

# CHAPTER 3

## CONFLICTING DISCOURSES ON CONCEPTUALISING CHILDREN WITH DISABILITIES IN AFRICA

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### Summary

*Despite the wide ratification of the United Nations Convention on the Rights of Persons with Disabilities, children with disabilities are still marginalised and their status as rights holders not fully acknowledged in many parts of Africa. In response to the call for research to focus on a distinct African conceptualisation of disability, an exploratory desk study was conducted on the disability discourse on children with disabilities in Africa. Though the authors uncovered positive African cultural and legislative narratives of disability, the dehumanising discourse identified, was more pronounced. The authors suggest that any strategy to improve the plight of children with disabilities in Africa will have to take into account and not underestimate the dehumanising discourse. The power of discourse should be used to emphasise the positive African cultural and legislative narratives of disability to counter the dehumanising discourse.*

### 1 Introduction

The Kigali Declaration, adopted in 2003 during the first African Union Ministerial Conference on Human Rights in Africa, laments the absence of sufficient protection of children's rights and the plight of vulnerable groups

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including persons with disabilities in Africa.<sup>1</sup> Almost a decade later, the situation has not improved. Koszela records his personal experiences during 2011 of the severe stigmatisation and exclusion that people with disabilities and in particular children, experienced in Patriensa, Ghana.<sup>2</sup> Plan International Norway et al conducted a study in Uganda (Kamuli district) and Malawi (Mulanje and Kasungu districts) in 2015 and concluded that the fact that children with disabilities are regarded as easy targets of violence can be attributed to how they are perceived and in particular to the perception that they are useless.<sup>3</sup> The African Committee of Experts on the Rights and Welfare of the Child issued a press release to commemorate Children's Day 2016 and identified violence against children with disabilities as one of the continued challenges Africa faces.<sup>4</sup> In 2018, Njelesani et al conducted a study on violence against children with disabilities in four West-African countries, namely Guinea, Niger, Sierra Leone and Togo. They positively linked stigma, traditional beliefs and the perception that children with disabilities are worthless to the violence perpetrated against these children.<sup>5</sup>

It is evident that the contention of the National Disability Authority that the social construct of disability is a barrier to social inclusion because it supports the denial of human rights and resistance to change is correct.<sup>6</sup> There is a need to reconceptualise people with disabilities in Africa. This need was indeed identified in a study conducted in nine Southern African countries under the auspices of the Open Society Initiative for Southern Africa, the Open Society Foundations' Disability Rights Initiative, and the Open Society Foundation for South Africa.<sup>7</sup>

Concepts or ideas are formed and reinforced by means of discourse<sup>8</sup> with the result that the disability discourse will empower or disempower, include or exclude.<sup>9</sup> One can therefore agree with the Foucauldian notion

1 African Commission on Human and Peoples' Rights *Kigali Declaration* adopted at Kigali, Rwanda on 8 May 2003, 19 <https://www.achpr.org/legalinstruments/detail?id=39> (accessed 24 October 2019).

2 K Koszela 'The stigmatization of disabilities in Africa and the developmental effects' (2013) 10-11 [http://digitalcollections.sit.edu/isp\\_collection/1639](http://digitalcollections.sit.edu/isp_collection/1639) (accessed 24 October 2019).

3 Plan International Norway et al *Protect us! Inclusion of children with disabilities in child protection* (2016) 51 <https://plan-international.org/protect-us> (accessed 24 October 2019).

4 African Committee of Experts on the Rights and Welfare of the Child 'Conflict and crisis in Africa: Protecting all children's rights' Press Release 16 June 2016 [https://au.int/sites/default/files/pressreleases/30785-pr-dac\\_2016\\_acerwc\\_press\\_statement\\_.pdf](https://au.int/sites/default/files/pressreleases/30785-pr-dac_2016_acerwc_press_statement_.pdf) (accessed 24 October 2019).

5 J Njelesani et al 'From the day they are born: A qualitative study exploring violence against children with disabilities in West Africa' (2018) 18 *BMC Public Health* 156.

6 National Disability Authority *Literature review on attitudes towards disability* (2006) 27 [https://www.ucd.ie/t4cms/0048-01%20NDA\\_public\\_attitudes\\_disability\\_2006\\_literature\\_review.pdf](https://www.ucd.ie/t4cms/0048-01%20NDA_public_attitudes_disability_2006_literature_review.pdf) (accessed 24 October 2019).

7 H Kotzé *Status of disability rights in Southern Africa* (2012) 22 <http://www.safod.net/library/files/m26904.pdf> (accessed 24 October 2019).

8 EJ Allan *Policy discourses, gender, and education: Constructing women's status* (2008) 6.

9 G Deleuze *Foucault* (1988) 47.

of discourse which stresses the role of discourse in the establishment, maintenance, extension and resistance or mobilisation of power relations.<sup>10</sup> Discourse can legitimise a dominant social ideology and support unfair discriminatory practices against children with disabilities. Or it can play an important role in resisting disempowering discourses, such as the dehumanising-disability discourse, and replace them with empowering and equalising discourses.<sup>11</sup> Cobbinah argues that language, names, tags and labels carry meaning that reinforces behaviour.<sup>12</sup> The nature of the response that a name triggers relates to the stereotypical meaning attached to such a name.

The authors conducted an exploratory desk study on the disability discourse on children with disabilities in Africa to determine how these children are conceptualised. They worked deductively by basing explanations and conclusions on a few examples.<sup>13</sup> They identified a pronounced dehumanising discourse, but also initiatives to promote positive African cultural and legislative narratives of disability.

One initiative to change peoples' conceptualisation of people with disabilities is the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018 (African Disability Protocol).<sup>14</sup> The fact that the African Disability Protocol is adopted as an African initiative indicates the presence of a regional awareness of the need to reconceptualise disability in Africa and that there is a need for discourse that will counter discourse that supports the stigmatisation and exclusion of people with disabilities and in particular children with disabilities. The African Disability Protocol was approved for adoption by Heads of State of the African Union on 31 January 2018, but is subject to the ratification by 15 countries to come into force and that has not been the case yet. In the light of the power that discourse holds, the authors hope this article will contribute to the reconceptualisation of children with disabilities in Africa in line with the positive discourse supported in the African Disability Protocol.

The authors organised the article in four sections. In the first, before reporting on the exploratory desk study that they conducted on the discourse on children with disabilities in Africa, they explain when a

10 F Armstrong *Spaced out: Policy, difference and the challenge of inclusive education* (2003) 4; R Doherty 'Critically framing education policy: Foucault, discourse and governmentality' in MA Peters & T Besley (eds) *Why Foucault? New directions in educational research* (2007) 195.

11 EH Tenorio 'Critical discourse analysis: An overview' (2011) 10 *Nordic Journal of English Studies* 183 184.

12 ST Cobbinah 'Labelling and framing disability: A content analysis of newspapers in Uganda' unpublished LLM dissertation, University of Pretoria, 2013 19.

