ADVISORY TO
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ON
KENYA’S RATIFICATION OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA

DATED: 10 01 2020
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A. Introduction

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution and operationalized under the KNCHR Act, 2011. KNCHR is accredited by the Global Alliance of National Human Rights Institutions as an ‘A status’ institution and is a member of the Network of African National Human Rights Institutions (NANHRI). KNCHR was granted affiliate status by the African Commission on Human and Peoples’ Rights (ACHPR) since 2004.

2. The National Commission has a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of independent national human rights institutions commonly referred to as the ‘Paris Principles’.

3. Under Article 59(2)(g) of the Constitution, the National Commission has a mandate to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights. The National Commission is also the monitoring agency for persons with disabilities under Article 33(2) of the Convention on the Rights of Persons with Disabilities. This submission is made pursuant to the Commission’s mandate on promoting human rights for all, as well as the explicit monitoring role on rights of persons with disabilities borne by the Commission.


B. Background

5. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa was adopted by the 30th Ordinary Session of the Assembly of Heads of States, held in Addis Ababa, Ethiopia on 29th January 2018. The process for development of the Protocol started with the Kigali Declaration on Human Rights of 8 May 2003, which ‘calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities’ (paragraph 20). Subsequently, Decision 750 (XXII) of the Executive Council at its Twenty-Second Ordinary Session held in Addis Ababa, Ethiopia, from 21 to 25 January 2013,
endorsed the African Union Disability Architecture (AUDA), of which a Protocol on the Rights of Persons with Disabilities to the African Charter is a central legal pillar.¹

6. Kenya has ratified various African Union human rights instruments which recognise the rights of persons with disabilities. In this regard, Kenya is a state party to the African Charter on Human and Peoples’ Rights, having ratified the same on 23rd January 1992. Article 18 (4) provides that ‘Older persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs.’ Kenya is also a state party to the Protocol to the African Charter on Human and People’s Rights on the Rights of women in Africa of 11 July 2003 (Maputo Protocol) (ratified by Kenya on 6th October, 2010). Article 23 of the Maputo Protocol provides for the special protection of women with disabilities. Kenya has also ratified the African Charter on the Rights and Welfare of the Child (ACRWC) of 11 July 1990 (ratified by Kenya on 25th July 2000). Article 13 of the ACRWC provides that: ‘Every child who is mentally or physically disabled has the right to special protection to ensure his or her dignity, promote his self-reliance and active participation in the community’.

C. Status of Signature, Ratification and Entry into Force

7. Article 38 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa provides that the protocol shall enter into force 30 days after the deposit of the 15th instrument of ratification. As at 18th December 2019, the Protocol had not been ratified by any county, but has already registered six signatures namely by Burkina Faso, Central African Republic, Gabon, Rwanda, South Africa and Togo.²

D. Objects and Subject Matter of the Protocol

8. The purpose of this protocol is to provide protection of the rights of persons with disabilities. The protocol recognizes rights and freedoms of persons with disabilities in society as well as provides for duties of persons with disabilities (Article 31). The rights espoused in the protocol include non-discrimination, right to equality, right to life, right to liberty and security of person, freedom from torture or cruel, inhuman or degrading treatment or punishment, protection from harmful practices, protection in

¹ Preamble, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa
situations of risk, right to access justice, right to live in the community, accessibility, right to education, right to health, habilitation and rehabilitation, right to work, right to an adequate standard of living, right to participate in political and public life, self-representation, right to freedom of expression and opinion, right to access to information, right to participate in sports, recreation and culture, right to family, among others.

9. In terms of duties, the Protocol recognizes that persons with disabilities have duties on an equal basis with other persons as elaborated in the African Charter. States Parties are required to ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

10. The protocol requires state parties to popularize the Protocol, and ensure the widest possible dissemination.

E. Constitutional Implications

11. Article 54 of the Constitution of Kenya is a stand-alone article on disability. It provides as follows:

'54. (1) A person with any disability is entitled –
(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
(b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
(c) to reasonable access to all places, public transport and information;
(d) to use Sign language, Braille or other appropriate means of communication; and
(e) to access materials and devices to overcome constraints arising from the person’s disability.
(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.’

