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# REGIONAL DEVELOPMENTS

## PROGRESS TOWARDS INCLUSIVE PRIMARY EDUCATION IN SELECTED WEST AFRICAN COUNTRIES

*Ngozi Chuma Umeh\**

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### Summary

*Using Nigeria, Ghana and Sierra Leone as the main case study, this commentary discusses developments on inclusive education in the West African Region. It evaluates the extent to which domestic legislation and policy framework in the three West African countries complies with the normative standards set in article 24 of Convention on Rights of Persons with Disabilities (CRPD) the commentary observes that none of the legislative and policy frameworks in the three West African States completely meets the standards set in article 24 of the CRPD or the newly adopted Protocol to the African Charter on Human Peoples' Rights on the Rights of Persons with Disabilities.*

### 1 Introduction

A number of countries in West Africa have in recent years ratified the Convention on the Rights of Persons with Disabilities (CRPD)<sup>1</sup> as well as international, regional and sub-regional human rights treaties asserting various aspects of the right to education of children with disabilities. While this is a positive development, the question arises as to whether these commitments have been translated into tangible progress in respect of the

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1 Convention on the Rights of Persons with Disabilities GA Res A/RES/61/06, adopted on 13 December 2006, entered into force on 3 May 2008. Information from the United Nations (UN) treaty collection indicates that 17 out of 18 West African countries have signed and ratified the CRPD as at 28 March 2018 – see [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en) (accessed 28 March 2018).

review of existing legislative and policy frameworks at domestic level.<sup>2</sup>

Article 24 of CRPD enjoins state parties to ensure inclusive education for persons with disabilities at all levels without discrimination and on the basis of equal opportunity.<sup>3</sup> Under article 24(2), five key state obligations relating to the realisation of the right to inclusive education may be identified, such as the duty to ensure that children with disabilities are not excluded from free and compulsory primary education on the ground of disability.<sup>4</sup> The state responsibility to provide reasonable accommodation<sup>5</sup> is also highlighted.<sup>6</sup>

The Committee on the Rights of Persons with Disabilities (RPD Committee) has adopted a General Comment on the right to inclusive education to guide further understanding of this right.<sup>7</sup> According to the Committee, article 24(2)(a) *inter alia* requires the prohibition of the exclusion of persons with disabilities from the general education system that may occur, for example, through legislative provisions limiting their inclusion based on disability.<sup>8</sup> Elaborating on the duty to provide reasonable accommodation, the Committee further states that policies committing to reasonable accommodation must be adopted at all education levels.<sup>9</sup>

In the African region, the international normative framework is expanded by the African Charter on Human and Peoples' Rights (African Charter).<sup>10</sup> This instrument sets out a number of provisions relevant to the right to education of children with disabilities. First, it guarantees freedom from discrimination<sup>11</sup> as well as the right to education;<sup>12</sup> second, it pays specific attention to the rights of the child<sup>13</sup> and persons with disabilities.<sup>14</sup>

2 In terms of art 4(1)(b) of the CRPD, states parties undertake to take all appropriate legislative and other measures to modify or abolish existing laws and practices constituting discrimination against persons with disabilities.

3 (n 1) art 24(1).

4 (n 1) art 24(2)(a).

5 See definition of 'reasonable accommodation' in art 2 of the CRPD: read with the definition of disability-based discrimination (also in art 2) it confirms that a denial of reasonable accommodation constitutes discrimination on the basis of disability. See also art 5(3) of the CRPD, which further addresses the duty to provide reasonable accommodation.

6 CRPD (n 1) art 24(2)(c).

7 CRPD Committee General Comment 4 (2016) *Art 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4.

8 (n 7) para 18.

9 (n 7) para 28.

10 African Charter on Human and Peoples' Rights OAU Doc CAB/LEG/67/3/Rev 5, adopted by the Organisation of African Unity, 27 June 1981, entered into force 21 October 1986.

11 Art 2. Although this article does not list disability among the prohibited grounds of discrimination, it includes the phrase 'or other status'. This has been read by the African Commission on Human and Peoples' Rights to encapsulate analogous grounds such as disability – *Purohit & Moore v Gambia* (2003) AHRLR 96 (ACHPR 2003).