13 Tenorio (n 11 above) 189.

14 See <http://blindsa.org.za/2018/02/13/protocol-african-charter-human-peoples-rights-rights-persons-disabilities-africa/> (accessed 24 October 2019). The Protocol has thus far been signed by five countries. No country has ratified the Protocol.

discourse will be regarded as dehumanising. Thereafter, they present the dehumanising discourse in terms of three main strands that emerged, namely: the discourse portraying children with disabilities as non-humans; as unworthy of social interactions; and as having 'compromised' humanness. In the second section, they briefly consider the positive African cultural narratives of disability. In the third section, the authors reflect on legislative narratives countering the dehumanising discourse before drawing conclusions and making recommendations to conclude the article.

## 2 Dehumanising disability discourse

In the medical models, the emphasis is on protection and welfare and people with disabilities are depicted as sick and in need of being cured. According to this model, a disability is something that is wrong with the child and the identity of a person with disabilities is described primarily through his or her condition.<sup>15</sup> In the social models, on the other hand, the emphasis is on the barriers that prevent the child with disabilities from being included in society. The AbleChild Africa identifies three possible barriers, namely, environmental, institutional and attitudinal which 'can interact in any combination, with an individual's impairment to prevent them from participating equally in everyday activities'.<sup>16</sup> According to Stone-MacDonald and Butera<sup>17</sup> in terms of the social model of disability, disability is but one characteristic of an individual that – depending on the individual's social interactions – becomes either more salient or more pronounced.

The human-rights variant of the social model considers disability as the consequence of social organisation and the relationship of the individual to society and aims at the provision of political and social entitlements through reformulation of economic, social and political policy.<sup>18</sup> Reformulation of political policy was, inter alia, done through the adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).<sup>19</sup> The UNCRPD<sup>20</sup> defines 'a person with disabilities' in terms of the social model to include people:

15 E Barton 'Discourses of disability in the *Digest*' (2001) 21 *JAC* 555; EM Sammon & G Burchell *Family care for children with disabilities: Practical guidance for Frontline Workers in low- and middle-income countries* (2018) 11.

16 AbleChildAfrica 2013 *AbleChildAfrica Strategic Plan 2013-2016* 9 <http://ablechildafrica.org/wp-content/uploads/2010/02/AbleChildAfrica-Strategy-2013-2016-FINAL.pdf> (accessed 24 October 2019).

17 A Stone-MacDonald & GD Butera 'Cultural beliefs and attitudes about disability in East Africa' (2014) 8 *Review of Disability Studies: An International Journal* 63-64.

18 Sammon & Burchell (n 15 above) 11.

19 Preamble of the Convention on the Rights of Persons with Disabilities (UNCRPD).

20 Art 1.

[W]ho have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The major difference between the dehumanising discourse and the human-rights disability discourse is the legal status afforded to people with disabilities. The human-rights discourse is based on the recognition of people with disabilities' individual autonomy, their independence, and ability and freedom to make their own choices (UN 2006, Preamble). Although the human-rights discourse, as a variant of the social model, is making progress in Africa, the disempowering, dehumanising discourse is still deafening. There is still a strong tendency to portray 'the person with rights ... to be fully rational, able-bodied, able-minded, and psychologically an adult',<sup>21</sup> thereby implying that people (and especially children) with disabilities cannot be rights holders. Children in general are marginalised because, despite the growing emphasis on children's rights, they are still regarded as less human, less equal and less deserving of having their rights recognised. Children with disabilities are thus doubly marginalised: first, as children and, second, as persons with disabilities who are defined by what they lack rather than by what they have.<sup>22</sup>

A dehumanising discourse is a discourse that fails to acknowledge a person's humanness, that stigmatises, excludes or dissociates, immobilises and silences, devaluates and invalidates by stripping a person of any self-worth.<sup>23</sup> Discourse has the power to perpetuate the plight of persons with disabilities.<sup>24</sup> As far back as 1963, Goffman observed that: 'By definition, of course, we believe the person with a stigma is not quite human.'<sup>25</sup> A person who is perceived as not quite human will not be regarded as someone with human dignity and, consequently, he/she will be treated in a manner that is inconsistent with his/her intrinsic worth.<sup>26</sup> If a person is dehumanised, he or she is viewed as someone who falls outside the scope of morality and justice, which makes it easy for others to regard any harm done to such a person as morally justified and warranted.<sup>27</sup>

21 MM O Donovan 'Feminism, disability, and evolutionary psychology: What is missing?' (2013) 33 *Disabilities Studies Quarterly* <http://dsq-sds.org/article/view/3872/3403> (accessed 24 October 2019).

22 UNICEF *The state of the world's children: Children with disabilities* (2013) 2.

23 M Baffoe 'Stigma, discrimination and marginalization: Gateways to oppression of persons with disabilities in Ghana, West Africa' (2013) 3 *Journal of Educational and Social Research* 187 193-194; Barton (n 15 above) 558; B Hughes 'Civilising modernity and the ontological invalidation of disabled people' in D Goodley B Hughes & L Davis (eds) *Disability and social theory: New developments and directions* (2012) 17-32.

24 R Slee 'Education and the politics of recognition: Inclusive education – An Australian snapshot' in D Mitchell (ed) *Contextualizing inclusive education: Evaluating old and new international perspectives* (2005) 158.

25 E Goffman *Stigma: Notes on the management of spoiled identity* (1963).

26 C Sanger 'Decisional dignity: Teenage abortion, bypass hearings, and the misuse of law' (2009) 18 *Columbia Journal of Gender and Law* 415.

27 M Maiese *Dehumanization* (2003) <http://www.beyondintractability.org/essay/dehumanization> (accessed 24 October 2019).

Three main strands emerged in the dehumanising-disability discourse, namely discourse portraying children with disabilities as non-humans; as unworthy of social interactions; and as having ‘compromised’ humanness which makes them worthless.

## 2.1 Children with disabilities portrayed as non-humans

According to Stone-MacDonald and Butera, it is common in East Africa to use terms from the *ki-vi* noun class, which is reserved for inanimate, non-human objects, to denominate people with disabilities.<sup>28</sup> In some Namibian villages, children with disabilities are ‘made into objects of superstitious fear’ in that children are warned that if they misbehave, a person with a disability will come and get them. Children are, in other words, taught from a very early age that it is morally acceptable – and even preferable – to distance themselves from and not to have any compassion for persons with disabilities.<sup>29</sup>

Children with disabilities are either elevated to a superhuman standing or relegated to a sub-human status. A very prominent dehumanising discourse is found in the perception that people with disabilities are possessed by evil spirits or have inherited demonic powers.<sup>30</sup> According to Njelesani et al children who are blind or suffer from polio are branded as ‘devils’ in certain communities in Sierra Leone.<sup>31</sup> UNICEF Sierra Leone mentions the case of Alpha, a street child with a disability from Kambia in Sierra Leone, whose mother abandoned him because herbalists couldn’t cure him of the ‘debul’ (devil).<sup>32</sup> There are accounts from West African communities of children with autism who were thrown into a bush because they were considered ‘possessed’ and their behaviour was deemed ‘demonic’.<sup>33</sup> A community member, in the Sierra Leone-part of the study conducted by Njelesani et al, admitted that, in his community it is custom to, when the community has identified a child with disabilities as a witch, take the child into the bush in the middle of the night, kill her and leave her there. The community is then told: ‘The witch has returned where it came from.’<sup>34</sup>

28 Stone-MacDonald & Butera (n 17 above) 70.

29 Kotzé (n 7 above) 22.

30 D Kaplan *The definition of disability* (2005) 1-2 <http://www.accessiblesociety.org/topics/demographics-identity/dkaplanpaper.htm> (accessed 24 October 2019).

