

African women with disabilities: The victims of multilayered discrimination

*Ilze Grobbelaar-du Plessis**

1 Introduction

Among the yardsticks to measure a society's respect for human rights and to evaluate the level of its maturity and its generosity of spirit, is to look at the status it accords to those members of society who are most vulnerable.¹

People with disabilities face many obstacles in their struggle for equality. Both men and women who are physically or mentally challenged are subject to discrimination, but women with disabilities are further disadvantaged, not only because they are disabled, but because they are 'disabled women'. Initially disability research assumed that gender and social dimensions such as race, class, culture and religion were irrelevant. Similarly, disability studies traditionally followed a gender-blind approach, and therefore neglected to explore the influence of gender, culture and religion on the lives of men and women with disabilities. According to Traustadottir² the major unifying factor of women with disabilities is the conceptualisation that they are a group with multiple-minority status. According to Human Rights Watch,³ women are more likely than men to become disadvantaged during their lives, due in part to gender bias in the allocation of scarce resources and in access to service. According to their website, women are less likely than men to make use of existing social services, including residential services due to social, cultural and religious factors. Disabled women and girls face the same spectrum of human rights abuses that able-bodied women face. However, these abuses are magnified due to the social isolation and dependence of the women concerned. In some countries laws overtly discriminate against disabled

*BIur LLB LLM (Pret). Senior Lecturer, Department of Public Law, University of Pretoria.

¹Integrated National Disability Strategy 9, White Paper, Office of the Deputy President of the Republic of South Africa, November 1997.

²Traustadottir *Women with disabilities: The double discrimination* (part I) Center on Human Policy, Division of Special Education and Rehabilitation, Syracuse University (2002) 3.

³www.hrw.org/women/disabled.html (accessed 2007-05-07).

women, and even where the laws are not discriminatory, disabled women and girls face a host of abuses at the hands of their caregivers, communities and the state.⁴ The discrimination these women face is deeply embedded in the cultural, religious and gender biased societies they live in. Persistence of certain cultural, religious and gender-based barriers makes women and girls with disabilities the victims of multi-discrimination.⁵ These women often lack the opportunities of the mainstream population, making them the most marginalised group in society.

2 The intersection between multiple forms of discrimination: Women with disabilities

2.1 Gender equality

Women with disabilities are not always regarded as fit to fill the traditional roles of mother, wife, homemaker, nurturer and to be economically productive members of society. The social role is stereotypically defined through motherhood and homemaking. These roles are sometimes not seen as appropriate for women with disabilities. Disabled women and girls are commonly stereotyped as sick, helpless, childlike, dependent, in need of care, incompetent, 'asexual'⁶ and 'genderless' and their options and opportunities are therefore greatly limited because they are seen as 'role less'.⁷ This imposes upon women with disabilities an 'invisible social status',⁸ reinforcing the traditional stereotypes of women as dependent, passive and needy.

If one compares women with disabilities to either men with disabilities or able-bodied women, women with disabilities are more likely not to marry,⁹ to marry later in life or to be divorced if they should get married.¹⁰

Able-bodied women are more likely than women with disabilities to be afforded the option of a traditional or non-traditional life-style. Women with disabilities rarely have this option and their access to the most traditional female roles is very restricted.¹¹ In this context, it is interesting to note that the very focus

⁴*Ibid.*

⁵'...women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability' Beijing Platform for Action, chapter IV, Strategic Objectives and Action para 46.

⁶According to Traustadottir (n 2) 6, it is widely documented that women with disabilities are typically seen as asexual.

⁷A report by Rousso 'Education for all: A gender and disability perspective' *CSW, disability unlimited, for the World Bank* at www.inclusion-international.org/site_uploads/11190069881345260283.pdf (accessed 2007-05-15).

⁸Naidu, Haffejee, Vetten and Hargreaves 'On the margins: Violence against women with disabilities' a research report written for the Centre for the Study of Violence and Reconciliation, April 2005 at <http://www.csvr.org.za/papers/papdisab.htm> (accessed 2007-05-07).