12. Other articles that address disability directly in the Constitution are the following: 7(3)(b) (national, official and other languages); 10(national values and principles of governance), 21(3) (implementation of rights and fundamental freedoms); 27(4) and (5) (equality and freedom from discrimination); 54 (persons with disabilities); 81(c) (general principles for the electoral system); 82(2)(c)(i) (legislation on elections); 83(1)(b) (registration as a voter); 97(1)(c) (membership of the national assembly); 98(1)(d) (membership of the Senate); 99(2)e (qualifications and disqualifications for
13. The Protocol does not alter any provisions of the Constitution; and is consistent with the Constitution and promotes constitutional values and objectives.

F. Obligations Imposed by the Protocol on Kenya

14. The protocol imposes the following obligations on the State:

a) **General obligations** under Article 4. The State is required to take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability. Such measures include implementing the provisions of the Protocol, mainstreaming disability, refraining from violating the provisions of the protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol.

Furthermore, as with many treaties, the Protocol calls for the State to cooperate at the international, Continental, sub-regional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support implementation of the Protocol (Article 33(a)).

It is important to note that under Article 22(f) on self-representation, the Protocol calls for the active consultation and involvement of persons with disabilities in the development and implementation of legislation, policies, programmes and budgets that impact persons with disabilities.

b) **Reporting obligations** under Article 34(1). States Parties are required to indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in the Protocol. It should be noted that this is not a new obligation as Kenya has been submitting periodic reports under the African Charter on Human and Peoples’ Rights.
c) **Data Collection Obligation** under Article 32. States Parties are obliged to ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. In particular, States Parties are required to disaggregate statistics and data, as appropriate, on the basis of disability and other variables including by ensuring that national population census and other survey captures data on disability; and disseminate statistics and data in forms accessible to all persons.

d) **Policy Development Obligations** under numerous articles including 4(c), 4j, 7(2)(e), 19(2)e; 23(2); and 27(l). States Parties are also called upon to take policy, and other measures to ensure that persons with disabilities can exercise rights on an equal basis with others.

   Article 4(c) calls upon the State to modify or abolish existing policies that constitute discrimination against persons with disabilities. Article 4(j) calls for the effective participation of persons with disabilities or their representative organisations including women and children with disabilities, in all decision-making processes including in the development and implementation of policies to this Protocol. Article 7(2)(e) calls for the review or repeal of policies which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities. Article 19(2)(e) obliges States Parties to promote the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives. Article 23(2) requires States Parties to take policy and other measures to ensure that persons with disabilities enjoy their right to freedom of expression and opinion on an equal basis with others. Article 27(l) calls for the integration of disability inclusive gender perspectives in policies and other measures in all spheres that affect women with disabilities.

e) **Obligations related to legislative proposals** are contained in numerous articles including 6(3); 19(3); 21(2); 23(2); 24(2) and 25(2).

   Article 6(3) on the right to equality calls upon State Parties to take all appropriate legislative and other measures in order to promote equality for persons with disabilities. Article 19(3) on the right to work calls upon States Parties to take legislative, and other measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities. Article 21(2) requires the State to take all appropriate legislative and other measures to promote the right of persons with disabilities to participate in political and public life. Article 23(2) requires States Parties to take legislative and other measures to
ensure that persons with disabilities enjoy their right to freedom of expression and opinion on an equal basis with others. According to Article 24(2), States Parties should take legislative and all other appropriate measures to ensure that persons with disabilities can exercise the right to access information on the basis of equality. Article 25(2) calls for States Parties to take legislative and other measures to ensure the right of persons with disabilities to participate in sports, recreation and culture.

G. Existing Legal, Policy & Administrative Measures on Protection of Rights of Persons with Disabilities

Legislative measures

15. The following Acts make provisions on various issues relating to persons with disabilities.

a) **The Constitution of Kenya**
   See Part E above entitled ‘Constitutional Implications’.

b) **The Persons with Disabilities Act, 2003**
   This Act is a comprehensive law covering rights, rehabilitation and equal opportunities for persons with disabilities. It creates the National Council of Persons with Disabilities as a statutory organ to oversee the welfare of persons with disabilities. The law also requires that both public and private sector employers reserve 5 per cent of jobs for disabled persons.

The rights provided for in the Act include civil and political rights as well as economic, social and cultural rights. Rights protected include equal rights of access to opportunities for suitable employment, to special and non-formal education, appropriate health care, participation in sporting and recreational activities and to a barrier free and disability friendly environment.