31 Njelesani et al (n 5 above) 153.

32 UNICEF Sierra Leone *The out-of-school children of Sierra Leone* (2008) 42 [http://www.unicef.org/wcaro/wcaro\\_SL\\_Out\\_of\\_school\\_aug\\_09.pdf](http://www.unicef.org/wcaro/wcaro_SL_Out_of_school_aug_09.pdf) (accessed 10 August 2018).

33 World Health Organisation & Mental Health and Poverty Project *Mental health and development: Targeting people with mental health conditions as a vulnerable group* (2010) 9 [https://www.who.int/mental\\_health/policy/mhtargeting/en/](https://www.who.int/mental_health/policy/mhtargeting/en/) (accessed 24 October 2019).

34 Njelesani et al (n 5 above) 156.

Stobart documented cases of children who were accused of witchcraft and subjected to ‘exorcism’ or ‘deliverance’ rituals which involved beatings, holding a red hot blade, forced ingestion of potentially fatal substances and incisions to release ‘evil forces’.<sup>35</sup> In Sierra Leone, for example, persons with disabilities are forced to drink kerosene.<sup>36</sup> In 2013 Cobbinah found the belief that disability is a curse was still quite widespread in Uganda.<sup>37</sup> The practice to consult traditional spiritual mediums who are believed to have supernatural powers to keep demons at bay and to bring about healing from ‘disability’ is common in rural Ethiopia.<sup>38</sup> In some parts of Ghana, children with psychosocial disabilities are subject to abuse in prayer camps where they are chained to trees for hours, denied food, and exposed to the sun as part of their ‘healing’ process.<sup>39</sup> Odoom and Van Weelden reveal that in Northern Ghana two reasons are proffered why children with intellectual disabilities are referred to as *kinkirigo* (spirit children). These children are either seen as ‘not meant for this world’ or as being sent by the spirits to bring harm to a family.<sup>40</sup>

Accusations of witchcraft are used to explain the perceived abnormality and unnaturalness of disability.<sup>41</sup> In the Central African Republic and neighbouring countries, children (mostly boys) with physical deformities or conditions such as autism, are accused of witchcraft, subjected to abuse and driven out of their homes and communities. Molina reports the case of a ten-year-old girl with a hunchback living in the Democratic Republic of Congo who was abandoned by her mother in the marketplace after her father died. Her witchcraft was regarded as the cause of her father’s death and her ‘hump’ was taken as proof of her witchcraft.<sup>42</sup> In the Central African Republic, a disabled child accused of witchcraft can be executed because ‘witchcraft’ is a criminal offence under the Penal Code punishable by execution in cases where the ‘witch’ is accused of

- 35 E Stobart ‘Child abuse linked to accusations of “possession” and “witchcraft”’ in JS La Fontaine *The devil’s children: From spirit possession to witchcraft; new allegations that affect children* (2009) 21.
- 36 United Nations Department of Economic and Social Affairs (DESA) *Toolkit on disability for Africa: Culture, beliefs and disability* (2016) 11 <https://www.un.org/development/desa/dspd/2016/11/toolkit-on-disability-for-africa-2/#English> (accessed 24 October 2019).
- 37 Cobbinah (n 12 above) 37.
- 38 T Tirusew *Disability in Ethiopia: Issues, insights and implications* (2005) 37.
- 39 Human Rights Watch ‘“Like a death sentence”: Abuses against persons with mental disabilities in Ghana’ (2012) 59 <http://www.hrw.org/sites/default/files/reports/ghana1012webwcover.pdf> (accessed 24 October 2019).
- 40 AJ Odoom & K van Weelden (ed) *Report on the level of stigmatization, discrimination and exclusion of persons with intellectual disability and their families in Ghana* (2011) 1.
- 41 A Cimpric *Children accused of witchcraft: An anthropological study of contemporary practices in Africa* (2010) 2, 17 [http://www.unicef.org/wcaro/wcaro\\_children-accused-of-witchcraft-in-Africa.pdf](http://www.unicef.org/wcaro/wcaro_children-accused-of-witchcraft-in-Africa.pdf) (accessed 8 October 2019); Njelesani et al (n 5 above) 156.
- 42 JA Molina *The invention of child witches in the Democratic Republic of Congo: Social cleansing, religious commerce and the difficulties of being a parent in an urban culture. Summary of the research and experiences of Save the Children’s 2003-2005 programme* (2005) 20.

homicide.<sup>43</sup> In its 2010 Concluding Observations to Nigeria, the CRC Committee expressed its 'utmost concern at reports of arbitrary killings of children during the course of activities designed to extract a confession of witchcraft or resulting from exorcism ceremonies'.<sup>44</sup>

Several child participants in Baffoe's study on the stigmatisation of people with disabilities in Ghana referred to the fact that their humanness is vilified: 'People don't regard us as human beings', 'They say all kinds of dirty things about me as if I am not a human being' and 'Why can people not accept us for who we are as human beings?'.<sup>45</sup> A 12-year-old boy from Guinea with a physical impairment explained that his father took him out of school because the other children called him 'half a person' and 'incomplete'.<sup>46</sup>

Discourse that demotes children with disabilities to the status of animals is common. Kumar describes the plight of a Nigerian girl with a clubfoot who is called 'a goat' by village children.<sup>47</sup> In some places in South Africa, children with albinism are referred to by members of some communities as 'nkau', which means 'apes', 'monkeys' or 'baboons'.<sup>48</sup> This is also the case in certain communities in Swaziland where children with albinism are referred to as *izinkawu* (monkeys).<sup>49</sup>

In parts of Togo, children with cerebral palsy or children who cannot stand are called 'snakes' and are drowned during a ritual where the children are believed to be sent back to where they came from.<sup>50</sup> A participant in the study conducted by Njelesani et al referred to above confirmed that in some communities in Togo children with cerebral palsy who cannot stand are called 'snakes' and are drowned during a ritual to 'prevent the return of the snake in [sic] the family'.<sup>51</sup> A study conducted by Bayat in the Ivory Coast (mostly in Abidjan) on children with intellectual

43 Art 51-58 Loi N 10.001 Du 06 Janvier 2010 Portant Code Penal Centrafricain Journal Officiel De La Republique Centrafricaine Edition Speciale; R Bannor-Addae *Central African Republic: Children, not witches* (2009) 2 [https://www.unicef.org/infobycountry/car\\_49658.html](https://www.unicef.org/infobycountry/car_49658.html) (accessed 25 October 2019).

44 Concluding Observations— on the consideration of reports submitted by states parties under article 44 of the Convention: Nigeria, CRC (21 June 2010) UN Doc CRC/C/NGA/CO/3-4 (2010) para 67.

45 Baffoe (n 23 above) 193-194.

46 Plan International Norway et al (n 3 above) 7.

47 D Kumar 'Africa's disabled cursed by apathy and abuse' (2013) 23 September *Al Jazeera* <http://www.aljazeera.com/indepth/features/2013/09/2013922121017135639.html> (accessed 24 October 2019).

