



MDAC Written Submission to the Secretariat of the African Decade of Persons with Disabilities for the Development of the African Union Continental Disability Strategy (2010-2019)

31 August 2011

Introduction

1. This submission is a response to the invitation by the Secretariat of the African Decade of Persons with Disabilities (SADPD) to disability stakeholders to input into the development of an African Union (AU) Continental Disability Strategy (CDS) for the second African Decade of Persons with disabilities (2010-2019). This submission contributes to the round table hosted by the SADPD from 31 August 2011 through 2 September 2011 in Johannesburg, South Africa, to facilitate the development of the AU CDS. It is our understanding that after this session the draft CDS will be submitted to the relevant ministerial sessions and adopted by the African Heads of States.

Interest and Experience of MDAC

2. The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. Our vision is a world of equality – where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realized for all persons without discrimination of any form. MDAC has been operating since 2002 and has its headquarters in Budapest, Hungary. It carries out strategic litigation, research and monitoring, advocacy and capacity-building in pursuit of three objectives which are to create progressive jurisprudence, instigate law reform, and empower people with disabilities. MDAC has special consultative status at ECOSOC and participatory status at the Council of Europe.
3. MDAC was involved in the negotiations leading to the UN Convention on the Rights of Persons with Disabilities (CRPD) and the bulk of its work is in central and eastern Europe. MDAC is managing several projects on CRPD implementation, including researching how the right to legal capacity is being implemented in Kenya. MDAC is starting researching the rights of girls and women with psycho-social (mental health) disabilities in South Africa, and is starting to research the interface between traditional healing, mental health and human rights in Zambia. MDAC is particularly concerned about the extent to which the CDS will focus on the implementation of CRPD and other African human rights instruments.

Summary of the Continental Plan of Action for the African Decade of Persons with Disabilities (1999 – 2009)

4. Following a recommendation made by the Labour and Social Affairs Commission of the Organisation of African Unity (OAU), the Assembly of Heads of States and Governments of the OAU proclaimed 1999-2009 as the African Decade of Disabled Persons. The Continental Plan of Action (CPOA) is the outcome of the Pan-African Conference on the African Decade of Persons with Disabilities that took place in Ethiopia in 2002. It serves as a set of guidelines to member states in formulating and implementing national disability strategies. The goal of the decade is the full participation, equality and empowerment of

people with disabilities in Africa, and the action plan is to be implemented jointly by various partners.¹ The decade calls upon OAU member States to study the situation of persons with disabilities, with a view of formulating measures favouring equalisation of opportunities, full participation and the independence of person with disabilities in society.²

5. The CPOA has 12 main objectives,³ with specific State measures for each. The African Rehabilitation Institute (ARI) is to assist governments and DPOs at continental, regional and national levels to implement the plan of action.⁴ In 2004 the SADPD was created as a technical agency to facilitate the implementation of the AU CPOA. The SADPD has noted that the evaluation of the decade conducted by the AU in 2010 recorded successes and gaps in fulfilling the objectives. Alongside this, 26 African States have ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and 14 have ratified the Optional Protocol to the CRPD which allows for individual complaints to the treaty body.

The African Decade of Persons with Disabilities (2010- 2019)

6. In 2008 the AU extended the African Decade of Persons with Disabilities to 2019.⁵ In addition, the AU commits to implement the priority strategies under the key thematic social issues spelt out in the Social Policy Frameworks for Africa, through empowering and providing persons with disabilities equal opportunities safeguarding their rights, enlisting their participation and mainstreaming them in all development programmes.⁶
7. MDAC applauds the AU department of Social Development for requesting the SADPD to lead and provide inputs into the development of a new AU CDS for the second African Decade of Persons with Disabilities. This allows for the participation of persons with disabilities, highlighted in Article 4(3) of the CRPD which places an obligation on the State to closely consult and actively involve people with disabilities in law and policy development and implementation.

¹ Continental Plan of Action for the African Decade of Persons with Disabilities 1999-2009 Para.18 (implementing partners are government line ministries and departments, disabled people’s organisations, the OAU/AU and its specialize agencies as well as the Regional Economic Communities (RECs), International Organisations including the United Nations and its specialized agencies, social partners, non-governmental organisations, religious organisations, other civil society organisations and individuals committed to the full participation, equality and empowered of people with disabilities in Africa.

² Ibid, para. 17.

