

# "Anti-discrimination and advocacy utilizing CRPD" .

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# Discrimination on the grounds of disability

- People with disabilities throughout the world experience discrimination because they are disabled.



# Discrimination and disability.

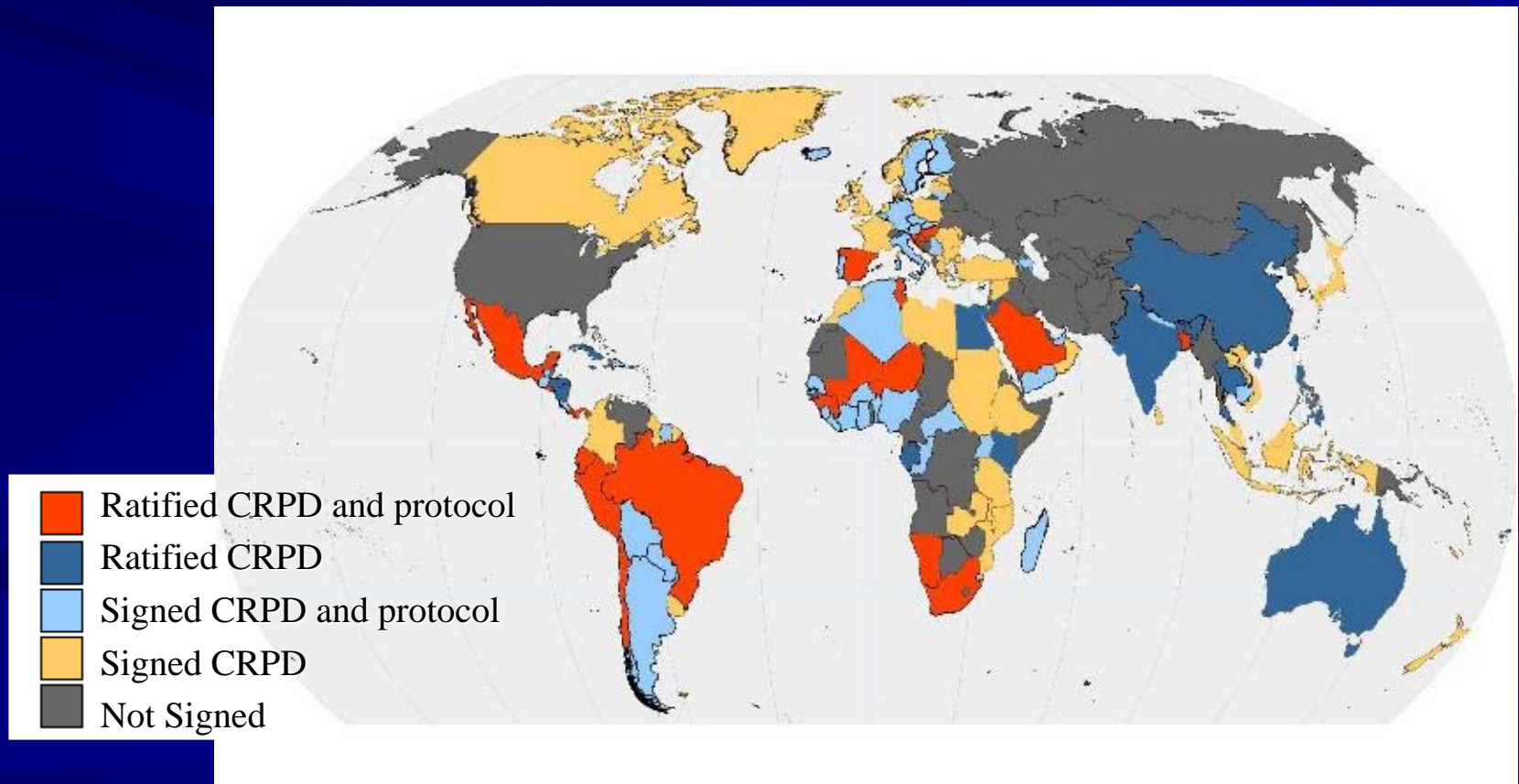
- This is often manifest by social exclusion and prejudice.
- This disparity is a function of inequity that has permeated social policy, access to education, training, and employment, as well as society's attitudes.

# Different forms of discrimination

- Discrimination comes in different forms:
  - direct
  - indirect and
  - systemic.