48 African Child Policy Forum *The African report on violence against children* (2014) 52 <https://app.box.com/s/iclv9c70sigmceyl30ym> (accessed 24 October 2019); 'Albinos' lonely call for recognition' *Mail & Guardian* 17 May 2012 <http://mg.co.za/article/2012-05-17-albinos-lonely-call-for-recognition> (accessed 24 October 2019).

49 HL Ndlovu 'African beliefs concerning people with disabilities: Implications for theological education' (2016) 20 *Journal of Disability & Religion* 33.

50 Plan International *Outside the circle: A research initiative by Plan International into the rights of children with disabilities to education and protection in West Africa* (2013) 25-26 <https://www.planusa.org/docs/education-outside-circle.pdf> (accessed 24 October 2019).

51 Njelesani et al (n 5 above) 156.



and developmental disabilities found that these children are commonly called 'snake children'. The term seems to have originated from a folktale of a pregnant woman who, although forbidden to do so, ate some food in the woods and dropped a few bread crumbs. A snake that ate them became so obsessed with human food that he exchanged places with the unborn child in the women's womb and was born into the human world.<sup>52</sup> Bayat concluded that these children are regarded as 'animals with no moral status'.<sup>53</sup> To get rid of them, they are either killed or taken back into the woods and left there to turn back into snakes or allowed to live in the community as an 'other', in other words, a 'non-human'.<sup>54</sup> Julieth, a woman with albinism, recalls how her uncle once told her father to get rid of her because she looks like a fish.<sup>55</sup>

The plight of children with albinism is at the centre of the demonising discourse. Traditional societies are torn between the contradictory discourses that portray persons with albinism as divine beings on the one hand and sacred monsters on the other.<sup>56</sup> They are believed to be in possession of *evu* – the witch substance – which they can use either in a positive way as a healer, seer, musician, dancer, orator or hunter, or in a harmful way as a witch.<sup>57</sup> In Kenya, Swaziland and Tanzania, children with albinism are referred to as *zeru-zeru* (the Swahili word for 'ghostlike creature'). The first person with albinism who became a Member of Parliament in Tanzania, Ms Kway-Geer recalls how, when she was a child, other children ran after her shouting '*zeru-zeru*'.<sup>58</sup> In the Central African Republic, a child with albinism is believed to be the offspring of a woman who had sexual intercourse with a water spirit.<sup>59</sup> In Malawi, people living with albinism are sometimes referred to as *napwere* which equates them to a tomato with leaf-spots.<sup>60</sup> Amnesty International mentions that women with albinism in Malawi are called *machilitso*, meaning 'cure', because of the belief that sex with them can cure men of HIV.<sup>61</sup>

52 M Bayat 'The stories of "snake children": Killing and abuse of children with developmental disabilities in West Africa' (2015) 59 *Journal of Intellectual Disability Research* 7.

53 Bayat (n 52 above) 9.

54 Bayat (n 52 above) 7-8.

55 G Brocco 'Albinism, stigma, subjectivity and global-local discourses in Tanzania' (2016) 23 *Anthropology & Medicine* 234.

56 Cimpric (n 41 above) 29.

57 Cimpric (n 41 above) 11.

58 UN Office of the High Commissioner for Human Rights 'The human rights of people with albinism in Kenya' (2014) para 24; DH Salewi 'The killing of persons with albinism in Tanzania: A social-legal inquiry' unpublished LLM thesis, University of Pretoria, 2011 10; 'Surprise of Tanzania's albino MP' *BBC News* 2008 <http://news.bbc.co.uk/2/hi/africa/7348528.stm> (accessed 24 October 2019).

59 Cimpric (n 41 above) 29.

60 As above.

61 Amnesty International "'We are not animals to be hunted or sold": Violence and discrimination against people with albinism in Malawi' (2016) 18 [https://www.amnesty.org.uk/files/we\\_are\\_not\\_animals\\_-\\_malawi\\_report\\_-\\_final\\_formated.pdf](https://www.amnesty.org.uk/files/we_are_not_animals_-_malawi_report_-_final_formated.pdf) (accessed 24 October 2019).

Hosea, himself a person living with albinism, divulges that people living with albinism are confronted with myths such as they are 'not human', 'never die', are cursed by the gods and anyone who touches them will become cursed too. Another myth is that anyone possessing charms and potions containing hair, body parts and organs of persons living with albinism will be rich and prosperous.<sup>62</sup> Hosea conveys how they had to flee Mwanza in Tanzania after being warned that there were people planning to murder him and his brother (also living with albinism) to harvest their body parts.<sup>63</sup> Amnesty International reports children living with albinism in Malawi are hunted like animals because it is believed that their bones contain gold and having their bones in your possession will bring wealth, happiness and good luck.<sup>64</sup>

Because children with albinism are defined as something less than human, it is considered acceptable to discriminate against them or mistreat them.<sup>65</sup> Mostert attests to the death ritual customary to north-eastern Tanzania where babies with albinism are dropped into a lake and if they drown, it is taken as proof that they were not truly human.<sup>66</sup>

## 2.2 The invisibility and exclusion discourse

Another discourse that came to the fore was the one that children with disabilities are unworthy of social (human) interaction. Partly because they are concealed, the majority of children with disabilities in African countries are not registered at birth or their birth is not recorded in public documents. For instance, about 80 per cent of children with visual impairments surveyed in Ethiopia and about 70 per cent of children with multiple disabilities surveyed in Uganda were not registered at birth.<sup>67</sup>

These children are hidden or abandoned because they are regarded as a sign of impurity, a curse and a shame on their families.<sup>68</sup> Members of the community tend to disassociate themselves from members of that family

62 M Hosea 'Living with albinism, discrimination and superstition' in UNICEF *The state of the world's children: Children with disabilities* (2013) 6.

63 M Hosea (n 62 above) 7.

64 Amnesty International (n 61 above) 9.

65 K Allen 'The human rights case of persons with albinism in Uganda' (2011) 1 *Undergraduate journal of global citizenship* 9 [http://digitalcommons.fairfield.edu/jogc/vol1/iss1/1?utm\\_source=digitalcommons.fairfield.edu%2Fjogc%2Fvol1%2Fiss1%2F1&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](http://digitalcommons.fairfield.edu/jogc/vol1/iss1/1?utm_source=digitalcommons.fairfield.edu%2Fjogc%2Fvol1%2Fiss1%2F1&utm_medium=PDF&utm_campaign=PDFCoverPages) (accessed 24 October 2019).

66 MP Mostert 'Stigma as [a] barrier to the implementation of the Convention on the Rights of Persons with Disabilities in Africa' (2016) 4 *African Disability Rights Yearbook* 3 12.

