

## VU Research Portal

### **Legal and policy provisions for reasonable accommodation in employment of persons with mental disability in East Africa**

Ebuenyi, Ikenna D.; Regeer, Barbara J.; Nthenge, Mirriam; Nardodkar, Renuka; Waltz, Mitzi; Bunders-Aelen, Joske F.G.

***published in***

International Journal of Law and Psychiatry  
2019

***DOI (link to publisher)***

[10.1016/j.ijlp.2019.02.007](https://doi.org/10.1016/j.ijlp.2019.02.007)

***document version***

Early version, also known as pre-print

***document license***

Article 25fa Dutch Copyright Act

[Link to publication in VU Research Portal](#)

***citation for published version (APA)***

Ebuenyi, I. D., Regeer, B. J., Nthenge, M., Nardodkar, R., Waltz, M., & Bunders-Aelen, J. F. G. (2019). Legal and policy provisions for reasonable accommodation in employment of persons with mental disability in East Africa: A review. *International Journal of Law and Psychiatry*, 64, 99-105.  
<https://doi.org/10.1016/j.ijlp.2019.02.007>

**General rights**

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

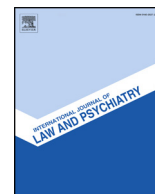
- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

**Take down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

**E-mail address:**

[vuresearchportal.ub@vu.nl](mailto:vuresearchportal.ub@vu.nl)



## Legal and policy provisions for reasonable accommodation in employment of persons with mental disability in East Africa: A review

Ikenna D. Ebuenyi<sup>a,b,\*</sup>, Barbara J. Regeer<sup>a</sup>, Mirriam Nthenge<sup>c</sup>, Renuka Nardodkar<sup>d</sup>, Mitzi Waltz<sup>a</sup>, Joske F.G. Bunders-Aelen<sup>a</sup>

<sup>a</sup> Athena Institute, Amsterdam Public Health research institute, Vrije Universiteit Amsterdam, Amsterdam, the Netherlands

<sup>b</sup> ISGlobal, Hospital Clínic, Universitat de Barcelona, Barcelona, Spain

<sup>c</sup> Independent consultant on disability rights, gender and youth issues, Kenya

<sup>d</sup> Centre for Mental Health Law and Policy, Indian Law Society, Pune, India

### ARTICLE INFO

#### Keywords:

Reasonable accommodation  
Mental disability  
East Africa  
Disability discrimination  
Employment

### ABSTRACT

Despite an elaborated framework on reasonable accommodations in the UN Convention on the Rights of Persons with Disabilities (UN CRPD), persons with mental disabilities continue to face significant limitations to employment in East Africa. The aim of our study is to explore legal provisions related to reasonable accommodations in the employment-related laws regarding persons with mental disabilities in East Africa, and to suggest ways to bridge the gap between principles of international law and provisions of domestic laws. The disability, labour and human rights laws of 18 East African countries were accessed from the database of WHO MiNDbank and the International Labour Organisation. These laws were reviewed in the light of the framework of Article 27 of the UN CRPD. We found that 15 (83%) of the countries in East Africa have ratified the UN CRPD, and 12 (67%) have formulated an explicit definition of disability that includes mental illness. Eleven countries (61%) have explicit laws mandating employers to provide reasonable accommodations for persons with a mental disability. Eight countries (44%) have submitted a state report to the CRPD Committee. Lack of clear and specific definition of reasonable accommodations or the existence of vague definitions create challenges. If persons with a mental disability are to exercise their right to inclusive and gainful employment, there is a need for legal reforms that guarantee access to inclusive employment practices.

### 1. Introduction

According to the *World Disability Report*, persons with disabilities constitute approximately 15% of the world's population, including between 785 and 975 million persons of working age (World Health Organisation, 2011). Persons with mental disabilities, a category that includes mental disorders that have the potential to impair social and occupational function (Linden, 2017), experience particularly marked challenges regarding employment. A European Union report suggests that for persons with mental disabilities, employment rates may be about 25% (Organisation for Economic Co-operation and Development, 2010). This estimate is probably high, and will vary depending on the specific mental disability and how countries record and report (un)employment. In some cases, persons working in sheltered workshops for no or extremely low pay are counted as 'employed,' and some individuals may be counted as 'employed' despite working few and irregular hours (precarious employment) (Waltz, 2017). Other individuals

with mental disabilities may only be able to secure part-time employment, or employment that is far below their educational level.

These challenges have informed the recommendation of reasonable accommodations, which the UN CRPD defines as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms' (United Nations, 2006: Article 2), to improve inclusion of persons with mental disabilities in work (McDowell & Fossey, 2015).

In low- and middle-income countries (LMICs), it is often unclear whether laws exist that mandate equal treatment, and the scope of such laws varies widely (Fernandes & Cantrill, 2016; Robb, 2012). Also, it is not uncommon for low-income countries to ratify international conventions without concrete plans to implement the resolutions (Ngwenya, Plessis, Combrinck, & Kamga, 2017).