³ The objectives are; a) formulating and implementing national policies programmes and legislation to promote the full and equal participations of persons with disabilities, b) promote participation of persons with disabilities in the process of economic and social development, c) promote self-representation of persons with disabilities in all public decision-making structures, d) enhance support services for persons with disabilities, e) promote special measures for children, youth, women and elderly persons with disabilities, f) ensure and improve access to education, rehabilitation, training, employment, sports, the cultural and physical environment, g) to prevent causes of disabilities, h) promote and protect disability rights as human rights, i) support the development of and strengthening Disabled Peoples Organisation (DPO), j) to mobilize resources, k) provide mechanisms for coordination, monitoring and evaluation of the activities of the African Decade of Persons with Disabilities, l) advocating and raising disability awareness in general and awareness of the African Decade of Persons with Disabilities in particular.

⁴ African Rehabilitation Institute is a specialised agency of the OAU dealing with disability issues in Africa.

⁵ See resolution 5(x) & resolution 6 of the Windhoek Declaration on Social Development 31 October 2008.

⁶ The Social Policy Framework was adopted by African Union to guide member states in their implementation of social protection programmes for safety nets and empowerment of poor and marginalised communities.

8. The SADPD has identified that some of the key principles of the CDS will include ownership, leadership and shared responsibility between AU Commission, AU governments, civil society organisations – in particular disabled people’s organisations. The rationale for the CDS includes the fragmented and uncoordinated disability policy formulation and strategy development in most African countries, the lack of know-how in governments on how to promote social inclusion of persons with disabilities. In addition, the non-governmental sector lacks sufficient skills, knowledge and financial capacity to represent their rights and participate in society on an equal basis with others. The SADPD has also identified the need to align Africa’s disability strategy to the Millennium Development Goals, to promote and implement AU policy and other African policy mechanisms,⁷ and to clarify roles of implementing partners, prioritising disability work and mainstreaming same within the AU structures and bodies.⁸ The SADPD makes the crucial point that the CRPD can be used to harmonise the process of developing the new CDS.

MDAC’s input to the development of the New Africa Continental Disability Strategy

9. MDAC encourages the AU to adopt a new CDS considering that persons with disabilities in general – especially persons with psycho-social disabilities and persons with intellectual disabilities – continue to experience different forms of neglects and human rights abuses in most parts of Africa. Human rights violations persist. In particular, MDAC recommends:
- a. **Be informed by theory and practice.** The new CDS should be evidence-based, and not consist of rhetoric or emotional reactions to perceived needs. It should be informed by gaps identified by the AU 2010 evaluation of the last decade. Further studies should be commissioned to identify key challenges in meeting unmet objectives in the previous decade. In identifying the unmet needs, a wide variety of stakeholders should be consulted – using as a starting point the key continental organisations: the Pan-African Network of Users and Survivors of Psychiatry (PANUSP) for people with psycho-social disabilities, and Inclusion Africa for people with intellectual disabilities. There are very many domestic organisations in various countries whose input should be actively sought.
 - b. **Make human rights the number one priority.** The AU should place a higher priority to human rights in the CDS. Human rights only featured as the eighth objective of CPOA of the previous decade, and one of the measures that states were to take to realise this was to develop an African Convention on the Rights of Persons with Disabilities.⁹ The new CDS should formally recognise and endorse the CRPD, and governments should in the CDS commit to ratify and effectively implement it.¹⁰ The AU should see the CRPD as the global minimum, to complement already existing human right instruments in Africa that offer some protection to persons with disabilities.¹¹

⁷ Such as the different African Commissions instruments, AU African Women’s Decade (AWD) from 2010-2020, AU Social Policy Framework (SPF), AU and Peace and Security Strategies, EU African strategy.

⁸ Bodies such as the African Rehabilitation Institute(ARI), AU Department of Social Development, Peace and Security, EU-Africa Team, Human Resources and Secretariat for Decade of Women, Pan African Parliament, the Commission for Human and Peoples’ Rights and Working Groups of Older Persons and Persons with Disabilities, and Regional Economic Commission (REC).

⁹ See the Continental Plan of Action 1999-2009 objective 8, Para. 33(a).

¹⁰ See MDAC written comments on the Draft African Disability Protocol.