In order to further implement the provisions of the Persons with Disabilities Act, 2003 and give greater effect to the Convention on the Rights of Persons with Disabilities, the Minister responsible for matters relating to persons with disabilities has made subsidiary legislation including the Persons with Disabilities (Registration) Regulations, 2009; and The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, 2010.
c) **Public Procurement and Disposal Act, 2015**  
The Public Procurement and Disposal Act 2015 and Regulations 2006, reserves thirty percent of public procurement for women, youth and persons with disabilities as a means of empowering them economically.

d) **Employment Act, 2007**  
The Employment Act, 2007 (Act No. 11 of 2007) contains elaborate provisions aimed at protecting persons from discrimination in the employment sector. The Act explicitly prohibits an employer from discriminating directly or indirectly against an employee or prospective employee, or harassing an employee or prospective employee on grounds of disability.

e) **Public Service (Values and Principles) Act, 2015**  
The Public Service (Values and Principles) Act, 2015, gives effect to Article 232 of the Constitution. The Act allows public institutions not to unduly rely on merit in making appointments for purposes of ensuring representation of persons with disabilities and other marginalized groups.

f) **The Sexual Offences Act, 2006**  
The Act recognises persons with disabilities as ‘vulnerable witnesses’ under Section 31 and authorises the use of intermediaries to enable the ‘vulnerable witnesses’ engage with the judicial system. An intermediary is ‘a person authorized by a court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counselor, guardian, children's officer or social worker.’ Section 31(10) provides that an accused shall not be convicted solely on the uncorroborated evidence of an intermediary.

g) **Social Assistance Act, 2013**  
Section 23 of the Social Assistance Act 24 of 2013 provides that a person with a disability is eligible for social assistance under the Act if the person suffers from severe mental or physical disability, the person’s disability renders them incapable of catering for their basic needs and there is no known source of income or support for the person.

h) **The Mental Health Act, 1989**  
The intent of the Act 10 of 1989 is to amend and consolidate the law relating to: the care of persons who are suffering from a mental disorder or mental subnormality with a mental disorder; the custody of their persons and the management
of their estates; and the management and control of mental hospitals. Section 16 of the Act authorises non-consensual psychiatric treatment as well as detention. Section 26 of the Act provides that the court may make orders for the management of the estate of any person suffering from a mental disorder and for the guardianship of any person suffering from a mental disorder.

i) **The Basic Education Act, 2013**
Part VI of the Basic Education Act 14 of 2013 focuses on promotion of special needs education. This part addresses, inter alia, the establishment and management of special institutions. Under the Act, children with special needs are identified as including 'intellectually, mentally, physically, visually, emotionally challenged or hearing impaired learners, pupils with multiple disabilities and specially gifted and talented pupils'. The Cabinet Secretary is required to ensure that every special school is provided with appropriate trained teachers and infrastructure for learners with disabilities.

j) **The Penal Code**
According to Section 12 of the Penal Code (Chapter 63 of the Laws of Kenya), a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission. Section 146 prohibits 'defilements of 'idiots' or 'imbeciles'.

k) **Criminal Procedure Code**
Sections 162, 163, 164 and 280 of the Criminal Procedure Code establish the procedure through which a court may determine that a person is of unsound mind and the subsequent consequences, including that once so declared a person may be consigned to a mental hospital or, in the wording of section 280, a 'lunatic asylum' until such time as the medical officer or the court or the Attorney General deem such person to be of sound mind.

l) **Marriage Act, 2014**
Section 11(2)(c) of the Marriage Act presumes that persons with any 'mental disorder or mental disability whether temporary or permanent' cannot give consent to marriage; this section denies the right of persons with psychosocial disabilities and persons with intellectual disabilities to marry and found a family. Section 73(1)(g), allows annulment of marriage on grounds that a person 'suffers recurrent bouts of insanity', while section 66(6)(g) makes 'insanity' a ground of divorce.
m) The Children’s Act, 2001
The Children’s Act 8 of 2001 explicitly prohibits discrimination against a child on the ground of disability under Section 5. Section 107(2) of the Act provides for the extension of guardianship when a child suffers from a mental or physical disability or illness rendering him or her incapable of maintaining himself or herself or managing his own affairs and property without a guardian’s assistance.

n) The Elections Act, 2011
The Elections Act 24 of 2011 disqualifies a person of unsound mind from being registered as a voter or being nominated as a Member of Parliament, county assembly, governor, speaker and other public offices. Section 36 outlines the criteria for allocation of special seats by political parties which include a requirement that the list shall include eight candidates, four of whom shall be persons with disabilities.

o) Law of Succession Act (Chapter 160 Laws of Kenya)
The Act denies persons of unsound mind the freedom of testation (section 5).