In East Africa, persons with mental illness continue to endure

\* Corresponding author at: Athena Institute, Vrije Universiteit Amsterdam, De Boelelaan 1085, 1081 HV Amsterdam, the Netherlands.  
E-mail address: [i.d.ebuenyi@vu.nl](mailto:i.d.ebuenyi@vu.nl) (I.D. Ebuenyi).

employment discrimination (Ecumenical Disability Advocates Network, 2012). Over 70% of employment in the region is informal, and this presents a particular challenge for implementing policy provisions. This study has therefore been undertaken to explore legal and policy provisions for reasonable accommodations in employment for persons with a mental disability in East Africa, and to suggest ways to bridge the gap between the principles of international law and provisions of domestic laws. In order to do this, following a section detailing the methods used to carry out a review of the disability, labour and human rights laws of 18 East African countries, we begin by discussing the concept of reasonable accommodations, and the regional and international human rights instruments within which the right to work is codified. We then present the results of the review, discuss these findings, and conclude, with reference to the implications of our findings.

## 2. Methods

### 2.1. Review strategy

We reviewed the disability, labour and human rights laws of 18 East African countries (United Nations Statistics Division, 2018) by accessing electronic databases like the WHO MINDbank (World Health Organisation, 2018) and the International Labor Organisation's NATLEX database of national labour, social security and related human rights legislation (International Labour Organisation, 2018). The databases used for the review were chosen on account of their comprehensiveness and relevance to the subject (Nardodkar et al., 2016). If disability or labor laws were not found for a specific country, we reviewed its constitution in order to obtain data relating to reasonable accommodations in employment for persons with mental disability. The retrieved policies and laws were then searched for terms such as discrimination, non-discrimination and equality. Sections on employment and work in the specific laws/policies were reviewed in-depth to minimize the risk that relevant provisions were excluded because utilized terms differed from our search terms. This process was undertaken by IDE and MN, and the output was reviewed by the co-authors. In addition, we obtained data from the World Psychiatric Association (WPA) global review of laws pertaining to the right to work and employment of persons with mental illness (Nardodkar et al., 2016).

We reviewed the provisions of the laws in relation to Article 27 of the UN CRPD on the right to work. We searched through the constitutional and subsidiary laws for terms relating to disability, mental illness/disability/health, employment and reasonable accommodations (e.g. discrimination, non-discrimination, equality).

We translated sections of the laws that were not in English, and asked a native speaker of the language to confirm these translations. However, the availability of expert translation services was limited, and may have affected the extent of data with respect to non-English speaking countries.

The study relied on a review of literature and data repositories of disability, labour and human rights legislation that are available online. This may have limited our access to other national policies and bills that could have relevant sections on reasonable accommodations for employment of persons with mental disabilities. Also, our analysis of reasonable accommodations on employment for persons with mental disabilities is based on what we found in national laws and the recommendations of the UN CRPD Committee (where available), and may not reflect the actual experiences of the persons with mental disabilities in specific countries. Also, we may have missed provisions on reasonable accommodation that utilized terms different from the ones we used, or practices based on case law.

Our extraction table was used to obtain the following information for each country in East Africa:

1. Status of ratification of the UN CRPD
2. Recognition of mental illness as a disability (and how mental illness

was referred to)

3. Provision and forms of reasonable accommodation for persons with disability
4. Submission of a State Report to the UN CRPD Committee
5. Review of the State Report by the UN CRPD Committee (specifically regarding recommendations related to the right to work, equality and non-discrimination by way of recognizing access to reasonable accommodations)

We checked the country pages of the countries in WHO MINDBank to confirm whether they had submitted a State Report to the CRPD Committee, and subsequently analyzed the review and response of the CRPD Committee to the State Party, if one existed. For countries that have received a review, we examined the recommendations of the CRPD Committee regarding country-specific legislation and policies, and how the country has complied with the recommendations given.

We used the data from the WPA review to triangulate the data in our extraction table.

### 2.2. Ethical approval

The study design was approved by the Amsterdam Public Health science committee (WC2017–011). The Maseno University (Kenya) Ethics Review committee approved the study (MSU/DRPI/MUERC/00391/17).

## 3. Background

Gainful employment and development are interrelated, and it is well-known that disadvantaged groups have unique needs. Indeed, the Sustainable Development Goals (SDGs) set specific targets to achieve full and productive decent work for women and persons with disabilities by 2030 (United Nations, 2015). However, despite the strong provisions in international and regional human rights law that are outlined in this section, persons with mental disabilities remain over-represented amongst the unemployed.

The reasons are complex. Mental illness has a long history of association with prejudice, stigma and neglect (Byrne, White, & McDonald, 2018; Krupa, Kirsh, Cockburn, & Gewurtz, 2009; Parry, 2013). Key barriers to gainful employment of persons with mental disabilities include stigma attached to mental health conditions, indirect and direct discrimination, segregation and exclusion (Marks, Cowan, & McLean, 2017); systemic challenges to inclusion in education (Wylonis, Wylonis, & Sadoff, 2017); the impact of social stigma on the self-esteem of individuals with mental disabilities, and restrictive national laws based on the medical model of disability (Waltz, 2017).