⁹Ingstad and Whyte *Disability and culture* (1995) 16.

¹⁰Traustadottir (n 2) 4.

¹¹*Ibid.*

of women's movements to advance an image of women as powerful, successful and competent tends to marginalise women with disabilities even more.

Women with disabilities experience particular forms of discrimination and prejudice related directly to their gender and disability, which may limit their participation in, and enjoyment of a full life in society.¹² Distinct intersections between class, race/ethnicity and gender, shape structural and political aspects of discrimination in patriarchal societies.¹³ The impact of class, race/ethnicity and gender on African women with disabilities, result in these women suffering more than double due to oppression.¹⁴ Crenshaw argues that gender and class oppression, coupled with racial discrimination; contributes significantly to African women being the most socially and politically marginalised group.¹⁵ The argument that African women with disabilities are not only the most marginalised but also the most vulnerable group in the South African society can be compounded by poverty and socio-economic disadvantages.¹⁶ Since African women as a group constitute the majority of the poor in South Africa, African women with disabilities are the most likely to be poor, destitute, malnourished and illiterate.¹⁷ According to a research report written for the Centre for the Study of Violence and Reconciliation,¹⁸ African women with disabilities experience multiple and reinforcing layers of discrimination, disadvantage and social marginalisation. The researchers argue that the multiple layers are lethal and deeply oppressive and points out that it is for this reason that the Paper on Social Welfare of 1997 and the Integrated National Disability Strategy of 1997 identified women, especially African women, as a particularly vulnerable group who are deserving of concerted policy attention.¹⁹

Women with disabilities are more prone to abuse than able-bodied women. Research found that women with disabilities are more likely to experience abuse by caregivers and healthcare providers than women without disabilities. As a result of society's negative perceptions about disability, many women with disabilities are trapped in abusive relationships, as they find themselves dependent on the abuser for assistance, affection, communication, financial assistance and physical support.²⁰

According to the research report by the Centre for the Study of Violence and Reconciliation, it is very difficult to fully estimate the extent of the

¹²Naidu *et al* (n 8).

¹³Crenshaw 'Mapping the margins: Intersectionality, identity politics and violence against women of color' (1991) *Stanford Law Review* 1244.

¹⁴Naidu *et al* (n 8).

¹⁵Crenshaw (n 13) 1245.

¹⁶*Ibid.*

¹⁷Integrated National Disability Strategy, White Paper, Office of the Deputy President of the Republic of South Africa November 1997.

¹⁸Naidu *et al* (n 8).

¹⁹*Ibid.*

²⁰*Ibid.*

problem. While, underreporting of violence against women with disabilities is common – and this is also the case with regard to their able-bodied peers – additional factors may prevent women with disabilities to report abuse. The high levels of dependency on caregivers, often the perpetrators of violence, together with social isolation and discrimination against women with disabilities, simultaneously contribute to underreporting of violence against women with disabilities.²¹

International studies have concluded that women with disabilities suffer an equal or up to three times greater risk than able-bodied women of being raped by a stranger or acquaintance.²² Women with disabilities are in particular subjected to mystification of their sexuality and are often viewed as asexual. This view, combined with the erroneous assumption, which is often made by people in Africa, that having sex with a virgin is a cure for HIV/AIDS, has led to sexual abuse of many girls and women with disabilities by men with HIV/AIDS.²³ According to Rousso alarming information are reported regarding disabled daughters being sold into prostitution by poor families. Prostitution rings see these victims as ‘good catches’, since disability-related limitations make it more difficult for disabled girls to escape.²⁴

A contradiction seems to present itself in that women with disabilities are not seen as sexual beings and at the same time they are at a much greater risk of being sexually abused. According to Traustadottir, those who have studied sexual abuse have documented that sexual abuse has more to do with the oppressive use of power than with sex. Abusers are on the lookout for, and take advantage of vulnerability to create the opportunity to rape. People who are marginalised, dependent and powerless,²⁵ such as women with disabilities are more vulnerable than others. Women with disabilities are therefore at a greater risk of being sexually abused than members of any other group of women.