12 African Charter, art 17(1).

13 Art 18(3).

14 Art 18(4).

The African Charter on the Rights and Welfare of the Child<sup>15</sup> (African Children's Charter) similarly provides for the right to education<sup>16</sup> of children with disabilities as well as special measures relating to children with disabilities.<sup>17</sup>

At the sub-regional level the Revised Economic Community of West African States (ECOWAS) Treaty recognises the promotion and protection of human rights in line with the African Charter as one of its fundamental principles.<sup>18</sup> Significantly, the ECOWAS Court of Justice has held that the right to education, as guaranteed in article 17(1) of the African Charter, is justiciable before this Court (despite the fact that it may not be justiciable at the domestic level – in this instance Nigeria).<sup>19</sup>

Against this background, this commentary examines the legislative and policy frameworks relating to inclusive education of children with disabilities in three West African countries, namely, Nigeria, Ghana and Sierra Leone, in order to establish whether these frameworks have been adjusted to conform to the CRPD. Such an inquiry becomes especially pertinent when one considers that several of the enactments in question predate the adoption of the Convention.<sup>20</sup>

All three countries have ratified CRPD<sup>21</sup> and also have national laws on education, children's rights and the rights of persons with disabilities (Nigeria being an exception regarding the latter). The three countries follow a similar dualist approach to international law, which means that international treaties ratified by the country concerned must be enacted as national legislation to acquire the force of domestic law.<sup>22</sup>

This commentary, which focuses on primary<sup>23</sup> education, will be limited to the two key obligations outlined above, namely, ensuring that children with disabilities are not excluded from free and compulsory

15 African Charter on the Rights and Welfare of the Child was adopted July 1990, OAU Doc.CAB/LEG/ 24.9/49 (entered into force 29 November 1999).

16 African Children's Charter, arts 11(3)(e) and 13. A discussion of these provisions is beyond the scope of this commentary.

17 African Children's Charter, art 13(1).

18 Revised ECOWAS Treaty 1993, art 4(g). See also art 56(2).

19 *Registered Trustees of Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission* (No ECW/CCJ/APP/0808), 27 October 2009, para 20. See also discussion of the Nigerian Constitution in Part 2 below.

20 For example, Ghana's Persons with Disability Act 715 of 2006 and Sierra Leone's Education Act 2 of 2004 (discussed below in Parts 3 and 4 respectively).

21 Dates of ratification are as follows: Nigeria on 24 September 2010; Ghana on 31 July 2012; Sierra Leone on 4 October 2010. Nigeria and Ghana ratified the Optional Protocol to the Convention on the same dates; Sierra Leone is yet to ratify it.

22 Constitution of the Federal Republic of Nigeria, 1999, as amended (Nigerian Constitution) sec 12; Constitution of the Republic of Ghana, 1992, as amended (Ghanaian Constitution) sec 75(2); Constitution of Sierra Leone Act 6 of 1991, as amended (Sierra Leone Constitution) proviso to sec 40(4).

23 UN Committee on Economic, Social and Cultural Rights General Comment No 13 (1999) *Art 13: The right to education*, 8 December 1999, E/C.12/1999/10 para 9.

primary education<sup>24</sup> and providing reasonable accommodation in the context of education.<sup>25</sup>

In terms of structure, the commentary is divided into five parts, including the introduction. The second, third and fourth parts examine the relevant legislation and policies in Nigeria, Ghana and Sierra Leone respectively, with a view to assessing state compliance with the normative standards outlined above. The final part is the conclusion.

## 2 Legislative and policy framework: Nigeria<sup>26</sup>

### 2.1 Ensuring that children with disabilities are not excluded from compulsory free primary education

#### 2.1.1 Nigerian Constitution

The Nigerian Constitution does not explicitly recognise the right to education.<sup>27</sup> Instead, section 18(1) requires the Nigerian government to direct its policy towards ensuring equal and adequate education opportunities at all levels.<sup>28</sup> Furthermore, the government must 'as and when practicable' provide free, compulsory and universal primary education.<sup>29</sup>

The Constitution does provide for the right to freedom from discrimination as a justiciable right.<sup>30</sup> It sets out a closed<sup>31</sup> list of so-called 'prohibited grounds'. It is worth noting that this list does not include disability.

24 CRPD, art 24(2)(a). This does not imply that these two aspects are the only indicators of compliance with art 24; however, a more comprehensive analysis is beyond the scope of this commentary.