### 3.1. International human rights instruments and the human right to work

In 1976 the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations, 1966) came into force. Article 7 of the ICESCR recognizes the right to work. While the ICESCR does not explicitly refer to persons with disabilities, General Comment No. 5 on persons with disabilities and General Comment No. 23 on the right to just and favourable conditions of work (Committee on Economic, Social and Cultural Rights, 1995, 2016) reiterate the right to favourable working conditions for all, without discrimination, including on the basis of disability. Sections are devoted to safeguarding the rights of persons with mental disabilities specifically (United Nations, 1966). In 1993, 22 standard rules on equalization of opportunities for persons with disabilities were adopted by the UN General Assembly to further protect the rights of persons with disabilities (United Nations, 1993).

In 2006, the UN General Assembly adopted the CRPD, which was opened for ratification in 2007. To date, about 177 countries have signed and ratified the CRPD (United Nations, 2018). The CRPD is guided by a set of principles that include non-discrimination, equality

of opportunity, and full and effective participation in society. Further, the UN CRPD explicitly defines reasonable accommodations, and creates linkages between discrimination on the basis of mental disability, reasonable accommodations, and the right to work. To this end, Article 1 of the UN CRPD defines persons with disabilities to ‘include those who 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 preamble of the UN CRPD recognizes that discrimination against any person on basis of disability is a violation of the inherent dignity and worth of the human person (United Nations, 2006). In defining discrimination on the basis of disability, the UN CRPD recognizes that discrimination includes denial of reasonable accommodations. Article 27 (1)(i) of the UN CRPD recognizes the right to work for persons with mental disabilities.

### 3.2. National laws, regional instruments and the human right to work

State Parties have an obligation, as provided under general obligations and Article 5 of the UN CRPD, to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities in the workplace. In order to monitor compliance with these provisions, Article 35 of the UN CRPD requires State Parties to submit reports of the progress made in relation to the CRPD two years after the policy ratification.

The right to work is further recognized in the African Charter on Human and Peoples' Rights (Organization of African Unity, 1981) and the recently adopted Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Union, 2018). Like the UN CRPD, the African Disability Protocol specifically obligates the State Parties to ensure that employers, both private and public, provide reasonable accommodations to persons with disabilities in the workplace.

Research suggests that even when relevant laws and international policies exist, their implementation and usefulness for persons with disabilities varies by country and disability type (Heymann, Stein, & Moreno, 2014). Country-specific disability and labor laws tend to call for equal opportunities in employment, but with varying practical implementations and usefulness for persons with disabilities, and especially for persons with mental disabilities (Nardodkar et al., 2016; Perlin, 2011). Non-inclusive definitions of disability in national legal and policy documents, and poor representation of persons with persistent and disabling mental illness in disabled persons' organizations that influence legislation and policy, are common occurrences (Users and Survivors of Psychiatry Kenya, 2017).

The importance and usefulness of clear, inclusive legal provisions regarding employment for persons with mental disabilities have been demonstrated in high-income countries. Most importantly, enforcement mechanisms have proven to be pivotal to achieving policy provisions (Perlin, 2011). This is exemplified by the Canadian Human Rights Act (Canadian Human Rights, 2012), the Australian 2010–2020 National Disability Strategy (Commonwealth of Australia, 2011); the Equality Act 2010 in the United Kingdom (Parliament of the United Kingdom, 2010), and disability and non-discrimination law in the European Union (Waddington & Lawson, 2009), all of which can be used as the basis for individual discrimination claims. However, even in these countries, participation in work by persons with mental disabilities remains low, and often requires recourse to employment tribunals or courts.

### 3.3. Inclusive definition of disability

It is recognized that how disability is defined can limit or extend the availability of legal remedies, and that people with mental disabilities have often been less favourably treated under disability rights laws,

including the ADA (Americans with Disability Act) (Prince, 2010). The inclusive definition of disability that is explicit in both the Canadian Human Rights Act (Canadian Human Rights, 2012) and the Australian 2010–2012 National Disability Strategy (Commonwealth of Australia, 2011), recognizing mental disability alongside physical disability, has had huge implications for persons with mental disabilities who wish to pursue their right to work.

Inclusive definition of disability under the law forms the focus of Section 4 of this review, which concerns similar laws in East Africa.

### 3.4. Reasonable accommodations

The term ‘reasonable accommodation(s)’ appears seven times in the UN CRPD. Under these provisions, which include Article 5: the right to equality and non-discrimination, Article 14: The right to liberty and security of the person, Article 24: The right to education, and Article 27: The right to work and employment (United Nations, 2006), reasonable accommodation is interpreted as a precondition to enjoyment of specific rights. Of course, the scope of reasonable accommodation is large, and not specific to mental disability. However, provisions that ensure equality and non-discrimination on the basis of disability need to explicitly include provisions for persons with mental illness in order to overcome the higher level of disadvantage experienced by this group.

State Parties that have signed the UN CRPD are therefore mandated to ensure that reasonable accommodations are provided to persons with mental disabilities in the workplace. The aim of any accommodation measure in the workplace is to enable the person for whom it is implemented to participate fully and equally in working life (United Nations High Commissioner for Human Rights, 2012). Denial of reasonable accommodations therefore constitutes discrimination on the basis of disability (United Nations, 2006: Article 2).