67 African Child Policy Forum *Educating children with disabilities in Africa: Towards a policy of inclusion* (2011) 35.

68 African Child Policy Forum *The lives of children with disabilities in Africa: A glimpse into a hidden world* (2011) 42, 52; Baffoe (n 23 above) 195; Kumar (n 47 above); Plan International (n 50 above) 8, 25; UNICEF Promoting the rights of children with disabilities (2007) 4, 14 *Innocenti Digest* [http://www.un.org/esa/socdev/unyin/documents/children\\_disability\\_rights.pdf](http://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf) (accessed 8 October 2019).

and effectively isolate the child and his/her family from community participation. This can be attributed to the fact that the stigma tends to spread from the stigmatised – the child with the disability – to his or her close relatives. More often than not, those closest to the stigmatised person tend to deny, hide or sever relations with the stigmatised person.<sup>69</sup> Ghoneim relates the story of a 13-year-old boy who suffers from cerebral palsy and spina bifida who whenever he and his family visit relatives, is kept in a bedroom away from others because they find his presence embarrassing.<sup>70</sup> The common belief that disability is punishment from God results in the practice of hiding children with disabilities in the house so that their supposed sins do not become known.<sup>71</sup> Her research team found children with disabilities who were kept hidden away for their whole lives. A woman living with albinism in Malawi mentioned, in an interview with Amnesty International, that she and her sister – who also lives with albinism – were given food separately from the other children.<sup>72</sup>

Brocco mentions that because mothers who give birth to a child with albinism are believed to be the primary cause of the ‘abnormality’ they are marginalised and the choice whether or not to reject a child with albinism lies mostly with fathers.<sup>73</sup> The UN Office of the High Commissioner for Human Rights<sup>74</sup> reported the case of a mother who received a one-year prison sentence for killing her 4-month-old baby daughter because she was born with albinism. The father threatened to divorce the mother because having a child with albinism was a bad omen and a disgrace to the family.

Some customs prohibit a person with a disability from attending national or cultural events where royalty will be present (such as the reed dance in Swaziland) because it is believed that ‘a disabled person making contact or coming close to royalty will actually bring bad luck to either the king or the queen mother’.<sup>75</sup> Eide and Jele inferred from their national representative study in Swaziland, that there is a belief that people with disabilities are bewitched or possessed by bad spirits. As a result, people with disabilities are not allowed to be part of society.<sup>76</sup> Even after death, persons with disabilities are excluded from customary practices as they may not be buried according to traditional funeral rites.<sup>77</sup>

69 Goffman (n 25 above) 30; DESA (n 36 above) 6; Njelesani et al (n 5 above) 156.

70 ‘Breaking “the curse” of disabled children in South Africa’ *Al Jazeera News South Africa* 21 April 2017 <https://www.aljazeera.com/blogs/africa/2017/04/breaking-curse-disabled-children-south-africa-170421190937536.html> (accessed 24 October 2019).

71 Cobbinah (n 12 above) 36-37; KA Erikson et al ‘Recognition as a valued human being: Perspectives of mental health service users’ (2012) 19 *Nursing ethics* 358.

72 Amnesty International (n 61 above) 17.

73 Brocco (n 55 above) 234.

74 UN Office of the High Commissioner for Human Rights (n 58 above) para 37.

75 Kotzé (n 7 above) 52.

76 AH Eide & B Jele *Living conditions among people with disabilities in Swaziland: A national representative study* (2011) 11.

77 DESA (n 36 above) 7.

It seems to be quite common to deny children with disabilities any participation or voice.<sup>78</sup> Non-participation by people with disabilities is not due to inability, but to discriminatory attitudes and practices.<sup>79</sup> Their right to develop towards self-determination is denied. Parents do not allow children with disabilities to attend school either because they want to protect them or because they are ashamed of them. Human Rights Watch quotes a person with a mental disability who claimed: 'People look down upon you; those who know you will not want you to speak in society.'<sup>80</sup>

The ultimate form of denying somebody self-determination is institutionalisation without consent. Slee correctly describes institutionalisation as 'social severance'.<sup>81</sup> Institutionalisation worsens stigmatisation and stereotyping, and isolates children with disabilities from their communities.<sup>82</sup> In the case of *Purohit v The Gambia*, the African Commission on Human and People's Rights deals with the forced and indefinite institutionalisation of mentally disabled persons under the Gambian Lunatics Detention Act. The Commission confirmed the following:

The Commission maintains that mentally disabled persons would like to share the same hopes, dreams and goals and have the same rights to pursue those hopes, dreams and goals just like any other human being. Like any other human being, mentally disabled persons or persons suffering from mental illnesses have a right to enjoy *a decent life, as normal and full as possible*, [our emphasis] a right which lies at the heart of the right to human dignity.<sup>83</sup>

### 2.3 The discourse of denunciation

People with disabilities – and children in particular – are regarded as worthless and without any future.<sup>84</sup> In the Luganda language spoken in Uganda, people with disabilities are called *kikulekule*, which means 'something strange'. They are also referred to as *kateyamba*, which means 'helplessness' or 'someone who cannot help him or herself'.<sup>85</sup> They grow up with a profound sense of their own incapacity and being defined by what they are not and what they cannot do.<sup>86</sup> Having a child with disabilities is regarded as a setback or a punishment sent by the gods.

78 B Ransom *Missing voices: Children with disabilities in Africa* (2009) 4.

79 Ransom (n 78 above) 5.

80 Human Rights Watch (n 39 above) 59.

81 Slee (n 24 above) 102.

82 Inclusion International *Hear our voices: A global report – People with an intellectual disability and their families speak out on poverty and exclusion* (2006) 44 <http://inclusion-international.org/wp-content/uploads/2013/07/Hear-Our-Voices-with-Covers.pdf> (accessed 24 October 2019).

83 (2003) AHRLR 96 (ACHPR 2003) para 61.

84 African Child Policy Forum (n 68 above) 50-51.

85 Cobbinah (n 12 above) 27.

86 G Lansdown *Disabled children in Nepal: Progress in implementing the Convention on the Rights of the Child* (2003).

Children are, it is believed, given to parents to assist them in old age and a child with a disability is incapable of that.<sup>87</sup>

Plan International tells the story of a ten-year-old girl who is paralysed from the waist down. She is regarded as a liability by her parents who see no use in sending her to school. After all, she has no prospects and will never be able to marry.<sup>88</sup> This belief was also evident in a study conducted by the Kenyan Red Cross Society et al on children with disabilities in the Turkana County in Kenya.<sup>89</sup> Kavesu conducted a study for Save the Children Sweden in 3 districts, Jonglei, Lakes and Northern Bahr el Ghazal in Southern Sudan and it is evident that girl participants accept that they are regarded as liabilities without any future prospects. The girls commented inter alia: 'Girls with disabilities are not taken to school because they may not get married and thus bring wealth to the family' and 'Parents feel like they are wasting resources sending a girl with disability to school'.<sup>90</sup> Sadly, these comments also speak to the marginalisation of girls in general and the fact that their 'value' lies in being a commodity. Girls with disabilities do not even have the value of being a commodity. A parent with a child with disabilities who participated in the study conducted under the auspices of Inclusion Ghana in the Greater Accra, Volta, Upper East and Brong Ahafo regions in Ghana commented on her attempts to take her child to school: 'The teacher in the regular school called to tell me it was useless bringing my child to school. He would never learn anything'.<sup>91</sup>

A mother with a daughter with epilepsy who participated in a qualitative study conducted in December 2015 in the Kamuli District in Uganda's Eastern Region by Plan International Norway et al explains that children with disabilities are vulnerable to violence because they are perceived as having no value, 'are good as nothing', 'very useless' and have 'nothing good in them'.<sup>92</sup>

Plan International links the conceptualisation of and the attitudes towards children with disabilities to infanticide and the trade in body parts of children with disabilities in West Africa.<sup>93</sup> Infanticide and the trade in body parts illustrate how children with disabilities are objectified and not regarded as human beings with self-worth. In fact, the study conducted in Turkana referred to above found these children are described as 'not alive'

87 JK Gona et al 'Caring for children with disabilities in Kilifi, Kenya: What is the carer's experience?' (2010) 37 *Child care, health and development* 179.

