsible minister, after consultation with the minister responsible for labour, employment and finance, to take appropriate measures to ensure access to the following: social security; appropriate and affordable services, devices and other assistance for disability-related needs; social protection programmes and poverty reduction strategies (in particular by the aged and women); and available grants and credit services for income-generating activities and public housing programmes, if resources allow.[186] However, the Act does not indicate that the right is also granted to the families of persons with disabilities. In addition, it does not mention the right to adequate standards of living. Nonetheless, to the extent that it provides for social protection, it could serve as a significant poverty eradication tool in favour of persons with disabilities in Tanzania.[187] Therefore, the selected disability statutes demonstrate greater levels of adherence to the social protection standards under CRPD and thus would serve as potential tools for poverty reduction.

4 Conclusion

The chapter has elucidated that there are several factors that contribute to the high levels of poverty among persons with disabilities in the world, and in Africa in particular, after noting and explaining the link between poverty and disability. As highlighted above, certain factors contributing to the poverty situation involve the obstacles faced by persons with disabilities in accessing education and employment, among others. Indeed, education and employment are recognised as socio-economic rights under CRPD and other relevant treaties. Accordingly, some of the contributing factors are based on or connected with the enjoyment of human rights. Hence, the extent of human rights enjoyment impacts on poverty among persons with disabilities in Africa.

The chapter has examined challenges that prevail with respect to four areas, namely, education, employment, livelihood and equality

184 See secs 36(a), (b), (c) & (d).
185 Sec 54.
186 Secs 54(2)(a), (b) & (c).
187 The chapter regards the recognition of the right to social protection as crucial, as discussed in 3 above.

and non-discrimination. In addition, it has argued that the appropriate implementation of these rights that are contained in CRPD would significantly contribute to alleviating poverty among persons with disabilities in Africa. Although several human rights treaties guarantee rights applicable in these contexts, CRPD is the contemporary human rights treaty that specifically makes provision for the rights of persons with disabilities. Of course, the AU has also adopted the African Disability Protocol as far as the African regional human rights system is concerned.[188] However, the Protocol was yet to enter into force at the time of writing (March 2020).[189] Until such time as it does, CRPD remains the only operational disability rights-specific treaty applicable in the African region.

CRPD was also adopted while bearing in mind that it should be both a human rights and a developmental tool capable of triggering a change that would push for poverty reduction among persons with disabilities in the world. For example, its Preamble expressly makes reference to the situations of poverty in which persons with disabilities often live.[190] It highlights that 'the majority of persons with disabilities live in conditions of poverty' and, hence, recognises that there is a 'critical need to address the negative impact of poverty on persons with disabilities'.[191] Above all, the Preamble recognises that 'the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms … will result in significant advances in the human, social and economic development of society and the eradication of poverty'.[192] Accordingly, CRPD acknowledges that the enjoyment of human rights by persons with disabilities would facilitate the reduction of or, indeed, eradicate poverty. It is worth noting that ending poverty is in line with Goal 1 of the Sustainable Development Goals (to end poverty in all its forms everywhere).

In addition, CRPD contains a number of rights, including socio-economic rights, and provisions that if implemented appropriately would go a long way towards alleviating poverty among persons with disabilities in Africa. These rights/provisions include those that set out socio-economic rights such as equality and non-discrimination (which is both a socio-economic and a civil and political right); education; employment; health; accessibility; adequate standards of living and social protection; independent and community living; and habilitation and rehabilitation. The chapter has focused on obstacles or factors that cause (or lead to) poverty that are related to education, employment, general livelihood and discrimination. Thus, it has highlighted that CRPD, through the standards it sets, provides opportunities for addressing the poverty situation among

188 African Disability Protocol (n 42).
189 The Protocol requires ratifications for it to enter into force. See African Disability Protocol (n 42) art 38(1). As of July 2019, only six out of the 55 AU member states had signed the Protocol; while no state had deposited its ratification.
190 See eg Preamble paras (e) & (m).
191 See Preamble para (e).
192 See Preamble para (m).

persons with disabilities through the socio-economic rights it guarantees that are applicable in these four areas. These socio-economic rights include equality and non-discrimination, inclusive education, open labour market employment and social protection.