Globally, numerous legal and policy provisions reaffirm the right to reasonable accommodations for persons with disabilities in all spheres of life (Crowther, Marshall, Bond, & Huxley, 2001; McDowell & Fossey, 2015). The Americans with Disability Act (ADA) (United States Congress, 1990) represented one of the first times the concept of reasonable accommodations was applied to disability within a legal framework, and later the European Union became one of the first regional bodies to adopt the concept through its Council Directive 2000/78 (European Union, 2000). It has been incorporated into international human rights policy provisions, many country-specific disability laws, and also some general national legislation regarding employment (Nardodkar et al., 2016; Perlin, 2011).

A scoping review on workplace accommodations for persons with mental illness identified various examples of reasonable workplace accommodations, for instance flexible scheduling/reduced hours, modified training and supervision, and modified job duties/descriptions (McDowell & Fossey, 2015). Current guidance for employers from the U.S. Equal Employment Opportunity Commission (EEOC) includes additional modifications, such as time to attend therapy appointments, a quiet work space, or permission to work from home (EEOC, 2018). The lack of reasonable accommodations in employment is often cited as a primary cause for high unemployment levels amongst people with disabilities (Harmuth et al., 2018), indicating that reasonable accommodation measures are essential to enjoyment of basic rights, including the right to employment.

## 4. Results

### 4.1. Status of UN CRPD ratification and inclusion of mental illness in the definition of disability

We found that 15 (83%) of the 18 countries in the East Africa region have ratified the UN CRPD (see Table 1). Twelve (67%) of the countries have laws that recognize mental illness as a disability (see Table 2). For example, in Uganda, Article 2 of the Persons with Disabilities Act 2006

**Table 1**  
Countries that have signed/ratified the CRPD.

Status	N (%)
Ratified	15 (83%)
Signed but not yet ratified	1 (6%)
Neither signed nor ratified	2 (11%)

**Table 2**  
Countries that explicitly define/recognize mental illness as a disability.

Status	N (%)
Yes (mental illness is included in the definition of disability)	12 (67%)
Unclear (it is unclear whether mental illness is included in the definition of disability)	6 (33%)

recognizes that mental impairment can affect activities of daily living and result in disability (Republic of Uganda, 2006). Similarly, in Seychelles, the National Council for Disabled Persons Act recognizes mental illness as a form of disability (Republic of Seychelles, 1994).

In the remaining six countries, it was unclear whether mental illness was included in the definition of disability, as there was no reference to mental illness in the description of disabilities.

It is also pertinent to point out that most of the laws still use derogatory terms such as ‘unsound mind’ or ‘mad’ to refer to mental illness, including the laws of some countries that explicitly include mental illness as a disability (Committee on the Rights of Persons with Disabilities, 2015a). For instance, in the Ugandan constitution, one of the conditions under which a person may be deprived of personal liberty includes “in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol...” (Republic of Uganda, 2005). Similarly, in the Kenyan constitution, one of the reasons for voter eligibility requires that the person “is not declared to be of unsound mind” (Republic of Kenya, 2010).

#### 4.2. Defining reasonable accommodations in national laws

We observed a lack of explicit definitions of reasonable accommodations, and incomplete recognition that denial of reasonable accommodations is disability-based discrimination. Only 11 (61%) of the countries have issued recommendations to employers on reasonable accommodations for employment of persons with disabilities that include mental disabilities (see Table 3). For instance, the Disability Act in Kenya and the Disability Act of Malawi recommend a barrier-free and disability-friendly environment for employment of persons with disabilities (Republic of Kenya, 2012; Republic of Malawi, 2012). In the other seven countries, recommendations on reasonable accommodations are given, but it is unclear whether persons with mental disabilities are included in such recommendations based on their definition of disability.

Some countries have disability laws that incentivize the inclusion of persons with disabilities in employment. For example, Kenya's law guarantees a 25% tax incentive for employers of persons with disabilities (Republic of Kenya, 2012). Similarly, in Uganda the Persons with Disabilities Act of 2006 ensures a 15% tax incentive for employers of persons with disabilities (Republic of Uganda, 2006). These incentives apply to employers of persons with disabilities in general, and

**Table 3**  
Countries with recommendations on reasonable accommodations in employment of persons with mental disabilities.

Status	N (%)
Yes (clear recommendations for reasonable accommodations in employment of persons with mental disabilities in the workplace)	11 (61%)
Unclear (it is unclear whether the laws and policies recommend reasonable accommodations in the workplace and/or in relation to employment of persons with a mental disability)	7 (39%)

**Table 4**  
Countries that have submitted a State Report to the CRPD Committee.

Status	N (%)
Yes (have submitted a State report to the CRPD committee)	8 (44%) <sup>a</sup>
No (have not submitted a State Report to the CRPD committee)	10 (56%)

<sup>a</sup> Out of the 8 countries that submitted a State Report, only 4 (22%) have been reviewed.

not to persons with mental disabilities alone. In countries where mental illness is accepted as a form of disability, it may be inferred that these incentives would be extended to employers of persons with mental disabilities. One function of such incentives is to cover the cost of reasonable accommodations.

#### 4.3. State reports on compliance with UN CRPD

Eight of the countries have submitted a State Report to the UN CRPD committee (see Table 4), and of these, four State Reports have been reviewed. We do not know why the State Reports of the other four countries have not been reviewed by the CRPD Committee. The review of State Reports serves as a way of monitoring compliance of State Parties with the recommendations of the CRPD Committee, including the alignment of their national laws to the UN CRPD.

