

# DOMESTIC FRAMEWORKS FOR MONITORING IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) IN AFRICA: NIGERIA AND SOUTH AFRICA IN PERSPECTIVE

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## ABSTRACT

*The Convention on the Rights of Persons with Disabilities (CRPD) is a viable framework for the respect and promotion of the rights of people living with disabilities. However, certain social and economic factors act as impediments towards the effective implementation of the Convention. This paper argues that the importance of CRPD lies in the obligations it creates for States to enforce and protect the rights of persons with disabilities. Specifically, the Convention obligates member states to overcome social, legal, environmental and political conditions that act as barriers to the full realization of these rights. This paper further posits that in order to realize the success and purposes of the CRPD, the Convention requires state parties to designate a framework to promote, protect and monitor the implementation of the convention. It is against this background that this paper explores frameworks established by states in Africa (and more particularly in South Africa and Nigeria) in order to ensure that the CRPD is enforced. This paper also identifies the challenges that these particular states encounters in the enforceability and also in monitoring the implementation of the CRPD. In conclusion, suggestions as to how these challenges can be tackled are proffered.*

## I. INTRODUCTION

Over a billion people of the world population live with disabilities.<sup>1</sup> The World Disability Report produced by the World Health Organization (WHO) and the World Bank, confirms that there are one billion persons with disabilities, which represents 15% of the world population and 80% of persons with disabilities, live in developing countries.<sup>2</sup> Due to a variety of societal barriers, persons with disabilities are overrepresented among the poor and are more likely than non-disabled persons to be excluded from education, productive employment and decent work, health services, economic and financial resources, infrastructure and participation in all aspects of society.<sup>3</sup> Evidence shows that compared to non-disabled people, persons with disabilities experience less legal protection, higher rates of poverty, lower educational achievements, poorer health outcomes and less political and cultural participation, amongst other things. Women, men and children with disabilities are too often amongst the most marginalized in all societies and face unique challenges in the enjoyment of their human rights.<sup>4</sup> Disability has been found to affect vulnerable populations in disproportionate way, with a higher disability prevalence observed in lower income countries, people from the poorest wealth quintile, women, children and older people.<sup>5</sup> Women, men and children with disabilities

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<sup>1</sup> Human Rights Watch One billion Forgotten: Protecting the human rights of persons with disabilities pp 3

[https://www.hrw.org/sites/default/files/related\\_material/2014%20disabilities\\_program\\_low.pdf](https://www.hrw.org/sites/default/files/related_material/2014%20disabilities_program_low.pdf) accessed 6 June 2014.

<sup>2</sup> Background Document Civil Society CRPD Forum 11 September, 2012 assessed 17 June, 2013.

<sup>3</sup> Ibid.

<sup>4</sup> Monitoring the Convention on the Rights of Persons

[http://www.ohchr.org/Documents/Publications/Disabilities\\_training\\_17EN.pdf](http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf) assessed 6 June, 2013.

<sup>5</sup> <http://mptf.undp.org/factsheet/fund/RPD00> accessed 14 February, 2014.



are too often amongst the most marginalized in all societies and face unique challenges in the enjoyment of their human rights.<sup>6</sup> The term disability:

Summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.<sup>7</sup>

Most of these persons, who live in developing countries, are excluded from health, education, social, economic, political and cultural opportunities.<sup>8</sup>

The CRPD, to a large extent has covered the rights of peoples with disabilities by making provisions for them under the Convention. The purpose of the Convention is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity".<sup>9</sup> This Convention provides that states parties should adequately provide for persons with disabilities without discrimination.<sup>10</sup>

Nigeria and South Africa are signatories to the CRPD and have also ratified this document. Being a party to the CRPD brings with it obligations and responsibilities. This article will look at the extent to which Nigeria and South Africa have aligned itself with these responsibilities, examining the frameworks for monitoring implementation.