# UN Convention on the Rights of Persons with Disabilities (CRPD)

- CRPD in force May 3, 2008; signed by 130 countries, ratified by 35 countries



# Africa: Signed/Ratified the CRPD\*

- ALGERIA
- BURKINA FASO
- BURUNDI
- CAPE VERDE
- CENTRAL AFRICAN REPUBLIC
- CONGO ( Republic of )
- CÔTE D'IVOIRE
- EGYPT
- ETHIOPIA
- GABON
- GHANA
- GUINEA
- KENYA
- LIBERIA
- MALI
- MOROCCO
- MOZAMBIQUE
- NAMIBIA
- NIGER
- NIGERIA
- SENEGAL
- SEYCHELLES
- SIERRA LEONE
- SOUTH AFRICA
- SUDAN
- TUNISIA
- UGANDA
- UNITED REPUBLIC OF TANZANIA



# The 8 General Principles

- Respect for the inherent dignity, autonomy, including the freedom to make one's own decisions, and independence of persons;
- **Non-discrimination;**
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities.

# The principle of Non-discrimination

- Outlaws any form of discrimination on the ground of disability in any area of life and guarantees equal protection and benefit of the law to all persons with disabilities.

# Equality vs. Non-discrimination

- Unfortunately these terms are often confused.
- Leading to conceptual confusion.
- In law- equality entails the entitlement of each individual to all human rights.
- In international HR law, equality is founded on two complementary principles:
  - Non-discrimination
  - Dignity

# Equality vs. Non-discrimination

- The principle of **non-discrimination** seeks to ensure that all persons can equally enjoy & exercise all their rights & freedoms.
- Discrimination violates the principle of equality.
- Under International HR law- one person may be treated less favorably than another “ if the criteria for such differentiation are *reasonable & objective* and if the aim is to achieve a purpose which is *legitimate*.

# Article 5 - CRPD covers all forms of discrimination

- SP should define the different forms of discrimination and establish their prohibition.
- Some suggestions:
  - No form of discrimination should be excluded
  - No restrictions should be allowed that discriminate on the ground of disability.
  - The level of protection against any form of discrimination should be the same.

# Denial of reasonable accommodation = discrimination

- Article 2 of the CRPD states that the denial of a reasonable accommodation is a form of discrimination.
- This is a key element of disability anti discrimination legislation.
- National legislation should reflect this element, removing any doubt that providing reasonable accommodation could be considered a non obligatory measure.

# Lack of Accessibility = discrimination

- The CRPD makes it clear that lack of accessibility produces human rights violations.
- Article 9 of the CRPD- requires the establishment of non discriminatory accessibility standards and legislation, and the obligation to prevent any new barriers when new infrastructure is being created or current infrastructure refurbished.
- Legislation should also address making the built environment accessible and establish timelines for preparing access plans and strategies.

# Defining & limiting the concept of disproportionate burden

- It is very important that the national disability anti discrimination legislation defines disproportionate burden.
- Failing to do so, would limit significantly the obligation of providing reasonable accommodations.

# Reasonable Accommodation vs. disproportionate burden.

- Some elements to consider:
- The size and economic turnover of the entity obliged to make the accommodations.
- The cost/impact of the accommodation
- Will the accommodation benefit the organization generally
- Are there public/private funding that could compensate the costs.
- Is the built environment /services in violation of accessibility laws.

# At a national level

- Comparative studies on disability legislation shows that only 45 countries have anti-discrimination and other disability-specific laws.