25 CRPD, art 24(2)(c).

26 For a more comprehensive overview of Nigerian legislation and policies relevant to disability, see NC Umeh and R Adeola 'Country report: Nigeria' (2013) *African Disability Rights Yearbook* 277-290.

27 Nigerian Constitution (n 22) sec 18(1).

28 The provisions regarding education, set out in sec 18, resort under Chapter II on Fundamental Objectives and Directive Principles of State Policy. By virtue of sec 6(6)(c) of the Constitution the right to education is therefore regarded as unenforceable in Nigerian courts.

29 Nigerian Constitution (n 22) sec 18(3)(a).

30 Nigerian Constitution (n 22) sec 42.

31 'Closed' implies that the list does not permit expansion as would have been the case if it contained the phrase 'or other status' or words to that effect.

### **2.1.2 African Charter (Ratification and Enforcement) Act**

The purpose of this Act<sup>32</sup> is to give effect to the African Charter in Nigerian domestic law. This enables one to advance the argument that the prohibition of discrimination in the African Charter (which has been understood to include disability-based discrimination),<sup>33</sup> as well as the assurance of the right to education,<sup>34</sup> accordingly also form part of Nigerian law.

### **2.1.3 Child Rights Act**

Section 15 of the Child Rights Act, 2003<sup>35</sup> stipulates that every child in Nigeria has the right to ‘free, compulsory and universal basic education’, and confirms that it is the duty of the government to provide such education.<sup>36</sup> Persons, authorities and institutions caring for children ‘in need of special protection measures’<sup>37</sup> are required to make an effort, within available resources, to provide the assistance and facilities necessary for their education and preparation for employment.<sup>38</sup>

Despite these encouraging provisions, children with intellectual<sup>39</sup> disabilities are expressly excluded from the domain of section 15.<sup>40</sup> This exclusion does not resonate with the principles of CRPD (especially article 24), and demonstrates that the Act cannot be regarded as ensuring full legal protection for children with disabilities.<sup>41</sup>

### **2.1.4 Compulsory, Free Universal Basic Education Act**

Section 2(1) of the UBE Act, 2004,<sup>42</sup> the principal Nigerian legal instrument regarding education, imposes the duty on the government to provide free, compulsory and universal basic education for every child of primary and junior secondary school age<sup>43</sup> and specifically includes

32 African Charter (Ratification and Enforcement) Act of 1983, Chapter A9 Laws of the Federation of Nigeria 2004.

33 Art 2 - see (n 11)

34 African Charter (n 10) art 17(1).

35 Child’s Rights Act of 2003, Cap C50 Laws of the Federation of Nigeria 2010.

36 Sec 15(1).

37 Sec 16(1).

38 Sec 16(2).

39 The Act uses the term ‘mental disabilities’.

40 Child’s Rights Act (n 35) sec 15(7).

41 In addition to the exclusion of children with intellectual disabilities in the Act itself, the Act furthermore has not yet been enacted in all states as required under the provisions on concurrent legislative powers in the Nigerian Constitution (Second Schedule, Part II). See eg M Ifijeh ‘UNICEF calls for adoption of Child Rights Acts in all states’ *This Day* 1 June 2017 <https://www.thisdaylive.com/index.php/2017/06/01/unicef-calls-for-adoption-of-child-rights-acts-in-all-states/> (accessed 31 August 2018).

42 Compulsory, Free Universal Basic Education Act of 2004 (UBE Act).

43 Sec 2(1).

children with disabilities.<sup>44</sup> The substance of the Act, however, does not make reference to inclusive education. Instead, children with disabilities are expected to benefit from the entirety of the rights to free and compulsory primary education on the same basis as children without disabilities.

### 2.1.5 National Policy on Education (NPE)

The present NPE 2013<sup>45</sup> includes a dedicated section on ‘special needs education’.<sup>46</sup> The policy states that persons with special educational needs must be provided with inclusive education in mainstream<sup>47</sup> schools.<sup>48</sup> On the other hand, persons with such needs ‘who cannot benefit from inclusive education’<sup>49</sup> are limited to special schools. At the same time, the NPE states that the aims of special needs education include the provision of access to education for all persons, in an inclusive setting, and equalisation of educational opportunities.<sup>50</sup> Notably, the NPE does not expressly prohibit the exclusion of children with disabilities from compulsory free primary education, despite the fact that the document was revised in 2013, that is, after Nigeria had ratified CRPD.