Oppressive and violent behaviour against women with disabilities is likely to occur in any patriarchal community that discriminates against women with disabilities. South African women who are disabled often deal with additional layers of discrimination such as violence and disadvantages, the origins of which are to be found in a history of institutionalised racism.²⁶ In order to ensure all African women their rightful status as human beings in terms of which they would be able to claim and exercise their rights in their societies and communities, all forms of discrimination against them must be weeded

²¹*Ibid.*

²²‘Disability in cross-cultural perspective: Rethinking disability’ (1999) *The Lancet* 756-757; Groce ‘Rape of individuals with disability: AIDS and the folk belief of virgin cleansing’ (2004) *The Lancet* 363.

²³Rousso (n 7) 12.

²⁴*Ibid.*

²⁵Traustadottir (n 2) 6.

²⁶Naidu *et al* (n 8).

out.²⁷ If this is not achieved discrimination and violence against women with disabilities will ravage its way through society.

Poor people and particularly women with disabilities, are extremely vulnerable. Women with disabilities are more likely to be living in poverty than men in the same situation. Women are not only vulnerable due to gender inequalities, but also as a result of their roles as mothers and caregivers. Persons with disabilities are more prone to poverty than others, and poverty creates the conditions, which are necessary to increase the risk of disability.²⁸ Therefore, vulnerability increases where poverty prevails as a result of poor nutrition, lack of access to health care and greater exposure to violence and the subsequent intentional or unintentional injuries.

2.2 Culture

A society manifests itself in the way it handles certain important phenomena.²⁹ Disability is one of such phenomenon.³⁰ Normality is a culturally construed notion that is strongly ethnocentric.³¹ While disability is universal, Groce³² argues that there is a marked variation in how cultures interpret disability. In the interpretation of disability, cross-cultural differences show that the lives of individuals with disabilities are limited not by their specific type of disability but by the social interpretation of that disability.³³ According to her, research shows that the lives of individuals with disabilities are globally more limited by prevailing social, cultural and economic constraints than by specific physical, sensory, psychological, or intellectual impairments. In other words, the attitudes of society and the environment society created are more restrictive than the disability itself. According to the Secretary-General of the United Nation's report on the Implementation of the World Programme of Action Concerning Disabled,³⁴ people with disabilities often encounter attitudinal and environmental barriers that prevent their full, equal and active participation in society. All societies and cultures have explanations for why some individuals are disabled and others not. The ways in which any particular society makes sense of disability find expression in the roles that society deems as appropriate or inappropriate for the persons with disabilities, what rights they are entitled to and what responsibilities they are entrusted with.³⁵ Culture plays an

²⁷*Ibid.*

²⁸Emmet 'Disability, poverty, gender and race' in *Disability and social change: A South African agenda* at www.hsrcpress.ac.za 208.

²⁹Striker *Corps infirmes et sociétés*. (1982) 25 as referred to in Devlieger 'Why disabled? The cultural understanding of physical disability in an African society' in *Disability and Culture* (1995) 94.

³⁰Devlieger (n 29) 94.

³¹Fougeyrollas 'Normalité et corps différents: Regard sur l'intégration sociale des handicapés physiques' (1987) *Anthropologie et Sciences* 54 as referred to in Devlieger (n 29) 95.

³²Groce (n 22) 756.

³³*Ibid.*

³⁴A/49/435 annex para 4.