p) Other Laws
Policy measures

16. The following policies make provisions on various issues relating to persons with disabilities.

a) **The National Disability Policy**
   
   The key policy with regard to persons with disabilities is the National Disability Policy of 2006. The Policy recognises disability as a ‘human rights and a development phenomenon that cuts across all aspects and spheres of society and which requires support from all sectors’. The Policy protects rights of persons with disabilities to accessibility, education and employment. The policy aims to abolish all forms of discrimination against persons with disabilities and to provide equal opportunities to persons with disabilities. The Policy takes cognisance of the importance of awareness raising on disability and to this end states that the ‘Government shall seek to increase the levels of public awareness on the needs, aspirations and capacities of persons with disabilities so as to enhance their acceptance, participation and integration in society’. The Sessional Paper for the Policy is yet to be presented to Parliament for approval.

b) **The Public Service Commission’s code of practice for mainstreaming disability in the Public Service**
   
   The PSC code of practice for mainstreaming disability in the Public Service, 2010, obligates public entities to reasonably accommodate the needs of persons with disabilities in the public service by retaining, retraining and deploying public servants who acquire disabilities in the course of duty.

c) **The National Land Policy**
   
   Section 3.6.5 Clause 194 of the National Land Policy makes provision for land rights of vulnerable groups who include persons with disabilities. This in recognition of the fact that they have historically been denied power, voice and representation in society, which limits their opportunities to own land based resources. To secure their rights the Policy provides for the development of mechanisms for identifying, monitoring and assessing the vulnerable groups; establish mechanisms for redistribution of land and resettlement; facilitate their participation in decision making over land and land based resources; and protect their land rights from unjust and illegal expropriation. The Policy also seeks to resolve historical land injustices, including those perpetrated against persons with disabilities, among others.
d) **Vision 2030**

This is Kenya’s main development strategy. It contends that no society can gain social cohesion if significant sections of the population live in poverty. Kenya Vision 2030 also touches on disability in its description of measures to be taken to enhance the lives of vulnerable groups.

e) There are also draft policies that make provision for persons with disabilities including the draft National Social Protection Policy and the draft Human Rights Policy.

**Administrative measures**

17. In addition to legislative and policy measures, the government has taken administrative measures to promote the wellbeing of persons with disabilities. These include Cash Transfer Programs. The National government supports a number of unconditional cash transfer programmes, including one for Persons with severe disabilities (PWSD-CT). Under this Programme, the government defines persons with severe disabilities as referring to ‘those who need permanent care including feeding, toiletry, protection from danger from themselves or other persons, and from the environment. They also need intensive support on a daily basis which therefore keeps their parents and guardians / caregivers at home or close to them throughout’. The overall objective of the Programme is ‘to enhance the capacities of the caregivers through cash transfers thereby improving the livelihoods of persons with severe disabilities and mitigating the effect of the disability to the household’. The eligibility criteria are ‘[a] household with a person with severe disability and extremely poor households’.

**H. Financial Implications**

I. Way Forward

19. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa offers a wide range of protection for persons with disabilities in society. It does not introduce new obligations on Kenya as many of the proposed measures in the protocol are already ongoing programs in Kenya. Further, the Protocol does not contradict any constitutional provisions. In light of this analysis we recommend that Kenya ratifies this regional human rights instrument to offer additional protection to its persons with disabilities.
Annexure 1

A comparison of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa vis a vis the UN Convention on the Rights of Persons with Disabilities


2. Unless otherwise stated, the highlights of the Protocol identified herein focus on the areas where the Protocol either:
   • Introduces elements of rights that are not included in the UN Convention on the Rights of Persons with Disabilities (CRPD)
   • Explicitly identifies rights aspects that are only implied in the CRPD
   • Broadens the understanding of rights under the CRPD/ goes further than the CRPD in protection of specific rights.

3. **Preamble**
   Preamble to the Protocol: expresses alarm at the maiming or killing of persons with albinism. The CRPD does not make any specific reference to persons with albinism.

4. **Article 1**
   Article 1 has a long list of definitions – much longer than the CRPD. It includes definitions of Deaf Culture, harmful practices, legal capacity, ritual killings, persons with disabilities (includes those with psychosocial disabilities), and reasonable accommodation. Unlike the CRPD, the Protocol does not include the threshold of disproportionate or undue burden in its definition of ‘reasonable accommodation’.

5. **Article 3**
   The Protocol has additional principles including reasonable accommodation, and the best interest of the child (the CRPD does not list these two as principles, however, they are recognized in the CRPD under articles 2 on definitions and 7 on children).