## 2.2 Obligation to provide reasonable accommodation<sup>51</sup>

### 2.2.1 African Charter (Ratification and Enforcement) Act

The African Charter (understandably, given the date of its adoption) does not mention the term ‘reasonable accommodation’, but does stipulate that persons with disabilities are entitled to ‘special measures of protection’ in relation to their needs.<sup>52</sup> Due to the effect of this Act, this entitlement has been introduced into Nigerian law.<sup>53</sup> Such protective measures may (arguably) include providing reasonable accommodation in the context of education.

44 Sec 15(1).

45 Federal Republic of Nigeria *National Policy on Education* 6th ed (2013).

46 Sec 7.

47 The phrase used in the NPE is ‘schools which normal persons attend’.

48 Para 118.

49 As above.

50 Paras 119(a) and (b).

51 In the interests of brevity, legislation and policies that do not make any reference to reasonable accommodation (or measures that may amount to such accommodation) have not been listed here. The same approach is followed in Parts 3 and 4.

52 Art 18(4) African Charter.

53 African Charter (Ratification and Enforcement) Act, 1983

## **2.2.2 National Policy on Education**

The NPE requires the Nigerian government to provide the funding, services and facilities necessary to ensure that persons with special education needs have 'easy access to quality education',<sup>54</sup> which could similarly be construed as an obligation in respect of reasonable accommodation. The specific examples listed in the policy, which include text books in Braille, wheelchairs, computer technology and protective clothing and sunglasses,<sup>55</sup> are reminiscent of 'typical' reasonable accommodation measures, even if the term is not expressly used.

## **3 Ghana<sup>56</sup>**

### **3.1 Ensuring that children with disabilities are not excluded from compulsory free primary education**

#### **3.1.1 Ghanaian Constitution**

The Ghanaian Constitution of 1992 safeguards the right to equal educational opportunities and facilities.<sup>57</sup> Basic education is stated to be free, compulsory and available to all.<sup>58</sup> Article 29 of the Constitution further specifies that persons with disabilities must be protected against all treatment of a discriminatory nature.<sup>59</sup> However, disability again is not listed among the prohibited grounds of discrimination.<sup>60</sup>

#### **3.1.2 Persons with Disability Act**

The Persons with Disability Act of 2006<sup>61</sup> goes beyond the Constitution in that it explicitly prohibits disability-based discrimination.<sup>62</sup> It also provides for the right to compulsory<sup>63</sup> free education for persons with disabilities,<sup>64</sup> except where a child with a disability has been assessed by

54 NPE (n 45) para 122.

55 Paras 122(i), (iv) & (vii) respectively.

56 For a more comprehensive overview of Ghanaian legislation and policies relevant to disability, see EA Gyamfi 'Country report: Ghana' (2013) *African Disability Rights Yearbook* 221.

57 The Ghanaian Constitution (n 22) art 25(1) emphasise the full realisation of the right to education of all persons under Ch 5 group of rights recognised as fundamental rights.

58 Art 25(1)(a).

59 Art 29(4).

60 Art 17(2). As in the case of the Nigerian Constitution, the list of prohibited grounds is a 'closed' one see 31.

61 Act 715 of 2006. The Act was assented to on 9 August 2006 and thus predates the adoption of CRPD on 13 December 2006.

62 Sec 4(1).

63 Secs 16(1) & (2).

64 Sec 18(1).

the Ministry of Education to be someone who ‘clearly requires’ being in a special school.<sup>65</sup>

### 3.1.3 *Education Act, 2008*

Ghana’s Education Act, 2008<sup>66</sup> endorses the principle of free and compulsory basic education.<sup>67</sup> It also addresses inclusive education, which is defined as entailing that all persons attending educational institutions are entitled to equal access to learning, achievement and the pursuit of excellence in all aspects of their education.<sup>68</sup> The specific measures set out in section 5 are addressed below.