88 Plan International (n 50 above) 25-29.

89 Kenyan Red Cross Society et al *Childhood disability and malnutrition in Turkana Kenya: A summary report for stakeholders and policy* (2014) 9 <https://www.lshtm.ac.uk/sites/default/files/2019-06/Malnutrition-and-Disability-Report-Full-Report.pdf> (accessed 24 October 2019).

90 B Kavesu *Children discriminated against in Southern Sudan* (2007) 10.

91 Odoom & Van Weelden (n 40 above) 14.

92 Plan International Norway et al (n 3 above) 30.

93 Plan International (n 50 above) 8, 36.

and ‘dead useless person(s)’.<sup>94</sup> Brocco refers to the fact that, in Tanzania, people with albinism are referred to as *dili* – which means ‘to deal’ – and signifies the fact that their body parts are traded as commodities.<sup>95</sup> A participant in a study conducted by Bucaro recalls the common practise in the city of Mwanza in Tanzania where a crowd would run after a person with albinism harassing him or her yelling *dili-dili*.<sup>96</sup> The same beliefs and practices were identified in Malawi and Burundi.<sup>97</sup>

During a workshop organised by the Southern African Federation of the Disabled held in Kempton Park in October 2007, people with disabilities described how they were branded by people in their communities. A discourse of invalidation is evident from descriptions such as: ‘morons’, ‘idiots’, ‘stupid’, ‘non-achievers’, ‘not worthy of wasting money on’, ‘useless to society’, ‘remains a child – not expected to ever behave like an adult’, ‘a burden’, ‘a liability’, ‘unproductive’, and ‘cannot be educated’.<sup>98</sup>

According to Plan International, children with disabilities are regarded as only good for becoming beggars.<sup>99</sup> Kamaleri and Eide concluded after a national household survey in Lesotho during 2009 and 2010 that people with disabilities are perceived as ‘objects of charity and passive recipients of rehabilitation’ and excluded from society.<sup>100</sup> Wa-Mungai<sup>101</sup> argues that beggary is seen as an activity reserved for people with disabilities. In support of his argument, he refers to the Gikũyũ phrase *Urahooya nĩ kwonja wonjete?*, meaning: ‘Why beg as if you are crippled?’ It appears in a song by Daniel Kamau Mwai and also to the Kiswahili phrase, with the same meaning, *mbona unaomba kama wewe ni kilema?*

There is a general belief that children with disabilities cannot be educated because they are stupid.<sup>102</sup> The Akan-speaking people in Ghana, call a person with intellectual disabilities *jimijimi* or *nea wanyinagya n’adwene ho* (a person who has outgrown his brains).<sup>103</sup> Odoom and van Weelden mention that the Ewe-speaking people in Ghana refer to a person with intellectual disabilities as *asotowo* (idiot or fool). They also quote an

94 Kenyan Red Cross Society et al (n 88 above) 9.

95 Brocco (n 55 above) 230. Also see UN Office of the High Commissioner for Human Rights (n 58 above) para 24.

96 S Bucaro ‘A black market for magical bones: The current plight of East African albinos’ (2010) 15 *Loyola Public Interest Law Reporter* 131 134.

97 DESA (n 36 above) 7.

98 R Rieser *Developing disability equality: Implementing inclusive education in South Africa Part I* (2008) 7, 8.

99 Plan International (n 49 above) 37.

100 Y Kamaleri & AH Eide *Living conditions among people with disabilities in Lesotho* (2011) 16.

101 M Wa-Mungai ‘“For I name thee ...”: Disability onomastics in Kenyan folklore and popular music’ (2009) 29 *Disability Studies Quarterly* <http://dsq-sds.org/article/view/984/1172> (accessed 7 October 2019).

102 Ransom (n 78 above) 5.

103 Odoom & Van Weelden (n 40 above) 7, 16, 43.

educator in the Navrongo in the Upper East Region who said he is called 'the teacher of fools' or the 'fools' teacher'.<sup>104</sup> In Uganda persons with intellectual disabilities who are also hard of hearing are called *kasiru* which means 'a stupid person'.<sup>105</sup> The World Health Organisation contends that even teachers who support inclusive education do not have high expectations of learners with disabilities.<sup>106</sup>

The African disability landscape is, as seen in the foregoing sections, littered with dehumanising and belittling discourses. But, countering those narratives, the Continent also offers us examples of inclusive and disability-friendly discourses, to which we now turn.

### 3 Positive African cultural narratives of disability

As revealed in the foregoing sections, the predominant lay narratives about disability in Africa are dehumanising. But there are societies where discourses are respectful and inclusive with clear indications of the person-first discourse.<sup>107</sup> 'People-first' language prefers the postmodified noun to the premodified noun.<sup>108</sup> 'Children with disabilities' instead of 'disabled children' and 'people who are hearing impaired' instead of 'deaf and dumb' or 'the deaf'.<sup>109</sup> For instance, among the Dinka in Sudan, the phrase *raan chie ming* is used, which translates to 'one who speaks using gestures', to describe people with hearing impairments. It is worth noting that the focus on the mode of communication rather than on the impairment itself is perfectly in line with the social model of disability.<sup>110</sup> In the DRC, among the Lingala, the term *ebosono* is used to describe a person with physical disabilities. The term literally means 'someone who cannot walk or perform physical tasks'.<sup>111</sup> Among the Acholi of Northern Uganda, the term *latowa* (pl *Lutuwa*) which means 'a person with visual impairments' is used to describe a blind person. Similarly, the term *lading yit* which is translated as 'a person who cannot hear' is used to describe a deaf person.<sup>112</sup>

In Botswana, the concept *kagisano* imposes the responsibility for caring for the disabled on societies and communities; denoting that disability is seen as socially constructed.<sup>113</sup> This is related to the *botho* concept in

104 Odoom & Van Weelden (n 40 above) 1, 23.

105 Cobbinah (n 12 above) 7, 16, 43.

106 World Health Organisation & Mental Health and Poverty Project (n 33 above) 216.

107 Wa-Mungai (n 101 above).

108 H Halmari 'Political correctness, euphemism, and language change: The case of "people first"' (2011) 43 *Journal of Pragmatics* 828 829.

109 Halmari (n 108 above) 832.

110 Wa-Mungai (n 101 above).

111 As above.

112 As above.

113 AG Hopkin 'Special education in Botswana: Social inclusion or exclusion?' (2004) 18 *Pula: Botswana Journal of African Studies* 88 90.