# Africa: Disability related legislation.

## – Legislation

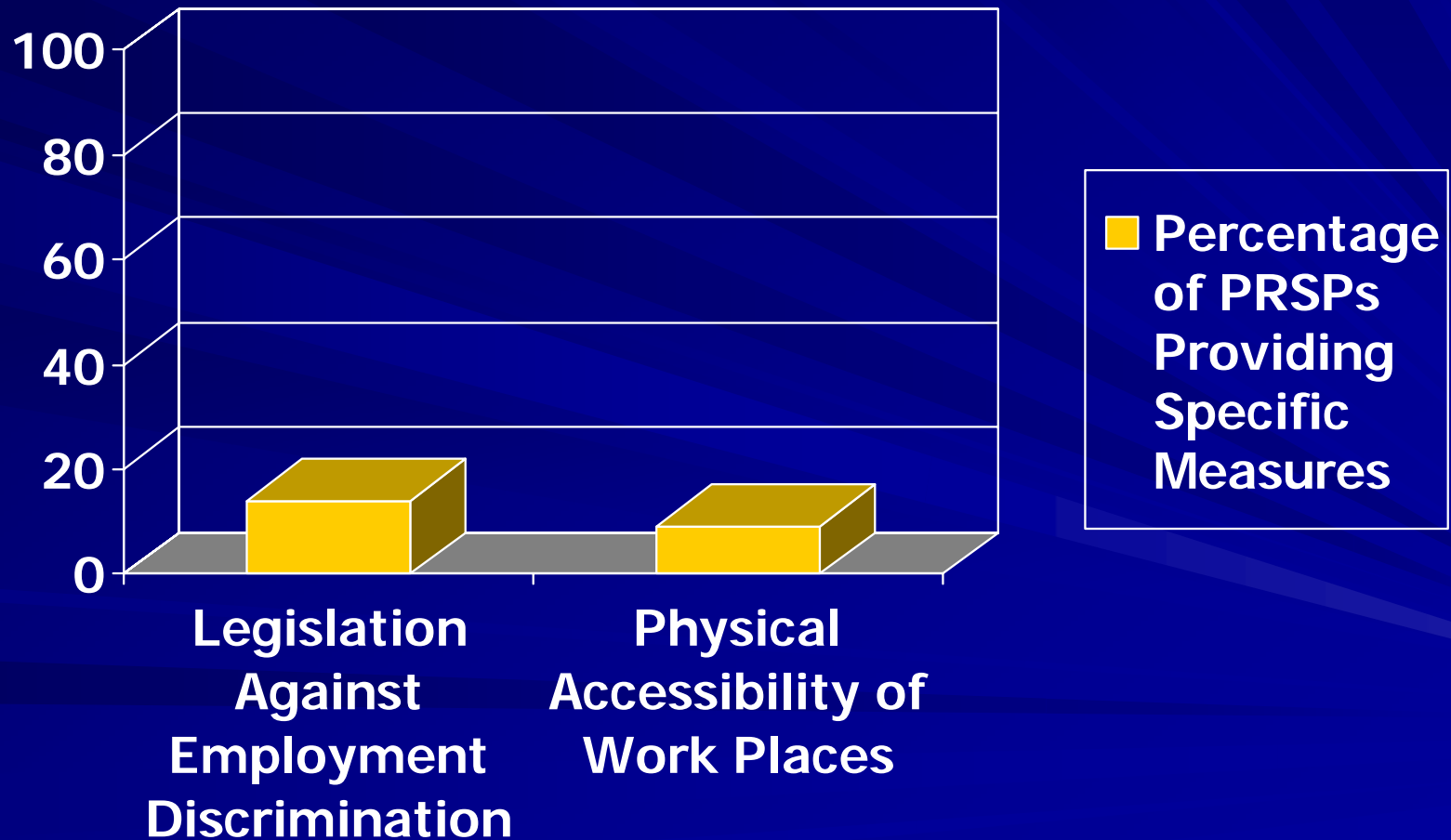
- Botswana
- Ghana
- Kenya
- Mozambique
- Tanzania
- South Africa
- Uganda
- Zimbabwe.
- Nigeria is in the process of adopting legislation.

## – Constitutional provisions

- Benin
- Burundi
- Cote D'Ivoire
- Gabon
- Gambia
- Ghana
- Madagascar
- Mozambique
- Niger
- Seychelles
- South Africa
- Uganda



# People with Disabilities remain excluded from Pro-Poor Growth



# The Constitution- South Africa

- Accepts that discrimination against a person on the basis of that individual's disability is *automatically* unfair, unless a case can be proved by the body or individual concerned that the discrimination was fair. *The onus to prove unfair discrimination does not lie with the disabled person.*
- Provision is made for affirmative action concerning people with disabilities.
- It allows for positive measures to be taken to promote the achievement of equality for categories of persons disadvantaged by unfair discrimination.

# The Promotion of Equality & Prevention of Unfair Discrimination

- Section 9 of the Constitution provides for the enactment of national legislation to prevent/prohibit unfair discrimination & to promote the achievement of equality.
- The PEPUDA (Act No. 4 of 2000) has met this provision, expanding on the Constitutional provisions prohibiting unfair discrimination & guaranteeing equality before the law. It gives effect to the letter and spirit of the Constitution, in particular -the principles of equality, fairness, social progress, justice, human dignity & freedom.

# Defining Discrimination

- Discrimination, according to the definition in the Act, means any act or omission, including a policy, law, rule, practice, condition or situation which
  - (a) imposes burdens, obligations or disadvantages on; or
  - (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability & any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms.

# What does this mean for the development partners?

- Article 32- States that international development programs should be inclusive of and accessible to people with disabilities.
- It emphasizes partnerships- international and regional.
- The inclusion of disability into PRSP process is critical.

# What does this mean for the International Partners?

- Align their development assistance with the tenets of the CRPD.
- Include people with disabilities in development dialogue.
- Develop TA for potential demand by SP.
- Build internal capacity on disability.

# Key messages.

- The CRPD closes a major protection gap.
- It is now imperative that these obligations take real effect in the lives of countless persons with disabilities.

# Key messages

- Opening up of the policy dialogue within government and with civil society
- Increased country ownership of policy agenda
- More prominence given to the principle of non discrimination
- Increased focus on monitoring and impact of non discrimination policy/legislation.



## **Human Development Network**

### **Social Protection & Labor (HDNSP)**

[www.worldbank.org/sp](http://www.worldbank.org/sp)



### **HDNSP Disability & Development (D&D)**

[www.worldbank.org/disability](http://www.worldbank.org/disability)



### **Global Partnership on Disability and Development (GPDD)**

[www.worldbank.org/disability/gpdd](http://www.worldbank.org/disability/gpdd)