### 3.1.4 *Inclusive Education Policy, 2015*

Ghana’s Inclusive Education Policy (IEP), 2015<sup>69</sup> *inter alia* seeks to redefine the delivery and management of educational services in order to respond to the diverse needs of all learners within the frameworks of Universal Design for Learning<sup>70</sup> and Child Friendly Schools.<sup>71</sup> One of the guiding principles underpinning this policy is that no child may be excluded from education based *inter alia* on disability.<sup>72</sup>

## 3.2 **Obligation to provide reasonable accommodation**

### 3.2.1 *Persons with Disability Act*

Article 17 of the Act, 2006<sup>73</sup> directs the Minister of Education to designate schools or institutions in each region to provide the facilities and equipment necessary ‘to enable persons with disability to fully benefit from the school or institution’. While this provision is encouraging, it stops short of articulating the concept of reasonable accommodation as envisaged in CRPD.

65 Sec 20(1).

66 Act 778 of 2008

67 Sec 2(2).

68 Sec 5 (4).

69 Government of Ghana, Ministry of Education *Inclusive Education Policy* (2015).

70 Universal Design for Learning (UDL), which is aimed at making learning accessible to more learners in inclusionary programmes, entails that with modifications of *inter alia* teaching and learning materials and methods of communication, a much wider range of learners can be included in regular classroom instruction: IEP Annex 2.

71 See Annex 2 for definition.

72 Sec 3.0.

73 Persons with Disability Act, 2006

### **3.2.2 Education Act**

Ghana's Education Act of 2008<sup>74</sup> recognises that institutions delivering education to children with disabilities<sup>75</sup> must improve on existing infrastructure and provide additional facilities where necessary.<sup>76</sup> Parents must request appropriate educational facilities (where these are not already in place); this is made subject to the availability of resources.<sup>77</sup> Furthermore, designs for schools should be 'user-friendly for children with special needs'.<sup>78</sup> Although this is a positive prerequisite, the impression is created (especially when read with the following subsection)<sup>79</sup> that the 'design' referred to here is limited to buildings and infrastructure. Although the Act does not make reference to reasonable accommodation, this provision may be seen as a move in this direction.

### **3.2.3 Inclusive Education Policy**

The policy objectives of the IEP, 2015 include the promotion of Universal Design for Learning.<sup>80</sup> One of the strategies framed to achieve this is to make the relevant equipment and assistive devices available to children with disabilities to enable them to access quality education.

Although a definition of 'accommodations' is included in the IEP,<sup>81</sup> the document's policy objectives and strategies do not mention 'reasonable accommodation' as such. The duty to provide reasonable accommodation could nevertheless (potentially) be inferred from other measures, as listed above.

74 Education Act (n 66).

75 The Act uses the term 'special needs'.

76 Sec 5(2).

77 Sec (5)(3).

78 Sec 5(1).

79 Sec 5(2) eg refers to improving existing infrastructure.

80 Sec 4.2 (Policy Objective 2).

81 See IEP Annex 1.

## 4 Sierra Leone<sup>82</sup>

### 4.1 Ensuring that children with disabilities are not excluded from compulsory free primary education

#### 4.1.1 *Sierra Leone Constitution*

In terms of the Sierra Leone Constitution,<sup>83</sup> the government must ensure that all citizens enjoy equal rights and adequate educational opportunities at all levels. This includes providing educational facilities at all levels so that all citizens have the opportunity to be educated to the best of their abilities.<sup>84</sup> In addition, the rights of vulnerable groups, such as children, women and the disabled, should be safeguarded.<sup>85</sup> The government's educational policy must be directed towards free compulsory basic education at primary and junior secondary school levels.<sup>86</sup> However, as is the case with the Nigerian Constitution,<sup>87</sup> these provisions are framed as fundamental principles of state policy, which are expressly declared non-justiciable and unenforceable by section 14 of the Sierra Leone Constitution. Although the right to non-discrimination is included as an enforceable right, disability is not specified as a prohibited ground of discrimination.<sup>88</sup>

#### 4.1.2 *Education Act*

Sierra Leone's Education Act, 2004<sup>89</sup> provides that all its citizens have the right to basic education,<sup>90</sup> which is compulsory.<sup>91</sup> It further stipulates that basic education must be free in government-assisted primary and junior secondary schools (to the extent specified by the Minister of Education).<sup>92</sup> Importantly, the principle of non-discrimination is emphasised, with disability explicitly listed as a prohibited ground.<sup>93</sup>

82 For a more comprehensive overview of legislation and policies in Sierra Leone relevant to disability, see R Adeola 'Country report: Sierra Leone' (2015) *African Disability Rights Yearbook* 225.