## II. DEFINITION OF DISABILITY

Many individuals with disabilities all over the world struggle for their basic human rights. These rights include the right to education, the right to employment, the right to participate in political and social life and even the right not to be locked up. These disabilities vary and so an enjoyment of their rights vary from one person with disability to another with a different form of disability. Perhaps this is what has made a comprehensive definition of disability difficult. In defining disability, the Zimbabwean Disabled Persons Act defines a disabled person as:

A person with physical, mental or sensory disability, including a visual hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of the community"<sup>11</sup>

This definition seems comprehensive enough to encompass all persons with disabilities however, this definition does not include persons with long-term physical, mental intellectual or sensory impairments as stated by the CRPD and argued by Mandipa.<sup>12</sup> Although the CRPD does not give a definition of disability, it describes it as, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective

<sup>6</sup> Monitoring the Convention on the Rights of Persons opcit.

<sup>7</sup> Human rights of Persons with Disabilities [http://www.hrea.org/index.php?doc\\_id=416](http://www.hrea.org/index.php?doc_id=416) assessed on 17 June, 2013

<sup>8</sup> Disabilities Right in Africa SIDA 2012 assessed on 17 June, 2013.

<sup>9</sup> Article 1 CRPD.

<sup>10</sup> Article 4 (1) CRPD.

<sup>11</sup> Section 2 Disabled Persons Act 1992 of Zimbabwe.

<sup>12</sup> Mandipa E (2013) "A critical analysis of the legal and institutional frameworks for the realization of the rights of persons with disabilities in Zimbabwe" in 1 African Disabilities Rights yearbook 2013 Pretoria University Law Press pp 73-96 81.



participation in society on an equal basis with others."<sup>13</sup> This seems a more comprehensive definition of the person with disabilities.

### III. LEGAL FRAMEWORK ON CRPD

The rights of persons with disabilities is now globally recognized such that the United Nations Organization adopted a separate convention and optional protocol since 2006 to address issue of the rights of disabilities worldwide. These have also impact on the way the disabled people are hand at national level globally. Below are some of the outlooks of the instruments.

#### a. International framework

The United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD or Convention) along with its Optional Protocol by general consensus on December 13, 2006.<sup>14</sup> The Convention and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3 May, 2008.<sup>15</sup>

The CRPD, including its Optional Protocol, was significant as the first global binding normative framework for ensuring the protection and promotion of the rights of persons with disabilities.<sup>16</sup>

#### b. National Framework

South Africa does not have a comprehensive legislation on disability. There are however various legislations that make provisions for persons with disabilities and also protect their rights. The most important of this legislation is the Constitution.<sup>17</sup> The South African Constitution which is human rights based recognizes that everyone is equal before the law and has the right to equal protection and benefit of the law.<sup>18</sup> On the issue with persons with disabilities, the 1996 Constitution states that, "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, conscience, belief, culture language and birth."<sup>19</sup>

There are several other legislations which provide for persons with disabilities impliedly on a general basis with the use of the word "everyone" and some others which expressly mentions "persons with disabilities". Some of these legislations include the Broad-Based Black Economic Empowerment Act 53 of 2003, the Electoral Act, which provides that voters with disabilities can be assisted by anyone of their choice. It also

<sup>13</sup> Article 1 CRPD.

<sup>14</sup> Stein M.A (2008) "The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities" University of Washington Law Review 449 (with Janet E. Lord) William & Mary Law School Research Paper No. 09-37 83.

<sup>15</sup> "United Nations Convention on the Rights of Persons with Disabilities" <http://www.cbmr.org/United-Nations-CRPD/256097.php> accessed 6 June 2014.

<sup>16</sup> Lawrence M. Mute, Commissioner, Kenya National Commission on Human Rights Implementing Convention On "The Rights of Persons with Disabilities: Some innovative Approaches from Kenya. Presentation for the XI International Human Rights Colloquium, Sao Paulo, 7-12 November 2011.

<sup>17</sup> Constitution of the Republic of South Africa No 108 of 1996 (hereafter 1996 Constitution).

<sup>18</sup> Section 9(1) 1996 Constitution.