6. **Article 5**
   The Protocol splits non-discrimination and equality into two separate articles, unlike article 5 of the CRPD.

   Article 5(2)(c) – non-discrimination – the article explicitly recognizes that parents and spouses of people with disabilities also experience discrimination by association. The CRPD is not explicit about discrimination by association.
7. **Article 7**
The Protocol recognizes the right of persons with disabilities to hold documents of identity. This is pertinent for the exercise of legal capacity (Article 7(2)(f). The CRPD does not make this express connection in article 12 on legal capacity.

8. **Article 10**
On freedom from torture, the Protocol recognizes as torture or cruel, inhuman or degrading treatment, the forced sterilization and other invasive procedures done to persons with disabilities. The CRPD does not explicitly name these invasive procedures as torture in the text of the Convention.

9. **Article 11**
The Protocol has ‘harmful practices’ as a stand-alone article. This article is especially important in the protection of the rights of persons with albinism. The article forbids witchcraft, abandonment, concealment and ritual killings. The CRPD does not make reference to the need for specific protection of persons with albinism.

10. **Article 12**
On situations of risk, the article specifically requires that persons with disabilities are consulted and participate in planning, implementation and monitoring of pre and post conflict reconstruction and rehabilitation. The CRPD recognizes the right to participate as a general obligation under Article 4(3) rather than specifically under article 11 on situations of risk and humanitarian emergencies.

11. **Article 13(2)**
On access to justice, the Protocol requires States Parties to ensure that customary law processes are inclusive and not used to deny persons with disabilities access to justice. The article also places an obligation on States to ensure legal assistance, including legal aid to persons with disabilities. The CRPD is silent about these two elements.

12. **Article 14**
On the right to live in the community, the Protocol provides for the right of persons who require intensive support to have access to respite care services/caregivers. The CRPD does not expressly identify respite care under article 19 on living independently in the community.

In addition, the right is framed as the right to live in the community, rather than as is in the CRPD ‘Living independently and being included in the community’. This reflects the fact that while the underlying values of the independent living movement (choice, autonomy etc) are central to persons with disabilities in Africa, the emphasis is on the ‘living in the community’ aspect.
The Protocol requires that Community Based Rehabilitation (CBR) should be provided in ways that enhance the inclusion of persons with disabilities in the community (i.e. should not be a medical model approach of ‘fixing’ the person). Article 19 of the CRPD does not directly address this issue.

The Protocol requires that community living centres organized or established by persons with disabilities be supported to provide training, peer support, etc. Article 19 of the CRPD does not directly address this issue.

13. **Article 15**  
On accessibility, the Protocol is not as detailed as the CRPD. It misses the following points that are well addressed in the CRPD:

- Ensuring that private entities that offer facilities and services that are open to the public take into account accessibility needs of persons with disabilities
- State obligation to provide training on accessibility issues facing persons with disabilities
- State obligation to promote access for persons with disabilities to new information and communication technologies and systems, including the internet.

14. **Article 16**  
On education, the Protocol provides that the education of persons with disabilities shall be directed to the preservation of positive African values. The CRPD does not, of course, mention this element.

The Protocol requires that States Parties ensure that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation measures and certification regardless of disability. Article 24 of the CRPD on education does not directly address this issue.

Article 16 of the Protocol is not as detailed as in the CRPD and misses out on the following points with regard to the right to education:

- Mentions facilitating sign language but not Braille, alternative script, augmentative and alternative means, modes and formats of communication, orientation and mobility, peer support and mentoring.
- The Protocol does not mention raising disability awareness among education professionals.

15. **Article 17**  
The Protocol requires the provision of pain relieving drugs, something that the CRPD does not explicitly require.
The Protocol requires States Parties to ensure that health services are provided in accessible formats and effective communication between service providers and persons with disabilities. The protection is also explicit about the obligations of States Parties to provide support for decision-making in health care issues. The Protocol is explicit that health campaigns should not stigmatise persons with disabilities. Article 25 of the CRPD on health does not directly address these issues.

The Protocol also extends its coverage to both formal and informal health practitioners. In this regard, it states that informal health care services should not violate the rights of persons with disabilities. This is not expressly addressed in the CRPD.

The Protocol, however, misses out on the following point:

- Unlike the CRPD, Article 17 of the Protocol on health does not expressly require the awareness raising, among health care professionals, of the human rights, dignity, autonomy and needs of persons with disabilities through training and ethics in public and private care.