The countries whose State Reports have been reviewed (Ethiopia, Kenya, Mauritius and Uganda) received similar patterns of recommendations from the UN CRPD Committee. The recurring recommendations in the concluding observations of the UN CRPD Committee for the State Parties whose reports were reviewed were removal of derogatory references to mental illness in national laws and policies, and addressing the poor rates of employment for persons with mental or psychosocial disabilities (Committee on the Rights of Persons with Disabilities, 2015a, 2015b, 2016a, 2016b).

In Kenya, the employment rate for persons with disabilities was noted as 1% (Committee on the Rights of Persons with Disabilities, 2015a). In Mauritius, the committee concluded by writing that only 3% of persons with disabilities are employed, and recommended reasonable accommodations in employment plus a movement from sheltered employment to open/competitive employment for persons with disabilities (Committee on the Rights of Persons with Disabilities, 2015b). In Ethiopia and Uganda, the committee noted the absence of affirmative action to support the employment of persons with disabilities (Committee on the Rights of Persons with Disabilities, 2016a).

The CRPD Committee also highlighted the non-involvement of civil society in the preparation of the four reviewed Reports. Article 33 (3) of the CRPD confers a monitoring role onto civil society organizations regarding the implementation of the convention by State Parties (United Nations, 2006). In addition to having a potential role in official monitoring of UN CRPD compliance, in many countries civil society organizations carry out independent investigations and issue ‘shadow reports,’ typically when it is perceived that the official government report is less than honest.

In the disability, labor and national laws examined, it was unclear whether the countries perceive reasonable accommodations as a progressive or immediate obligation, and there is an overall lack of specific frameworks to align national policies to the recommendations of the UN CRPD.

## 5. Discussion

Our study reveals that ratification of the UN CRPD does not always mean that its key provisions are quickly reflected in country-specific legislation. This observation is highlighted by the non-inclusive definitions of disability found in the laws of several countries that have ratified the UN CRPD. A report by the NGO Disability Studies in Nederland suggests that non-inclusive definitions of disability form a key barrier to persons with mental disabilities enjoying the right to reasonable accommodations in the workplace (Waltz, 2017). In our study, the law-to-practice gap is even larger when the rate of ratification (83%) is compared to only 44% compliance with submission of a State Report to the UN CRPD Committee, which triggers monitoring of compliance by State Parties, and is also an indicator of the fulfilment of their immediate and progressive obligations. These discrepancies between national and international legislation are likely markers of even larger gaps between national laws and practice, as was highlighted in a recent study on disability policy in Africa (Fernandez, Rutka, & Aldersey, 2017).

The lack of clarity on whether mental illness is included in the definition of disability in six countries raises concerns. Explicit inclusion is necessary to bring parity even within the disability sector, and also to facilitate access to other employment-related rights, such as insurance, medical leave or obtaining a disability certificate (Mokoka, Rataemane, & Dos Santos, 2012). An inclusive definition of disability in legal documents is relevant for implementation of reasonable accommodations for persons with mental disabilities in the workplace and in other sectors of life.

A narrow definition of disability that excludes persons with mental illness implies that such individuals are unlikely to benefit from government welfare packages for persons with disabilities, an attitude that has been previously reported in Kenya (Users and Survivors of Psychiatry Kenya, 2017). Also, employers may not accept having to provide workplace accommodations for persons with mental illness in countries where mental illness is not recognized as a disability.

Our study reveals a divergence between the ratification of the UN CRPD and changes to country-specific legislation that would ensure actualization of the treaty. This is also observed in the 22% of the countries that have received recommendations from the CRPD Committee. There is an obvious failure of State Parties to adhere through practice to the recommendations of the CRPD Committee. The persistence of discrimination and the use of derogatory terms regarding persons with mental disabilities are worrisome, and suggest a correlation between stigma attached to mental disabilities and the drafting of legislation. Other studies indicate an association between mental disability, stigma and the absence of reasonable accommodations in employment of persons with mental disability (Nardodkar et al., 2016; Saleh & Bruyère, 2018). Enforcement of national legislation on reasonable accommodation is important for the realization of inclusive and equitable employment for persons with mental disabilities. The employment rate of 1% for all persons with disabilities in Kenya documented in the CRPD Committee report (Committee on the Rights of Persons with Disabilities, 2015a) implies that for persons with mental disabilities, the rate is a fraction of 1%.

Enforcement of available laws and policies is pivotal to achievement of immediate obligations related to other basic needs, like health, education and shelter, that persons with mental disabilities require to function in employment (Byrne et al., 2018; Mental Health Europe, 2016). Reasonable accommodations in education and health are absolutely essential for employment of persons with mental disabilities (World Health Organisation, 2018). It is hence not surprising that the UN CRPD Committee recommended national coverage of health insurance for persons with disabilities in Uganda (Committee on the Rights of Persons with Disabilities, 2016b). In Kenya, a report published by the Users and Survivors of Psychiatry Kenya makes a case for the realization of the right to health, and highlights the many deficiencies

of their country's health system (Users and Survivors of Psychiatry Kenya, 2017).