83 Sierra Leone Constitution 1992 (n 22), sec 9(1).

84 Sec 9(1)(a).

85 Sec 9(1)(b).

86 Sec 9(2)(b).

87 See Part 2 above.

88 Sec 27(3). The list of grounds is a closed one.

89 No. 2 of 2004

90 'Formal basic education' consists of six years of primary and three years of junior secondary schooling; sec 3(1).

91 Sec 3(2).

92 Sec 3(3).

93 Secs 4(1) & (2).

### **4.1.3 Child Rights Act, 2007**

The Child Rights Act, of 2007<sup>94</sup> stipulates that children with disabilities have the right to ‘special care, education and training’ wherever possible to develop their maximum potential and be self-reliant.<sup>95</sup> Reference is not made to the duty to ensure that children with disabilities are not excluded from the general education system.

### **4.1.4 Persons with Disability Act**

Significantly, the Persons with Disability Act of 2011<sup>96</sup> provide that persons with disabilities may not be denied admission to or expelled from educational institutions by reason only of disability.<sup>97</sup> The right to free education of persons with disabilities nonetheless appears to be limited to tertiary education.<sup>98</sup>

### **4.1.5 Education Sector Plan (ESP)**

The Education Sector Plan (ESP) 2018-2020<sup>99</sup> acknowledges that inclusive education for ‘children with special needs’ in mainstream schools is still a new phenomenon in Sierra Leone.<sup>100</sup> In addition to inaccessible structures, a lack of appropriate facilities, teaching and learning materials and trained teachers to meet the needs of children with disabilities prevails.<sup>101</sup> In order to address these shortcomings, the Ministry of Education, Science and Technology is currently in the process of developing an inclusive education policy.<sup>102</sup>

While it could be argued that children with disabilities may benefit from the generalised outcomes formulated in the ESP (for example, Strategic Outcome 1.1 entails that all children will enter school and complete primary education),<sup>103</sup> it is regrettable that the ESP does not specifically address the exclusion of children with disabilities from education.

94 Act 7 of 2007

95 Sec 30(2).

96 Act 3 of 2011.

97 Sec 15(1).

98 Sec 14(1).

99 Ministry of Education, Science and Technology *Education Sector Plan: Getting it right – Service Delivery, Integrity and Learning in Sierra Leone*(2018-2020).

100 ESP (n 95) 37.

101 ESP 22.

102 ESP 74.

103 ESP 27 - Strategic Outcome 1.1.

## 4.2 Obligation to provide reasonable accommodation

### 4.2.1 Sierra Leone Constitution

The Constitution requires the government to provide the necessary structures, finance and supportive facilities for education (generally).<sup>104</sup> This provision, however, hollowed out, first by the fact that it is framed as a principle of state policy and, second, by the addition of the qualification 'as and when practicable'.

### 4.2.3 Persons with Disabilities Act

This Act requires the government to ensure the structural adaptation of educational institutions to make them 'easily accessible' to persons with disabilities,<sup>105</sup> and every school is tasked with providing facilities for learning by persons with disabilities.<sup>106</sup> Furthermore, educational institutions must take into account the special needs of persons with disabilities with respect to the use of school facilities, physical education requirements and similar considerations.<sup>107</sup> While these provisions could be construed as an obligation to provide reasonable accommodation and/or individualised support, neither concept is expressly mentioned.

### 4.2.4 Education Sector Plan (2018-2010)

Under Strategic Outcome 1.6 of the ESP, which entails the improvement of school infrastructure, the ESP undertakes to *inter alia* address the lack of classrooms to accommodate all students and the lack of 'ramps for children with special needs'.<sup>108</sup> Specifically, Intervention 1.6b resolves to ensure that by 2020 at least 15 per cent of existing schools have ramps for students with disabilities. This commitment is commendable, but does raise the concern that inclusive education is conceptualised narrowly to relate to accessibility of the built environment only. It is also problematic that the ESP does not include a reference to 'reasonable accommodation' as such.