<sup>19</sup> Section 9 (3) of the 1996 Constitution.



provides that they can be registered as special voters thus voting on a predetermined day, or voting even at their residence.<sup>20</sup> Equality and Unfair Discrimination Act<sup>21</sup> also incorporates the rights of persons with disability. It provides for special measures to promote equality<sup>22</sup>, and prohibit unfair discrimination on ground of disability.<sup>23</sup>

In addition to the legislations on disability rights, the South African Human Rights Commission (the Commission)'s constitutional mandate is to protect and monitor observance of human rights as well as to promote the culture of human rights in the Republic. This includes the promotion and protection of the rights of vulnerable groups in our society such as children, women, persons living with disability and older persons. In discharging this mandate, the Commission has identified its priority areas as equality, socio-economic rights and access to information.<sup>24</sup>

Nigeria signed and ratified the United Nations Convention on the Rights of Persons with disabilities. Thus, it is under an obligation to respect, protect and fulfil the provisions of the Convention. Prior to 1999, the Nigerian with Disability Decree of 1993 made copious provisions for the protection of human rights of persons with disabilities.<sup>25</sup> In its Section 3, provisions were made for their human rights and privileges while Section 14 established a National Commission for Persons with Disability.<sup>26</sup>

The 'Bill For An Act To Ensure Full Integration Of Persons With Disabilities Into The Society And Establish A National Commission For Persons With Disabilities And Vest It With The Responsibilities For Their Education, Health Care And The Protection Of Their Social, Economic, Civil Rights And For Other Related Matters 2013 (SB.102)' bill has been passed through the senate, it is yet still a scrap of paper. This bill will take charge of disabled persons' education, health care, social rights and all related welfare and well being of such persons. Recently, a bill was passed that will legally protect persons with disability from discrimination. The bill sought to integrate such persons into the society and establish a commission for persons with disability. The bill, titled "Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014", prescribes a fine of one million Naira for corporate bodies and N100,000 or six months imprisonment or both for an individual who contravenes the law.<sup>27</sup> The Nigerian Human Rights Commission is established for the promotion and protection of human rights to the exclusion of the rights of the disabled. There is no national commission for persons with disabilities.

#### IV. THE SIGNIFICANCE OF THE CONVENTION

The CRPD established the UN Committee on the Rights of Persons with Disabilities.<sup>28</sup> This Committee whose tasks are to examine State reports on the implementation of the Convention, handle individual complaints and conducting enquiries (as provided for by the Optional Protocol to CRPD (OP CRPD)). At the national level, there exist a three-pillar structure which will be the subject of the present Study.<sup>29</sup> Article

<sup>20</sup> Section 33 and 39 Electoral Act 73 of 1998.

<sup>21</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (hereafter Equality and Unfair Discrimination Act).

<sup>22</sup> Section 28 Equality and Unfair Discrimination Act.

<sup>23</sup> Section 9 Equality and Unfair Discrimination Act.

<sup>24</sup> Overview of SAHRC Activities on CRPD [http://nhri.ohchr.org/EN/ICC/AnnualMeeting/25/Statementspresentations/Monitoring under CRPD - South Africa.doc](http://nhri.ohchr.org/EN/ICC/AnnualMeeting/25/Statementspresentations/Monitoring%20under%20CRPD%20-%20South%20Africa.doc) assessed on 11 March 2014

<sup>25</sup> Human rights crisis in Nigeria <http://www.pambazuka.org/en/category/comment/47079> assessed on 5 June 2014

<sup>26</sup> Ibid.

<sup>27</sup> A. Aminu, "Senate Passes Discrimination Against Persons with Disabilities Prohibition Bill"

<http://www.dailytimes.com.ng/article/senate-passes-discrimination-against-persons-disabilities-prohibition-bill> assessed on 11 June 2014

<sup>28</sup> Article 34 (1) CRPD.

<sup>29</sup> Article 33 CRPD Europe.