The duty to provide reasonable accommodations is an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, for example in a workplace or school, in order to enjoy her or his rights on an equal basis in a particular context (Committee on the Rights of Persons with Disabilities, 2014, 2018). Hence, reasonable accommodation is not the mere provision of accessibility (an *ex ante* duty), but entails individualized measures negotiated with the affected individual, and sometimes initiated by the duty bearer when recognized as relevant to overcome barriers to the exercise of rights by a person with a disability (Committee on the Rights of Persons with Disabilities, 2018). Interestingly, there is evidence that reasonable accommodations for persons with psychiatric disabilities do not cost the employer so much (MacDonald-Wilson, Rogers, Massaro, Lyass, & Crean, 2002). A range of accommodation measures, including flexible and alternative working arrangements, can be provided at low cost (United Nations High Commissioner for Human Rights, 2012).

We acknowledge that some of the reviewed laws and policies may have provisions related to reasonable accommodations that we may have missed. Also, we may have missed practices based on precedents set by court cases.

## 6. Conclusion and recommendations

The provision of reasonable accommodations in employment for persons with a mental disability is a human right, as guaranteed in the UN CRPD. However, accessing this right remains extremely difficult for people living in East Africa. Our research documents a gap between ratification of the UN CRPD and its translation into legal and policy provisions for reasonable accommodations in employment in respective countries. In most cases, inclusion of reasonable accommodations and recognition of the denial of reasonable accommodations as discrimination is lacking in East Africa.

In addition, much of the literature, including legal and policy advice, is geared towards formal employment. Companies with HR departments, formal contracts, and diversity policies find it easier to implement the kinds of reasonable adjustments that are typically given as examples of good practice. In East Africa, however, new ways of thinking, new ways to reach and convince small, informal employers, and methods of providing support for those who live by daily labour or self-employment are needed.

Translating principles of international human rights into real-world practice is fundamental to the enjoyment of the right to work for persons with mental disabilities. It is essential for states to review their laws more carefully, including employment laws and definitions of disability, to ensure that they are in line with the UN CRPD. It is further crucial for states to create awareness about the requirement to provide reasonable accommodations in employment amongst different stakeholders, including employers in both the private and public sector, and to take steps to eliminate mental disability stigma. Persons with mental disabilities and their representative organizations must be actively involved in all these processes to guard against discrimination, and to generate helpful examples of how reasonable accommodations can make a difference in a variety of work situations. It is our recommendation that future studies on this subject review the actual implementation of laws, and the impact of reasonable accommodations on the enjoyment of the right to work by persons with a mental disability.

## Authors and contributors

IDE, BJR, and JFGB designed the study. IDE collected the data, which was analyzed with MN, RN and MW. IDE wrote the initial draft, which was reviewed with BJR, JFGB, MN, RN and MW. All authors

approved the final version of the manuscript for submission.

## Funding

This work was supported by funding received by the first author from the Erasmus Mundus Joint Doctorate (EMJD) Fellowship-TransGlobal Health Consortium FPA 2013-0039 (SGA2016-1346).

## Acknowledgements

We are grateful to Prof. Michael Stein for his review of the initial draft of the manuscript and his suggestions. We thank Dr. Soumitra Pathare and Dr. Dinesh Bhugra for sharing data from the World Psychiatric Association (WPA) global review of laws pertaining to the right to work and employment of persons with mental illness.

## Competing interests

None.

## Prior presentation

Presented as an abstract at the International Commission on Occupational Health (ICOH) conference, May 2018 (Dublin, Ireland).