## 5 Conclusion

As this brief survey shows, none of the legislative and policy frameworks in the three West African jurisdictions comprehensively lives up to the expectations arising from articles 24(2)(a) and (c) of CRPD. In respect of constitutional provisions, the shortcomings range from the omission of

104 Sierra Leone Constitution 1992 (n 22), sec 9(1)(c).

105 Act 3 of 2011, sec 14(2).

106 Sec 14(3).

107 Sec 15(2).

108 ESP (n 95) 36.

disability as a listed ground in the general prohibition of discrimination (all three constitutions) to the framing of the right to education as a non-justiciable directive of state policy (Nigeria and Sierra Leone). Significantly, the non-discrimination clauses in the constitutions examined are not conceptually linked to a denial of reasonable accommodation as a form of disability-based discrimination.<sup>109</sup>

As far as the dedicated laws on education, children's rights and the rights of persons with disabilities are concerned, it can be said that there is no single piece of legislation across the three countries which alone or in combination meets the standards set by article 24(2). Where legislation does include entitlements to education, this often is qualified by phrases such as 'within available resources'<sup>110</sup> and 'wherever possible'.<sup>111</sup> While these inadequacies are (to some extent) explicable in the case of legislation enacted before the adoption of CRPD, it is disconcerting that omissions still occur, for example, in Sierra Leone's disability-specific legislation of 2011.<sup>112</sup>

In terms of policy, all three jurisdictions have certain constructive policy statements, such as the recognition that 'special needs education' should aim to provide access to education for all persons with disabilities in an inclusive setting<sup>113</sup> and the prohibition of exclusion of children with disabilities from the general education system.<sup>114</sup> One may observe that Ghana has made the most progress in the form of an inclusive education policy which not only acknowledges CRPD as underpinning framework,<sup>115</sup> but also draws on key concepts from the Convention, such as universal design.<sup>116</sup> On the other hand, Sierra Leone, which is yet to finalise its inclusive education policy, may be lagging behind.

What is glaringly missing in all three jurisdictions is a commitment to the provision of reasonable accommodation. As indicated above,<sup>117</sup> such an undertaking, at least at policy level, is essential for conforming to CRPD. Instead, duties regarding reasonable accommodation may have to be construed from general and vague phrases such as 'easy access to quality education',<sup>118</sup> and 'user-friendly [school designs] for children with special needs'.<sup>119</sup>

109 As highlighted earlier – see n 9.

110 Child Rights Act, Nigeria (n 35) sec 16(2).

111 Child Rights Act, Sierra Leone (n 90) sec 30(2).

112 See discussion in para 4.1.4 above.

113 National Policy on Education, Nigeria (n 45) para 119(a). See also discussion in para 2.1.5 above.

114 Inclusive Education Policy, Ghana (n 68) sec 3.0.

115 Inclusive Education Policy Annex 3.

116 See art 2 of the CRPD for a definition of 'universal design'.

117 See Part 1 above.

118 National Policy on Education, Nigeria (n 45) para 122. See also discussion in para 2.2.2 above.

119 Education Act of 2008, Ghana (n 65) sec 5(1). See also discussion in para 3.2.4 above.

This does not imply that no progress has been made. For example, Sierra Leone recently launched a free education programme, which will benefit 1,5 million children.<sup>120</sup> This announcement is significant, given the confirmation in the country's Education Sector Policy that the group of children most at risk of being left out of education due to unaffordable school fees includes children with disabilities.<sup>121</sup>

It is also promising that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol),<sup>122</sup> adopted by the African Union Assembly of Heads of State and Government on 29 January 2018, is not only aligned with article 24 of the CRPD, but in certain instances also expands state duties regarding the right to education, for example, by requiring state parties to ensure that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities.<sup>123</sup>

It is hoped that, once in operation, the combined weight of CRPD and the African Disability Protocol will generate sufficient political will at national level for governments to take the practical steps necessary to realise the right to inclusive education of children with disabilities not only in West Africa, but in the broader African context as well.

120 AR Thomas 'Sierra Leone launches free school education' *Sierra Leone Telegraph* 19 August 2018, <https://www.thesierraleonetelegraph.com/sierra-leone-launches-free-school-education/> (accessed 23 August 2018).

121 Education Sector Policy, Sierra Leone (n 95) 27.

122 Office of the UN High Commissioner for Human Rights 'African states affirm the rights of persons with disabilities in a new landmark protocol' 15 February 2018. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E> (accessed 23 August 2018).

123 Art 14(3)(g).