33 CRPD is arguably the most complete provision on national level implementation and monitoring ever in an international human rights treaty and represents one of the most innovative provisions of the Convention.<sup>30</sup>

Ratifying a treaty commits a country to implementing it. This may mean the country needs to modify existing laws, or abolish old laws, to be more consistent with the treaty. The Optional Protocol gives people with disabilities in ratifying countries an additional avenue for pursuing justice if all other standard methods for pursuing justice within their country should fail.<sup>31</sup> The Convention represents a development at the international level from non-binding international standards on disability to formally binding legal obligations for those countries which become party to the Convention.<sup>32</sup> In late 2001, the United Nations General Assembly established an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities."<sup>33</sup> The Ad Hoc Committee drafted a document over the course of five years and eight sessions, and the new *Convention on the Rights of Persons with Disabilities* was adopted in December 2006 and opened for signature in March 2007. It entered into force - thus becoming legally binding on States parties - on May 3, 2008, thirty days after the 20th ratification.<sup>34</sup>

The Convention affirms that not only do States parties have a role to play in fostering international cooperation to promote the rights of persons with disabilities, but civil society, including organizations representing persons with disabilities, and international and regional organizations, such as the United Nations specialized agencies, the World Bank and other development banks, and regional organizations such as the European Commission and the African Union, do, also.

The CRPD heralded a critical shift away from the medical model to the social model of disability - the idea that the individual rather than their disability should be at the core of society's responses to disability. It established foundational principles, frameworks, terminologies and content which henceforth refocused State approaches towards persons with disabilities. All States which ratified the Convention bound themselves to abandon the charity model of disability in favour of the social or rights model of disability.<sup>35</sup> The convention engrains an understanding of disability as a social phenomenon, and not as a health or welfare issue, and takes it forward to a human rights dimension.<sup>36</sup> The convention responds to a long-standing protection and promotion gap: not only by reaffirming the applicability of all human rights values and freedoms to persons with disabilities, but also by identifying a road map for states as to the measures which are necessary:

<sup>30</sup> United Nations Office of the High Commissioner Europe Regional Office, Study on the Implementation of Article 33 of the Convention on the Rights of Persons with Disabilities in Europe.

<sup>31</sup> [http://www.uscid.org/index.cfm/news\\_nigeria-ratifies-crp-d-and-optional-protocol](http://www.uscid.org/index.cfm/news_nigeria-ratifies-crp-d-and-optional-protocol) accessed on 14 February, 2014.

<sup>32</sup> The Disability Discrimination Ordinance, the UN Convention on the Rights of Persons with Disabilities, and Beyond: Achievements and Challenges after Ten Years of Hong Kong Anti-discrimination Legislation. Andrew Byrnes Faculty of Law, University of New South Wales Sydney, Australia.

<sup>33</sup> G.A. Res. 56/168 (2001), G.A. Res. A/61/611 (2006), G.A. Res. A/61/106 (2006), On the 20th ratification, see United Nations Press Release HR/4941 L/T/4411 With 20 Ratifications, Landmark Disability Treaty Set to Enter into Force on 3 May Available <http://www.un.org/News/Press/docs/2008/hr4941.doc.htm> accessed 6 June 2013; Perlin, M. L. (2008) Change is Gonna Come: The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law A. 29 Northern Illinois University Law Review (2008-2009) pp 483.

<sup>34</sup> Ibid.

<sup>35</sup> Lawrence M. Mute, Commissioner, Kenya National Commission on Human Rights Implementing Convention on the Rights of Persons with Disabilities: some innovative Approaches from Kenya Presentation for the XI International Human Rights Colloquium, Sao Paulo, 7-12 November 2011.

<sup>36</sup> Conference Proceedings "Protecting and promoting the rights of persons with disabilities in Europe: Towards full participation, inclusion and empowerment" at Swedish Conference on UN Disability Convention and Council of Europe Disability Action Plan, Council of Europe Strasbourg 29-30 October 2008. Available at [http://www.coe.int/t/e/social\\_cohesion/sp/Protecting\\_and\\_promoting\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_-\\_complete\\_with\\_cover1.pdf](http://www.coe.int/t/e/social_cohesion/sp/Protecting_and_promoting_the_rights_of_persons_with_disabilities_-_complete_with_cover1.pdf) role of national rights structures accessed 6 June, 2014.