16. Article 18

On habilitation and rehabilitation, the Protocol is customized to the African context in that it encourages the design and production of assistive devices adapted to local conditions.

The Protocol, however, misses out on the following points:

- The CRPD requires that habilitation and rehabilitation should begin at the earliest possible stage, and be based on multi-disciplinary assessment of needs and strengths
- The CRPD requires that habilitation and rehabilitation should be voluntary.

17. Article 19

On work and employment, the Protocol is explicit about the need for reserving and enforcing minimum job-quotas for employees with disabilities in the public sector (unlike article 27 of the CRPD on work and employment).

The Protocol also states explicitly that the principle of equal work for equal pay should not undermine the right of persons with disabilities to work (unlike article 27 of the CRPD on work and employment).

The Protocol, however, misses out on the following point:
• The CRPD refers to work in the *open* labour market. The Protocol does not may this reference to ‘open’, which may be seen as tacitly approving of sheltered workshops.

18. **Article 20**
On the right to an adequate standard of living, the Protocol largely echoes the CRPD, but misses out on the following points:

• Unlike article 28(2)(d) of the CRPD, the Protocol does not mandate access to public housing programmes, which is unfortunate, because African States are increasingly moving towards public housing e.g slum upgrading projects.
• Unlike article 28(2)(b) of the CRPD, the Protocol does not specifically mention women and girls as a specific group requiring inclusion in social protection programmes.

19. **Article 21**
On political participation, the Protocol expressly calls for amending laws that restrict the right to vote, stand for or remain in office. The CRPD generally recommends amendment of laws under Article 4 on General Obligations rather than specifically under Article 29 on participation in political and public life.

20. **Article 22**
On self-representation, the Protocol addresses this issue as a standalone clause. In this regard, the Protocol recognizes the critical role that persons with disabilities play in effectively advocating for their rights and inclusion in society.

The Protocol also recognizes the right of persons with disabilities to enhance capacities and skills for effectively engaging on issues of disability, including through direct collaboration with organisations of persons with disabilities and academic institutions.

There is no stand-alone clause in the CRPD on self-representation.

21. **Article 24**
On access to information, the Protocol largely echoes the CRPD, but misses out on the following point:

• The Protocol does not mention the internet explicitly unlike the CRPD which requires those who provide information through the internet, including private entities and mass media, to make their services accessible to persons with disabilities.
22. **Article 25**
On family, the Protocol largely echoes the CRPD, but misses out on the following point:

- Unlike the CRPD, the Protocol is not explicit about the need for states to render appropriate assistance to persons with disabilities in the performance of child rearing responsibilities.

23. **Article 27**
On women and girls with disabilities, the Protocol is pretty comprehensive with 12 sub-clauses as compared to the 2 sub-clauses in the CRPD. In terms of value addition on this article, the Protocol requires that women with disabilities:

- Be included in the mainstream women’s organization and programs
- Access income generating activities
- Be protected against forced sterilization.

24. **Article 28**
On children, at Article 28(4)(d), the Protocol requires that children with disabilities be registered immediately after birth. The Protocol also expressly requires the specific protection of children with disabilities who require intensive support. It also introduces the necessity to foster in all children an attitude of respect for the rights of persons with disabilities. Article 7 of the CRPD on children with disabilities does not directly address these issues.

25. **Article 29**
On youth with disabilities, this provision is a novel introduction; the CRPD does not have an article on youth with disabilities. The article addresses *inter alia* inclusive education, and requires the inclusion of youth with disabilities in mainstream youth organisations.

26. **Article 30**
On older persons with disabilities, this provision is a novel introduction; the CRPD does not have an article on older persons with disabilities. In this regard, the Protocol provides for the right of older persons to social protection programmes, support to exercise legal capacity, services in the community and protection from violence on accusation of witchcraft.

27. **Article 31**
On duties of persons with disabilities, unlike the CRPD, the Protocol reiterates the provision on duties as per the African Charter on Human and Peoples’ Rights. In addition, the Protocol provides that persons with disabilities should be provided with reasonable accommodation in the performance of their duties.
28. **Article 33**
The Protocol requires the setting up of AU Commission Advisory Council on Disability to facilitate implementation.

29. **Article 36**
This article is of great importance, especially in the light of some of the criticisms above (where the Protocol seems to offer a lower level of protection than the CRPD). The Protocol clarifies that:

   No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of Persons with Disabilities in Africa.

30. **Conclusion**
Based on the above additional gains and omissions, KNCHR supports the ratification of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa without any reservations.