## References

- African Union (2018). *African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities*. Banjul, Gambia: African Commission on Human and Peoples' Rights. Retrieved from <http://www.achpr.org/instruments/achpr/>.
- Byrne, M., White, B., & McDonald, F. (2018). A new tool to assess compliance of mental health laws with the Convention on the Rights of Persons with Disabilities. *International Journal of Law and Psychiatry*, 58, 122–142.
- Canadian Human Rights (2012). Canadian Human Rights Act (R.S.C., 1985, c. H-6). Retrieved from [https://www.mindbank.info/external\\_link/989/423477dcb448f00fe65475918d0cc89c8b0ee67](https://www.mindbank.info/external_link/989/423477dcb448f00fe65475918d0cc89c8b0ee67).
- Committee on Economic, Social and Cultural Rights (1995). CESCR General Comment No. 5: Persons with Disabilities. Retrieved from <http://disabilitycouncilinternational.org/documents/CESCRGeneralComment5.pdf>.
- Committee on Economic, Social and Cultural Rights (2016). General Comment No. 23 (2016) on the Right to Just and Favorable Conditions of Work (article 7 of the International Covenant on Economic, Social and Cultural Rights). Retrieved from <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work>.
- Committee on the Rights of Persons with Disabilities (2014). General Comment No.2 on Accessibility. para 25 (CRPD/C/GC/2). Retrieved from <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>.
- Committee on the Rights of Persons with Disabilities (2015a). Concluding Observations on the Initial Report of Kenya (CRPD/C/KEN/1). Retrieved from [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN).
- Committee on the Rights of Persons with Disabilities (2015b). Concluding observations on the initial report of Mauritius (CRPD/C/MUS/1). Retrieved from [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MUS&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MUS&Lang=EN).
- Committee on the Rights of Persons with Disabilities (2016a). Concluding observations on the initial report of Ethiopia (CRPD/C/ETH/1). Retrieved from [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ETH&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ETH&Lang=EN).
- Committee on the Rights of Persons with Disabilities (2016b). Concluding observations on the initial report of Uganda (CRPD/C/UGA/1). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/223/37/PDF/G1522337.pdf?OpenElement>.
- Committee on the Rights of Persons with Disabilities (2018). General comment on equality and non-discrimination. Retrieved from [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRPD\\_C\\_GC\\_6\\_2018\\_ENG.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRPD_C_GC_6_2018_ENG.pdf).
- Commonwealth of Australia (2011). National Disability Strategy for Australia 2010–2020: An Initiative of the Council of Australian Governments. Retrieved from <https://trove.nla.gov.au/work/80951377?selectedversion=NBD55181486>.
- Crowther, R., Marshall, M., Bond, G. R., & Huxley, P. (2001). Vocational Rehabilitation for People with Severe Mental Illness. *Cochrane Database of Systematic Reviews*(2), CD003080. <https://doi.org/10.1002/14651858.CD003080>.
- Ecumenical Disability Advocates Network (2012). A Review of Legislative, Policy and Programmatic Change in East Africa: Four Years after the UN Convention on the Rights of Persons with Disabilities (CPRD). Retrieved from <http://www.edan-wcc.org/a-review-of-legislative-policy-and-programmatic-change-in-east-africa-four-years-after-the-un-convention-on-the-rights-of-persons-with-disabilities>.
- EEOC (2018). Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights. Retrieved from [https://www.eeoc.gov/eeoc/publications/mental\\_health.cfm](https://www.eeoc.gov/eeoc/publications/mental_health.cfm).
- European Union (2000). Council Directive 2000/78/EC. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.
- Fernandes, H., & Cantrill, S. (2016). Inclusion of People with Psychosocial Disability in Low and Middle Income Contexts: A Literature and Practice Review. Retrieved from [http://www.mhinnovation.net/sites/default/files/downloads/resource/TEAR-MentalHealthReport\\_A4pg-FA\\_small\\_file\\_0.pdf](http://www.mhinnovation.net/sites/default/files/downloads/resource/TEAR-MentalHealthReport_A4pg-FA_small_file_0.pdf).
- Fernandez, E. L. A., Rutka, L. J., & Aldersey, H. M. (2017). Exploring disability policy in Africa: An online search for national disability policies and UNCRPD ratification. *Review of Disability Studies: An International Journal*, 13(1), 13.
- Harmuth, E., Silletta, E., Bailey, A., Adams, T., Beck, C., & Barbic, S. P. (2018). Barriers and facilitators to employment for adults with autism: A scoping review. *Annals of International Occupational Therapy*, 1(1), 31–40.
- Heymann, J., Stein, M. A., & Moreno, G. (2014). *Disability and equity at work*. Oxford University Press.
- International Labour Organisation (2018). *NATLEX Database of National Labour, Social Security and Related Human Rights Legislation*. Retrieved 28 July 2018, from [ILOhttp://www.ilo.org/dyn/natlex/country\\_profiles.byCountry?p\\_lang=en](http://www.ilo.org/dyn/natlex/country_profiles.byCountry?p_lang=en).
- Krupa, T., Kirsh, B., Cockburn, L., & Gewurtz, R. (2009). Understanding the stigma of mental illness in employment. *Work*, 33(4), 413–425.
- Linden, M. (2017). Definition and assessment of disability in mental disorders under the perspective of the international classification of functioning disability and health (ICF). *Behavioral Sciences & the Law*, 35(2), 95–185. <https://doi.org/10.1002/bsl.2283>.
- MacDonald-Wilson, K. L., Rogers, E. S., Massaro, J. M., Lyass, A., & Crean, T. (2002). An investigation of reasonable workplace accommodations for people with psychiatric disabilities: Quantitative findings from a multi-site study. *Community Mental Health Journal*, 38(1), 35–50.
- Marks, A., Cowan, S., & McLean, G. (2017). *Mental health and unemployment in Scotland*. In: Heriot Watt University.
- McDowell, C., & Fossey, E. (2015). Workplace accommodations for people with mental illness: A scoping review. *Journal of Occupational Rehabilitation*, 25(1), 197–206.
- Mental Health Europe (2016). Mental Health Europe Contribution to the Call for Submissions from the Committee on the Rights of Persons with Disabilities on the General Day of Discussion Art. 19 on the right to live independently and be included in the community. Retrieved from <https://mhe-sme.org/contribution-article-19-of-the-un-crpd/>.
- Mokoka, M. T., Rataamane, S. T., & Dos Santos, M. (2012). Disability claims on psychiatric grounds in the South African context: A review. *South African Journal of Psychiatry*, 18(2), 34–41.
- Nardodkar, R., Pathare, S., Ventriglio, A., Castaldelli-Maia, J., Javate, K. R., Torales, J., & Bhugra, D. (2016). Legal protection of the right to work and employment for persons with mental health problems: A review of legislation across the world. *International Review of Psychiatry*, 28(4), 375–384.
- Ngwenya, C., Plessis, I. G.-d., Combrinck, H., & Kamga, S. D. (2017). *African Disability Rights Yearbook 5*. Pretoria, South Africa: Pretoria University Law Press.
- Organisation for Economic Co-operation and Development (2010). *Mental Health, Disability and Work*. Retrieved from [www.oecd.org/els/disability](http://www.oecd.org/els/disability).
- Organization of African Unity (1981). *African Charter on Human and Peoples' Rights*. Retrieved from [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).
- Parliament of the United Kingdom (2010). *Equality Act 2010*. London: The Stationary Office.
- Parry, J. W. (2013). *Mental Disability, Violence, and Future Dangerousness: Myths Behind the Presumption of Guilt*. Rowman & Littlefield.
- Perlin, M. L. (2011). *International Human Rights and Mental Disability Law: When the Silenced are Heard*. Oxford University Press.
- Prince, M. J. (2010). What about a disability rights act for Canada? Practices and lessons from America, Australia, and the United Kingdom. *Canadian Public Policy*, 36(2), 199–214.
- Republic of Kenya (2010). The Constitution of Kenya. Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/ke/ke019en.pdf>.
- Republic of Kenya (2012). Persons with Disabilities Act, Kenya. Retrieved from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/69444/115499/F923058%20154/KEN69444%202012.pdf>.
- Republic of Malawi (2012). Disability Act, 2012 (No. 8 of 2012) Malawi. Retrieved from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104036/126729/F-177386510/MWI104036.pdf>.
- Republic of Seychelles (1994). National Council for Disabled Persons Act (Chapter 137a). Retrieved from <https://seylil.org/sc/legislation/consolidated-act/137a>.
- Republic of Uganda (2005). The Constitution of the Republic of Uganda. Retrieved from <https://wipo.int/en/text/424968>.
- Republic of Uganda (2006). Persons with Disabilities Act, 2006. Retrieved from [http://www.usicd.org/doc/wcms\\_232181.pdf](http://www.usicd.org/doc/wcms_232181.pdf).
- Robb, A. (2012). *Towards strengthening the rights of persons with psychosocial disabilities in Africa*. Cape Town: Pan African Network of People with Psychosocial Disabilities (PANUSP).
- Saleh, M. C., & Bruyère, S. M. (2018). Leveraging employer practices in global regulatory frameworks to improve employment outcomes for people with disabilities. *Social Inclusion*, 6(1), 18–28.
- United Nations (1966). *International Covenant on Economic, Social and Cultural Rights*. Resolution 2200A (XXI) of December, 16, 1966.
- United Nations (1993). The Standard Rules on the Equalization of Opportunities for persons with Disabilities. Retrieved from United Nations <http://www.un.org/esa/socdev/enable/dissre00.htm>.