Furthermore, the chapter has analysed the obstacles faced by persons with disabilities in the four areas explained above. It has also examined the extent to which the disability-specific legislation in three selected African countries (Malawi, Zambia and Tanzania) incorporates the broad standards set by CRPD for implementing the pertinent four socio-economic rights mentioned in order to facilitate poverty reduction among persons with disabilities in the African region. It must be acknowledged that socio-economic rights generally are subject to progressive realisation.[193] However, in light of the fact that persons with disabilities constitute a vulnerable and marginalised group, state parties to ICESCR have the immediate (core) obligation to prioritise such group when implementing the four socio-economic rights.[194] In addition, obligations such as to ensure non-discrimination in the enjoyment of socio-economic rights are also more immediately applicable.[195] Accordingly, African states are expected to pay particular attention to their obligations relating to the socio-economic rights of persons with disabilities, with a view to addressing the poverty situation.

The following four statements can generally be made in relation to the analysis. First, certain disability-specific statutes analysed for purposes of this chapter still fall short of conforming to the equality and non-discrimination standards under CRPD by not recognising the obligation to provide reasonable accommodation in ensuring equality and non-discrimination. Second, most of these disability-specific statutes do not conform to the inclusive education standards under CRPD principally because the statutes continue to recognise the dual track system of providing the education of person with disabilities in special schools and in mainstream inclusive schools. Third, certain disability-specific statutes do not conform to the open labour market employment standard under CRPD. This is so because most of the disability statutes do not expressly recognise the open labour market employment model alone, with certain statutes still advocating [for] sheltered employment. Fourth, the disability-specific statutes appear to be on track with regard to respecting the obligation to ensure social protection measures for persons with disabilities.

Therefore, it may generally be concluded from the chapter's analysis that African countries need to modify their disability-specific statutes

193 See International Covenant on Economic Social and Cultural Rights (ICESCR), adopted on 16 December 1966, entered into force on 3 January 1976 (UN Treaty Series Vol 993 3) art 2(1). See also ESCR Committee General Comment 3: 'The nature of states parties obligations' UN Doc E/1991/23 (14 December 1990) para 1.

194 See General Comment 3 (n 193) para 12.

195 General Comment 3 para 1.

(and similar implementation measures) to conform to CRPD's provisions and/or standards in order to utilise the opportunities that CRPD provides through its rights provisions to eradicate poverty among persons with disabilities in their jurisdictions. This will also contribute to furthering the realisation of Sustainable Development Goal 1. The modification of the disability-specific statutes is especially necessary regarding the aspects of ensuring equality and non-discrimination, inclusive education and employment in the open labour market. It can unequivocally be stated that only after this has been done will the pertinent disability-specific statutes serve as tools capable of igniting the hope of ushering persons with disabilities in Africa out of the situations of poverty which they currently face.

References

Alam, KJ 'Impact of the global economic crisis and disability and poverty in developing countries' www.un.org/disabilities/documents/COP/alam.doc (accessed 27 April 2015

Chilemba, EM 'Disability rights and emerging disability legislation in selected African jurisdictions: A diagnostic commentary' (2015) 3 *African Disability Rights Yearbook* 291

Chilemba, EM 'Malawi' (2014) *African Disability Rights Yearbook* 207

Chilemba, EM 'The right to primary education for children with disabilities in Malawi: A diagnosis of the conceptual approach and implementation' (2013) *African Disability Rights Yearbook* 3

De Beco, G 'Study on the implementation of article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe' Study commissioned by the Office of the UN High Commissioner for Human Rights (OHCHR) Regional Office for Europe (2011)

'Disabled living in poverty – Study' *News24:* 14 May 2010 http://www.news24.com/SouthAfrica/News/Disabled-living-in-poverty-study-20100514 (accessed 2 April 2015)