Tswana, which means respect for the humanity in all human beings. A related notion, called ubuntu (in full it reads *Umntu ngumuntu ngabantu*), is found among the Zulu. Eze<sup>114</sup> argues that the worldview of many other ethnic groups in sub-Saharan Africa is the principle of ubuntu. This concept embodies the fact that 'a person is a person through other people'.<sup>115</sup> The African view of what it means to be human based on Ubuntu, regards disability as a common humanity and any threat to a child with disability is a threat to humanity.<sup>116</sup> Berghs<sup>117</sup> explains that:

Disablement happens when that otherness or diversity becomes a difference predicated as inhuman, for example, in that a person is viewed as threatening the social order, kinship relations or is viewed as morally outside the realm of what it socially means to be human.

The theory of Goodley and Runswick-Cole<sup>118</sup> that intellectual disabilities challenge people to reconsider 'normative, taken-for-granted, deeply societally ingrained assumptions about what it means to be human' also rings true with regard to children with disabilities. Because people do not want their idea of what it means to be human disrupted they tend to *dis* (African-American slang term meaning to 'put down, fail to show respect, abuse, and disparage') the person with disabilities and not accept him or her into the human registry. This theory may explain why the ubuntu worldview is *dissed* in favour of harmful customary beliefs about children with disabilities.

The authors contend that ubuntu, because it is a worldview of humanity as determined by the interrelatedness of people,<sup>119</sup> can be utilised to counter the dehumanising discourse. For example, sayings that support the ubuntu worldview such as *Motho gase mphshe ga a tshewe sesotlho* (no single human can be thoroughly and completely useless),<sup>120</sup> could be employed to contradict dehumanising discourse on the worthlessness of children with disabilities.

114 MO Eze 'What is African communitarianism? Against consensus 'as a regulative ideal' (2008) 27 *South African Journal of Philosophy* 386-387.

115 Desmond Tutu quoted in DR Jolley *U B U N T U: A person is a person through other persons* (2011) 6.

116 M Berghs 'Practices and discourses of ubuntu: Implications for an African model of disability?' (2017) 6 *African Journal of Disability* 2.

117 Berghs (n 116 above) 6.

118 D Goodley & K Runswick-Cole 'Becoming dishuman: Thinking about the human through dis/ability' (2016) 37 *Discourse: Studies in the Cultural Politics of Education* 6.

119 G Mji et al 'An African way of networking around disability' (2011) 26 *Disability & Society* 365.

120 Eze (n 114 above) 388.



## 4 Legislative narratives countering the dehumanising discourse

Human rights instruments counter the dehumanising discourse through the principle of human dignity – dubbed as ‘the normative fountainhead of human rights’.<sup>121</sup> A number of countries in Africa have ratified major international human rights treaties which – directly or indirectly – promote a discourse focusing on the dignity of children with disabilities. Human-rights instruments that apply to all people (children included) that are notable in this regard include the Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>122</sup> and the African Disability Protocol.<sup>123</sup>

Under article 8(2)(a), the UNCRPD calls upon states parties to take measures, to ‘promote positive perceptions and greater social awareness towards persons with disabilities’. The Convention itself contributes towards promoting such positive perceptions and it contains ample evidence of discourse that focuses on people-first language, countering dehumanising discourse. Under its underlying principles, the UNCRPD promotes discourse emphasising people of disability as part of humanity. It calls for the ‘respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons with disabilities’. It also calls for ‘respect for difference and acceptance of persons with disabilities as part of *human diversity and humanity*’ [our emphasis].<sup>124</sup> The UNCRPD counters exclusion and invisibility discourses by urging states parties to take measures to put children with disabilities on an equal footing with other children, to ‘ensure that children with disabilities have equal rights with respect to family life’ and ‘to prevent concealment, abandonment, neglect and segregation of children with disabilities’.<sup>125</sup> The UNCRPD contains provisions which are a direct contrast to dehumanising cultural discourses and practices. Under article 8(1)(a), the Convention urges states parties: ‘To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.’

The African Disability Protocol<sup>126</sup> contains a similar provision imploring states parties to reconceptualise people with disabilities:

States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.

121 A Dimopoulos *Issues in human rights protection of intellectually disabled persons* (2010) 4.

122 Preamble, arts 1, 3(a), 8(1)(a) and 25(d) UNCRPD.

123 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa of 2018 (African Disability Protocol).

124 Art 3 UNCRPD.

125 Art 7 & 23(3) UNCRPD.

126 Art 2 African Disability Protocol.

The African Disability Protocol acknowledges persons with disabilities' inherent dignity, individual autonomy and freedom to make their own choices.<sup>127</sup> It further appreciates the 'value of persons with disabilities including those with high support needs, as full members of society' (our emphasis).<sup>128</sup> The African Disability Protocol defines harmful practices to include 'behaviours, attitudes and practices based on tradition, culture, religion, superstition, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination'.<sup>129</sup> Similar to the UNCRPD, the African Disability Protocol urges states to take measures 'to eliminate harmful practices on persons with disabilities, including witchcraft, *abandonment, concealment, ritual killings* or the association of disability with *omen*' (our emphasis).<sup>130</sup>

Except for the above instruments, specific instruments were adopted to provide extra protection for children in particular. These include, inter alia, the Convention on the Rights of the Child (CRC)<sup>131</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>132</sup>

The UNCRC General Comment 9 recognises the invisibility of children with disabilities:

Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and *become invisible* in government statistics ... Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death [our emphasis].<sup>133</sup>

Though people-first language is not used in the ACRWC as it is in the UNCRC, it still supports equalising and empowering discourse. Equalising and empowering discourse is especially evident in article 13:

- a) Value: 'active participation in the community';
- b) Humanness: 'the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity';
- c) Social inclusion: 'fullest possible social integration'; and

127 Preamble African Disability Protocol.

128 Preamble African Disability Protocol.

129 Art 1 African Disability Protocol.

130 Art 9(1) African Disability Protocol.

131 Preamble and art 23(1) United Nations Convention on the Rights of the Child (UNCRC).

132 Preamble, art 13(1) & 21(1) African Charter on the Rights and Welfare of the Child (ACRWC).

133 UNCRC Committee General Comment 9: The rights of children with disabilities (2006) UN Doc CRC/C/GC/9 dated 27 February 2007 para 35.