achieve real equality for persons with disabilities with any other person.<sup>37</sup> The Convention clarifies that States should not discriminate against persons with disabilities. It sets out the many steps that States must take to create an enabling environment so that persons with disabilities can enjoy real equality in society, e.g. accessibility, raising awareness, and access to justice.<sup>38</sup> In addition to promoting the rights of persons with disabilities, the Convention outlines the institutional changes which States have to undertake in order to facilitate its implementation.<sup>39</sup>

Also, the CRPD requires nations to recognize that the human rights of people with disabilities deserve the same level of commitment that governments demonstrate toward the rights of people without disabilities and society as a whole.<sup>40</sup> The CRPD is a United Nations Treaty, which is an express agreement under international law entered into freely by sovereign states and international organizations to legally bind themselves to the principals, duties and obligations under the CRPD. The CRPD is grounded in a broad human rights framework based on the United Nations Charter, the Universal Declaration of Human Rights, international covenants on human rights and other human rights instruments.<sup>41</sup>

## V. NATIONAL IMPLEMENTATION AND MONITORING MECHANISM

South Africa, came up with an implementation plan to deal with disability in the legislative sector. The report on this plan, explored the implementation of the policies and pieces of legislation by parliament and provincial legislatures. It also examines in detail the oversight role of the legislatures with regard implementation of policies and legislations that include disability components.<sup>42</sup> According to the report, the policies may not be perfect but they are in place. Similarly, Nigeria as a nation although is a signatory to the convention but is yet to come up with concrete policy through legislation to properly addresses the issue of disabilities in the society.

## VI. IMPLEMENTATION AND MONITORING MECHANISMS AND INSTITUTIONS

Article 33 CRPD is arguably the most complete provision on national level implementation and monitoring ever in an international human rights treaty.<sup>43</sup> Article 33 allows for procedures which are adjusted to the particular legal and administrative system of the country, but requires that the government designate one or more focal points and that it establishes a mechanism for the co-ordination of actions to implement the Convention.<sup>44</sup> As regards national implementation, Article 33, 1 of the CRPD provides that:

States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a

<sup>37</sup> Ms Maarit KOHONEN Coordinator Office of the High Commissioner for Human Rights (OHCHR) Geneva, Switzerland European Conference on Protecting and promoting the rights of persons with disabilities in Europe: towards full participation, inclusion and empowerment at Strasbourg 29-30 October 2008  
e[http://www.coe.int/t/e/social\\_cohesion/socsp/Protecting\\_and\\_promoting\\_the\\_rights\\_of\\_persons\\_with\\_disabilities\\_-complete\\_with\\_cover1.pdf](http://www.coe.int/t/e/social_cohesion/socsp/Protecting_and_promoting_the_rights_of_persons_with_disabilities_-complete_with_cover1.pdf) role of national human rights structures

<sup>38</sup> Ibid.  
<sup>39</sup> Gauthier de Beco Article 33(2) of the UN Convention on the Rights of Persons with Disabilities: Another Role for National Human Rights Institutions? Netherlands Quarterly of Human Rights, Vol. 29/1, 84-106, 2011. Netherlands Institute of Human Rights (SIM), Printed in the Netherlands assessed on 17 June 2013.

<sup>40</sup> <http://www.nad.org/issues/international-advocacy/crpd> assessed on 17 June 2013

<sup>41</sup> What is the CRPD? <http://www.riglobal.org/resource-center/convention-on-the-rights-of-persons-with-disabilities/what-is-the-crpd/> accessed 12 June 2013.

<sup>42</sup> "A framework strategy and implementation plan for dealing with disability in the legislative sector" Final Report August 2007.