¹¹ African Charter of Human and Peoples’ Rights, Protocol to the African Charter on the Rights of Women, African Charter on the Rights and Welfare of the Child and the African Youth Charter

- c. **AU possible ratification of the CRPD.** The AU should also investigate whether it has the competencies to accede to the CRPD itself, as a “regional integration organisation” under Article 44 of the CRPD. During the CRPD Committee session on 4 October 2010, the Director of the African Bureau of the OHCHR made a statement that the AU should ratify the CRPD and commend programmes for the second decade.¹² CDS should encourage constructive dialogue among African States for AU to ratify the CRPD.
- d. **Prevent ill-treatment.** The CDS must tackle tough issues. One of these is combating exploitation, violence, abuse and forms of ill-treatment of persons with disabilities, in particular, persons with psycho-social disabilities and persons with intellectual disabilities. Such abuses take place in government-run hospitals and other medical/care facilities, in traditional healing camps, in churches, in the community, and in the home. Some of the forms of ill-treatment that has been widely reported include chaining, beating, fasting, tying to a tree without shade or mosquito nets etc. These grave abuses touch on CRPD rights such as the right to community living under Article 19, freedom from torture and other forms of ill-treatment and punishment under Article 15, and the right to be free from violence, exploitation and abuse under Article 16.
- e. **Inclusive education.** The CDS should come out strongly and clearly to support the right (established clearly in Article 24 of the CRPD) to inclusive education for all children. The wording of the CPOA of the previous decade needs to be abandoned: it talks about “integrated” education (meaning dumping children with disabilities into mainstream schools without giving them tailored-support – a method which inevitably fails) and allows for special education (where children with disabilities are grouped together and where educational attainment outcomes are usually much lower).¹³ The CRPD recognises the resource-related challenges that States may face in implementing the right to inclusive education, the importance of the right and its multiplier effects – including decreasing stigma and discrimination, increasing community cohesion, facilitating employment opportunities, developing economic capability of nations – warrant firm wording in the new AU CDS.
- f. **Secure resources and encourage international cooperation.** The CPOA of the previous decade did not secure financial commitments from African governments to support its implementation. This made it impossible to implement any of the decade’s programmes in its first two years.¹⁴ CDS should address the issue of resources by ensuring that African States set up special funds to facilitate the implementation of activities of the CDS. CDS should encourage states to engage in international cooperation as provided under Article 32 of the CRPD. An example is exploring how the CDS can benefit from the current AU/EU strategy that has a plan of action from 2011-2015 aimed at enhancing development of the continent and has disability as its sixth priority action.

¹² Statement of Ibrahim Wani, Director African Bureau, OHCHR, during the CRPD Committee Sessions on the 4 October 2010, Page 2 of the minutes of the session.

¹³ See the objective 6 of the CPOA Para. 29 (a) & (b)

¹⁴ See Para 15 of the CPOA.

- g. **Right to legal capacity.** The right of persons with disabilities to make decisions regarding their affairs is being questioned, denied or restricted either by law or customary practices in most if not all African countries. Therefore, good or bad decisions are being made by others on behalf of persons with disabilities - especially persons with psycho-social disabilities and persons with intellectual disabilities - whether they like the decisions or not. CDS should also ensure that persons with disabilities enjoy and exercise the right to legal capacity on an equal basis with others and where this right cannot be exercised independently, access to required support should be provided as enshrined in Article 12 of the CRPD. The implementation of the right of persons with disabilities to make decisions for themselves has been a challenge not only in Africa, so the CDS should prioritise this right.
 - h. **Right to political participation.** Reports from different countries in Africa show that electoral processes exclude people with disabilities. While persons with physical and sensory disabilities face enormous challenges accessing democratic sphere, people with psycho-social disabilities and persons with intellectual disabilities are actually excluded by statute from casting their vote, further exacerbating their political visibility. The CDS should ensure the right to vote and to hold public offices for all persons with disabilities as guaranteed under Article 29 of the CRPD.
 - i. **Access to justice.** Despite the countless human rights violations which persons with disabilities face, people with disabilities face enormous obstacles in seeking redress. In a similar vein to Article 13 of the CRPD, the CDS should ensure that access to justice is recognised as a right, and that State duties are elaborated on accessibility. Therefore, CDS should encourage AU governments to secure individual complaints for persons with disabilities before African human rights protection mechanisms by allowing for direct access to these mechanisms.
10. The above suggestions should be read as such, and not as a priority list where some human rights are more important than others. African governments have duties under the CRPD to implement the full range of human rights, and MDAC hopes that any Africa-specific document is underpinned by CRPD principles, obligations and rights.

Eyong Louis Mbuen, Legal Officer
Mental Disability Advocacy Center (MDAC).
Tel: +3614132730,
Fax: +3614132739,
Email: embuen@mdac.info
Website: www.mdac.info