Filmer, D 'Disability, poverty, and schooling in developing countries: Results from 14 household surveys' (2008) 22 *World Bank World Economic Review* 141

Grobbelaar-du Plessis, I & Van Reenen, T 'Introduction to aspects of disability law in Africa' in Grobbelaar-du Plessis, I & Van Reenen, T (eds) *Aspects of disability law in Africa* (Pretoria University Law Press 2011)

Groce, N et al 'Poverty and disability: A critical review of the literature in low and middle-income countries' (2011) University College London: Leonard Cheshire Disability and Inclusive Development Centre

Human Rights Watch *Discrimination, inequality, and poverty: A human rights perspective* (2013) http://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective (accessed 27 April 2015)

Infocus Programme on Skills, Knowledge and Employability/Disability Programme and International Labour Office 'Disability and poverty reduction strategies: How to ensure that access of persons with disabilities to decent and productive work is part of the PRSP Process (2002) 168 Gladnet Collection Paper http://digitalcommons.ilr.cornell.edu/gladnetcollect/168 (accessed 27 April 2014)

Jones, M & Marks, LA 'Law and the social construction of disability' in Jones, M & Marks, AB (eds) *Disability, divers-ability and legal change* (The Hague: Martinus Nijhoff 1999)

Kamga, SAD 'Forgotten or included? Disabled children's access to primary education in Cameroon' (2013) *African Disability Rights Yearbook* 27

Kayess, R & French, P 'Out of darkness into light: Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 1

Kotzé, H *Status of disability rights in Southern Africa* (2012) OSISA/OSF

Lang, R & Charowa, D *DFID scoping study: Disability issues in Zimbabwe* (2007) Harare: Department for International Development (DFID)

Mandipa, E '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* 73

Mitra, S, Posarac, A & Vick, B 'Disability and poverty in developing countries: A multidimensional study' (2013) 41 *World Development* 1

Mitra, S (Disability World) 'Disability: The hidden side of African poverty' http://www.disabilityworld.org/01-03_04/news/africa.shtml (accessed 27 April 2015)

Mitra, S, Posarac, A & Vick, B *Disability and poverty in developing countries: A snapshot from the world healthy survey* (2011) World Bank

Mizunoya, S & Mitra, S 'Is there a disability gap in employment rates in developing

countries?' (2013) 42 *World Development* 28
Munthali, C and Centre for Social Research *Situational analysis of persons with disabilities in Malawi* (2011) Zomba: Centre for Social Research
Parker, C & Clements, L 'The UN Convention on the Rights of Persons with Disabilities: A new right to independent living? (2008) 4 *European Human Rights Law Review* 508
Peters, SJ 'Review of marginalisation of people with disabilities in Lebanon, Syria and Jordan: Background paper prepared for the Education for All Global Monitoring Report' (2010) UNESCO
Schulze, M *Understanding the UN Convention on the Rights of Persons with Disabilities* (Handicap International 2010)
Steiner, H, Alston, P & Goodman, R *International human rights in context: Law, politics, morals* (Oxford University Press 2007)
Tesema, ST 'Economic discourse of disability in Africa: An overview of lay and legislative narratives' (2014) *African Disability Rights Yearbook* 121
UNICEF *Children and young people with disabilities: Fact Sheet* (2013)
UNICEF & Malawi government *From exclusion to inclusion: Promoting the rights of children with disabilities in Malawi* (2012)
United Nations *From exclusion to equality: Realising the rights of persons with disabilities: A handbook for parliamentarians on the Convention on the Rights of persons with disabilities (*2007) Geneva: Office of the High Commissioner for Human Rights
United Nations *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for human rights monitors* (2010) Geneva/New York: Office of the High Commissioner for Human Rights
Waddington, L 'Breaking new ground: The implication of ratification of the UN Convention on the Rights of Persons with Disabilities for the European community' in Arnardóttir, OM & Quinn, G (eds) *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian perspectives* (Martinus Nijhoff Publishers 2009)
World Health Organisation and World Bank (2011) *World report on disability* World Health Organisation & World Bank: Geneva