<sup>43</sup> Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe United Nations Human Rights Commission Office of the High Commissioner Europe Regional Office assessed on 6<sup>th</sup> June, 2013

<sup>44</sup> Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities assessed on 6<sup>th</sup> June, 2013



coordination mechanism within government to facilitate related action in different sectors and at different levels

Focal points are an issue of internal public administration. The purpose is to appoint a governmental department for handling matters relating to the implementation of CRPD. The focal points should both have the necessary resources to carry out their function and be sufficiently accessible to persons with disabilities. States may also designate several focal points or sub-focal points. Coordination mechanisms aim to boost cooperation between ministries and to avoid that policymakers adopt isolated measures. The establishment or designation of a coordination mechanism, however, is not a legal obligation. It is optional.<sup>45</sup> Article 33 (2) CRPD provides that:

States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

States have to create independent mechanisms in line with the principles relating to the status and functioning of national institutions for protection and promotion of human rights, which are commonly called the Paris Principles.<sup>46</sup> These Principles, commonly called the *Paris Principles*, were drafted at the First International Workshop of National Human Rights Institutions held in Paris in 1991 and endorsed by both the UN General Assembly and Commission on Human Rights in 1993.<sup>47</sup> This is not the first international human rights treaty obliging States to create independent mechanisms in line with the principles relating to the status and functioning of national institutions for protection and promotion of human rights which are commonly called the Paris Principles. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires that States designate or establish one or more national preventive mechanisms to visit places of detention with due consideration for the same Paris Principles.<sup>48</sup> The *Paris Principles* outline the responsibilities, composition and working methods of NHRIs. The *Paris Principles* outline the responsibilities, composition and working methods of NHRIs. In addition to setting out the functions of NHRIs, they place emphasis on two fundamental principles: independence and pluralism. The *Paris Principles* outline the different aspects of NHRIs according to the following headings:

- a) Competence and responsibilities;
- b) Composition and guarantees of independence and pluralism;
- c) Methods of operation; and
- d) Additional principles concerning the status of commissions with quasi-jurisdictional competence.

In addition to setting out the functions of NHRIs, the *Paris Principles* lay emphasis on two fundamental principles: independence and pluralism. Independence means that NHRIs should be free from government interference. To guarantee this, the Paris Principles provide that the independent mechanisms must

<sup>45</sup> Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe<sup>13</sup> Nations Human Rights Commission Office of the High Commissioner Europe Regional Office assessed on 6 June, 2013.

<sup>46</sup> Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe<sup>14</sup> Nations Human Rights Commission Office of the High Commissioner Europe Regional Office assessed on 6 June, 2013.

<sup>47</sup> UN GA, Resolution 48/134, UN Doc. A/RES/48/134, 20 December 1993; Article 33(2) of the UN Convention on the Rights of Persons with Disabilities: Another Role for National Human Rights Institutions? Gauthier de Beco, assessed on 25 June, 2013.

<sup>48</sup> Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe<sup>15</sup> Nations Human Rights Commission Office of the High Commissioner Europe Regional Office assessed on 6 June, 2013.



created by law. In addition, they stipulate that representatives of ministries may only participate in an advisory capacity. The Paris Principles also require that NHRIs have sufficient funding in order to be able to choose their own staff and to determine their priorities. The Paris Principles require that organizations of persons with disabilities should either be represented in the independent mechanisms or be able to cooperate closely with these mechanisms. It is advisable that persons with disabilities be appointed to their board. According to the Paris Principles, other actors, such as trade unions, social and professional organizations as well as experts, should also be involved.

Pluralism links NHRIs with civil society. They also mention a series of actors who should be included in the organization of NHRIs:

- b) Trends in philosophical or religious thought;
- c) Universities and qualified experts;
- d) Parliament and;
- e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).<sup>6</sup>

Article 33 (3) CRPD provides that, Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process. paragraph 3 requires the full participation and involvement of civil society, particularly persons with disabilities and their representative organisations.

## VII. THE CHALLENGES OF NATIONAL IMPLEMENTATION OF THE CRPD

In Nigeria today, people with disabilities face challenges and discrimination on grounds of their being disabled despite the fact that the government has ratified the Convention on the Rights of Person with Disability (CRPD). Persons with disabilities suffer from discrimination based on society's prejudice and ignorance. In addition, they often do not enjoy the same opportunities as other people because of the lack of access to essential services.<sup>49</sup> This is all as a result of not possessing legislation as regards disability rights in the country.