- d) The social model of disability: 'special measures of protection', 'conditions which ensure ...', 'assistance', 'achieving progressively the full convenience ... to movement and access to public highway buildings and other places'.<sup>134</sup>

Depending on the country's legal tradition, treaties can either automatically become part of domestic law or be domesticated through parliamentary enactment of related laws. Many countries have not only domesticated these international human rights instruments but have also incorporated the spirit of human dignity that lies at the heart of these instruments within their domestic laws. This spirit is especially evident in constitutional discourse. For example, the Constitution of the Republic of Uganda, 1995 (as amended) requires society and the state to 'recognise the right of persons with disabilities to respect and *human dignity*' (our emphasis).<sup>135</sup> The Constitution of the Democratic Republic of the Congo, 2005 provides '[t]he abandonment and maltreatment of children, in particular paedophilia, sexual abuse and the charge of engaging in witchcraft, are prohibited and punishable by law'.<sup>136</sup> The Constitution of the Arab Republic of Egypt, 2014 explicitly guarantees the rights of children with disabilities and ensures them of the government's commitment to their rehabilitation and incorporation into society.<sup>137</sup> Constitution of Kenya, 2010 article 54(1)(a) provides that '[a] person with any disability is entitled to be treated with dignity and respect'. It further acknowledges that the manner in which persons with disabilities are addressed and referred to can marginalise them. It thus prescribes that people with disabilities should not be addressed or referred to in a manner that demeans them.<sup>138</sup>

There are examples of national legislation that criminalise the exclusion of persons with disabilities through upholding the right to non-discrimination or through criminalising concealment. '[U]sing words, gestures or caricatures that demean, scandalize or embarrass a person with disability' constitutes discrimination in terms of the Sierra Leone Persons with Disability Act 3 of 2011.<sup>139</sup>

Several countries have laws criminalising the concealment of persons with disabilities. For instance, the Zambian Persons with Disabilities Act 6 of 2012;<sup>140</sup> the Sierra Leone Persons with Disability Act 3 of 2011;<sup>141</sup> and Persons with Disability Act 14 of 2003 of Kenya.<sup>142</sup> The Persons with Disabilities Act 33 of 1996 of Zambia contains anti-discrimination

134 Art 13 ACRWC.

135 Sec 35(1) Constitution of the Republic of Uganda, 1995 (as amended).

136 Sec 41 Constitution of the Democratic Republic of the Congo, 2005.

137 Art 80 Constitution of the Arab Republic of Egypt, 2014.

138 Art 54(1)(a) Constitution of Kenya, 2010.

139 Sec 1 Sierra Leone Persons with Disability Act 3 of 2011.

140 Sec 61 Zambian Persons with Disabilities Act 6 of 2012.

141 Sec 35 Sierra Leone Persons with Disability Act 3 of 2011.

142 Sec 45 Persons with Disability Act 14 of 2003 of Kenya.

provisions including those practices that discriminate among persons with disabilities, such as:

Treating a person with a disability less favourably from a person without a disability; treating a person with a disability less favourably from another person with a disability; requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over; or not providing different services or conditions required for that disability.

According to section 35 of the Sierra Leone Persons with Disability Act 3 of 2011, a parent, guardian or next-of kin or carer who:

- a) Conceals a person with disability, or
- b) fails to register a person with disability,

commits an offence and shall on conviction be liable to a fine not exceeding two million leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

A similar provision is contained in section 45 of the Persons with Disabilities Act 14 of 2003 of Kenya:

- (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services available under this Act.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding twenty thousand shillings.

The Kenyan Children Act 8 of 2001 as amended by CAP 141 of 2012 prohibits discrimination against children with disabilities.<sup>143</sup> It further requires that a child with a disability accused of an offence be treated with the same dignity as a child with no disability.<sup>144</sup> The Egyptian Childhood Law 12 of 1996 (as amended by Law 126 of 2008) provides that children with disabilities have the right to '[e]njoy special social, physical, and mental care promoting self-reliance, and facilitating the child's integration and participation in the community'.<sup>145</sup> The Act also guarantees the right to rehabilitation of children with disabilities. In terms of this right, children with disabilities have a right to social, mental, medical, educational and professional services that they or their families may require to overcome the barriers created as a result of their disabilities.<sup>146</sup> Under the Mauritius Child Protection Act 30 of 1994 sexual offences on children with disability, ill treatment, exposure or abandonment or forcing a child with a disability

143 Sec 5 Kenyan Children Act 8 of 2001.

144 Sec 186(h) Kenyan Children Act 8 of 2001.

145 Art 76 Egyptian Childhood Law 12 of 1996.

146 Art 77 Egyptian Childhood Law 12 of 1996.

to beg are criminal offences.<sup>147</sup> Though the Act does not specifically mention children with disabilities, it is clear that they are covered under the protection that this Act offers since 'child' is defined as '... any unmarried person under the age of 18'.<sup>148</sup>

Great strides were made towards positive disability discourse in Nigeria on 23 January 2019, when the Nigerian President Muhammadu Buhari signed the Discrimination against Persons with Disabilities (Prohibition) Act 2018 into law. The main aim of the Act is the full integration into society of people with disabilities. In terms of section 1(2) it is an offence to discriminate against a person on ground of his or her disability.<sup>149</sup> It can be taken that since discrimination is broadly defined as 'differential treatment'<sup>150</sup> it covers discrimination through discourse. Other offences provided for in the Act include to abuse a person with a disability by employing, using or involving him or her in begging, to parade a person with a disability in public for the purpose of soliciting handouts and to use having a disability as a guise for begging in public.<sup>151</sup>

The above discourses foster inclusion rather than exclusion, acceptance rather than rejection. They promote humanity's oneness and, consequently, protect persons with disabilities.<sup>152</sup> These discourses can be used as a stepping stone in reconceptualising children with disabilities in Africa. The focus should be to build upon the existing positive discursive practices and create more inclusive, humane and respectful discourses.

## **6 Concluding words**

Two general observations can be made from the preceding discussions. First, the continent abounds with examples of progressive legislative narratives, where the principles of human rights, human dignity and equality of children with disabilities are promoted. The fact that the UNCRPD is one of the instruments which enjoyed a rapid rate of ratification in the continent is testimony to growing awareness about the issue. Africa's adoption of the African Disability Protocol, which takes into account existing negative cultural narratives, is yet another commitment to the realisation of the rights of persons (children) with disabilities. The African Disability Protocol, in its Preamble, rightly expresses the prevailing concern that 'persons with disabilities continue to

147 Secs 13, 13B, 13C, 14 and 18 Mauritius Child Protection Act 30 of 1994.

148 Sec 1 Mauritius Child Protection Act 30 of 1994.

149 Sec 1(2) Nigerian Discrimination against Persons with Disabilities (Prohibition) Act, 2018.

150 Sec 57 Nigerian Discrimination against Persons with Disabilities (Prohibition) Act.

151 Sec 16 Nigerian Discrimination against Persons with Disabilities (Prohibition) Act.

152 DJ Louw (2004) 'Ubuntu: An African assessment of the religious other' (1998) August 10-15 Twentieth World Congress of Philosophy, in Boston, Massachusetts <https://www.bu.edu/wcp/Papers/Afri/AfriLouw.htm> (accessed 24 October 2019).

experience human rights violations, systemic discrimination, social exclusion and prejudice within political, social and economic spheres'.<sup>153</sup> Furthermore, in line with these and other relevant instruments, many countries have put in place legislative frameworks that counter dehumanising, denouncing and exclusionary discourses.

Secondly, there is a mixed and contradictory cultural discourse of disability, whereby both the dehumanising, denouncing and discriminatory discourses live side by side with inclusive, human-rights based narratives. Such discourses vary from one community to another and even from one family to another, hence rendering any generalisations about these discourses practically impossible.

Based on these observations, it is important to deconstruct the negative discourses and reconstruct them to reinforce the existing positive, inclusive discourses such as the ubuntu worldview so that the humanising, inclusive and empowering discourse becomes the dominant discourse. That is the first important step towards creating a continent where children with disabilities enjoy their full range of rights, as humans, as rights holders and as equal citizens.

153 Preamble African Disability Protocol.