- United Nations (2006). Convention on the Rights of Persons with Disabilities and Optional Protocol. Retrieved from <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.
- United Nations (2015). Sustainable Development Goals. Retrieved from <http://www.un.org/sustainabledevelopment/sustainable-development-goals/#>.
- United Nations (2018). Convention on the Rights of Persons with Disabilities (CRPD). <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.
- United Nations High Commissioner for Human Rights (2012). Thematic Report on Right to Employment of Persons with Disabilities (A/HRC/22/25). Retrieved from <http://www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx>.
- United Nations Statistics Division (2018). Standard Country or Area Codes for Statistical Use (M49). Retrieved from <https://unstats.un.org/unsd/methodology/m49/website>.
- United States Congress (1990). Americans with Disabilities Act of 1990: Public Law 101-336, 108th Congress, 2nd session (July 26, 1990). *Public Law*, 101, 336.
- Users and Survivors of Psychiatry Kenya (2017). Advancing the Rights of Persons with Psychosocial Disability in Kenya. Retrieved from <http://www.uspkenya.org/wp-content/uploads/2017/08/Advancing-the-Rights-of-Persons-with-Psychosocial-Disability-Booklet-Sample.pdf>.
- Waddington, L., & Lawson, A. (2009). *Disability and non-discrimination law in the European Union: An analysis of disability discrimination law within and beyond the employment field*. Publications Office of the European Union.
- Waltz, M. (2017). *Included in Training and Work: Transforming Policies and Practices for People with Disabilities*. Amersfoort: Disability Studies in Nederland. Retrieved from [https://disabilitystudies.nl/sites/disabilitystudies.nl/files/included\\_in\\_training\\_and\\_work\\_-\\_the\\_report.pdf](https://disabilitystudies.nl/sites/disabilitystudies.nl/files/included_in_training_and_work_-_the_report.pdf).
- World Health Organisation (2011). *World Report on Disability*. World Health Organization. Retrieved from: [https://www.who.int/disabilities/world\\_report/2011/en/](https://www.who.int/disabilities/world_report/2011/en/).
- World Health Organisation (2018). *WHO MiNDbank: More Inclusiveness Needed in Disability and Development*. Geneva: World Health Organisation. Retrieved from <https://www.mindbank.info/collection/country>.
- Wylonis, L., Wylonis, N. T., & Sadoff, R. (2017). Navigating the rolling hills of justice: Mental disabilities, employment and the evolving jurisprudence of the Americans with disabilities act. *Behavioral Sciences & the Law*, 35(2), 178–185.