South Africa does not have a single legislation that dwells on persons with disabilities. It however has pieces of legislations which recognize expressly (the rights of) persons with disabilities; and disabled people are involved at all levels of government. The most important of this legislation is the 1996 Constitution which is a human rights based Constitution.

Although South Africa does not have a single legislation on disability, the achievements linked to the development of new legislation and policy in South Africa include, the development and the adoption of disability on an Integrated National Disability Strategy (INDS); the ease of determining employment-equity quotas that apply to the private and public sector with regard to employment of disabled people through the Employment Equity Act (EEA) of 1998; and the increase in the basic disability grant and extension of its provisions to a wider sector of people through the Social Assistance Act.<sup>50</sup>

In spite of this, the challenges of persons with disabilities still abound. While support by the South African government for the formulation and adoption of policy has been excellent, policy implementation remains a challenge.<sup>51</sup> The major setback of Disability Policy implementation in South Africa is: Legislation and policies are not implemented, due to lack of allocated fiscal resources and commitment by government, and

<sup>49</sup> Human rights of persons with disabilities < [http://www.hrea.org/index.php?doc\\_id=416](http://www.hrea.org/index.php?doc_id=416) > assessed on 5 June 2014

<sup>50</sup> A case for Nigerians living with disabilities By Senator Abatemi-Usman is Vice Chairman, Senate Committee on Niger Delta Affairs Article On 11 Feb, 2013 The Article, the Africa Aggregator of the Planet assessed on 20 February, 2014

<sup>51</sup> Ibid.



agencies responsible for such implementation.<sup>52</sup> Lord and Stein in their work also have argued that the CRPD must be understood and implemented holistically, across articles, and that highlighting particular rights does not infer their precedence.<sup>53</sup>

## VIII. CONCLUSION

There is need for radical changes in societal attitudes with respect to people with disabilities, to enable them become a driving force for social processes and contribute actively to the building of an open civil society.<sup>54</sup> Apart from ensuring a forum to redress rights violations, states should play an active role in preventing such rights violations and enforcing protective measures on behalf of persons with disabilities.<sup>55</sup> The majority of persons with disabilities live in less developed countries where people lack access to essential services such as health care.<sup>56</sup>

Perhaps an inclusion of a certain percentage of peoples with disabilities in the legislative sector may provide a solution and address with in dept, the challenges of persons with disabilities and suggest better monitoring mechanisms. In order to reduce and prevent these challenges, there is an urgent need to establish a legal framework in Nigeria which will include legislations and commission for the rights of person with disabilities.

There is still more that should be done of African Countries with respect to persons with disabilities. African states, embraced the adoption of the CRPD and the Optional Protocol when it came into force. One would expect that with such turn out at the adoption of the CRPD and the Special Rapporteur being African, more would have be done on the issues of implementing mechanisms. The Committee on the rights of persons with disabilities has the duty of monitoring implementation by states parties through mandatory state reporting and issuance of recommendations. South Africa and Nigeria are lagging behind in this area as Nigeria's country report was due in May 2012 and South Africa's country report too was due in May 2010. Without their reports the Committee cannot make observations or recommendations. Furthermore, the non existence of a comprehensive legislation to address the issues of persons with disabilities makes it difficult to holistically address this issue as, pieces of legislations do not comprehensively provide for or address issue of implementation.

There is need for the society to be educated to respect the rights of persons with disabilities, regard them as part of the community and invariably support them.

<sup>52</sup> Ibid.

<sup>53</sup> Janet Lord and Michael Ashley Stein "Prospects and Practices for CRPD Implementation in Africa" (2013) in 1 African Disability Rights Yearbook, Pretoria University Law press pp102.

<sup>54</sup> The NGO Role In Advocacy For The Human Rights Of People With Disabilities In Bulgaria <http://www.opensocietyfoundations.org/sites/default/files/ilieva.pdf> assessed on 17 June, 2013.

<sup>55</sup> "International Norms And Standards Relating To Disability" <http://www.un.org/esa/socdev/enable/comp104.htm#4.5> assessed on 17 June, 2013.

<sup>56</sup> Human rights of persons with disabilities, op cit.



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