³⁵*Supra* 31.

important role in the way we relate to people with disabilities, and in particular women with disabilities. According to Whyte and Ingstad, cross-cultural literature on disability employs two general ways of looking at the influence of culture on disability. Firstly, one can examine the overall features of social organisation in society, and secondly, one can focus on the implication of specific social characteristics like gender, race/ethnicity, age and class.³⁶ For some cultures disability goes far beyond the individual characteristics of the person, and in those cultures the persons with disabilities is placed in the framework of a wider social-cultural system. The social status of women with disabilities is shaped by cultural beliefs. Cultural bias against women with disabilities is reflected in the assumption in some cultures and societies that a disabled daughter will not marry. Since in some cultures, the prospect of a good marriage is the primary value of single girls, the assumption that a disabled daughter will not marry may lead to her social devaluation.³⁷ Physical disability for many African women inhibits daily activities such as fetching water, cutting wood and the washing of clothes. The prospect of marriage is for these women virtually nonexistent.³⁸ In many cultures disability *per se* is a source of stigma. In some cultures the health and beauty of girls and women represent family well-being. A disabled daughter or woman is sometimes seen as a failure³⁹ and hidden by the family.⁴⁰ Having a disabled daughter is seen as a double liability, which may lead to the devaluation of the whole family.⁴¹ According to the report of the Taylor Committee of Inquiry into a comprehensive system of social security for South Africa⁴² some people conceal their disability status or that of members of their households. This is reported to occur more likely in households and communities that are poorer and located in rural and less accessible areas. Furthermore, various myths and negative perceptions about disabled women may render disabled women unacceptable as marriage partners. Despite medical evidence that most disabilities are not heredity, fears and perceptions persist within certain societies that women with disabilities will give birth to disabled children.⁴³ These fears have resulted in severe discrimination against women with disabilities in general, and women with mental or intellectual disabilities in particular.⁴⁴ In addition to the above, custom in certain cultures dictates that the limited resources of an impoverished family should be used for the education of the boys, because they will be burdened in future with the responsibility of supporting the family.⁴⁵ These cultural barriers cut across most

³⁶Ingstad and Whyte *Disability and Culture* (1995) 12.

³⁷Rousso (n 7) 6.

³⁸Devlieger *Disability and Culture* (1995) 97.

³⁹Rousso (n 7) 7.

⁴⁰*Id* 8.

⁴¹*Id* 6.

⁴²Taylor report of the *Committee of Inquiry in to a comprehensive system of social security for South Africa*. Pretoria: Department of Social Development (2001) 357.

⁴³Naidu *et al* (n 8).

⁴⁴Traustadottir (n 2) 5.

⁴⁵*Supra* 40.

African countries. For example in Kenya, Ghana and Tanzania, boys are regarded as more valuable than girls. When resources are scarce, the boy is sent to school and not the girl, even if the boy is disabled.⁴⁶ In the light of the above, girls with disabilities are unlikely to be sent to school. The reason for this may be that girls with disability may be more costly to send to school,⁴⁷ particularly when they need special education, disability related equipment or special transportation. Understanding cultural and traditional beliefs is particularly important when it comes to health service providers and rehabilitation of persons with disabilities, and more specifically women with disabilities. Understanding is the basis for dialogue between the health service provider and the women with disabilities. The opportunity should be created for such women to discuss elements of their culture with the health service provider,⁴⁸ and for the women to reinterpret their cultural framework. This will enable the service provider to work 'with' and not 'against' the culture.⁴⁹ However, the idea of rehabilitation is a Western idea that is foreign to some African cultures as some African cultures have developed alternative ways of coping with disability in their communities.⁵⁰

2.3 Religion

Disability has always occurred amongst members of the human race. It follows that in every society some system of beliefs and practices concerning disability has developed. Causality, the cultural explanation for the occurrence of disability, is categorised as one of the social beliefs, which Groce⁵¹ argues could appear cross-culturally. A number of religions seem to have a negative attitude towards disability. Disability is sometimes seen as something, which could be 'cured' by believing in God. Some evangelic fundamentalist believes that people with disabilities who have not had their disability 'removed' by the 'blessing of God' are non-believers.⁵² In some religious sects, people with certain medical conditions are encouraged to refuse life-saving treatment and to die for their faith.⁵³ For some people, disability has religious or moral significance because they believe that people become, or are born disabled, either as punishment for sin, or as a means of inspiring or redeeming others. Others believe in reincarnation and claim that disability in this life is the result of 'bad karma' in a previous life.⁵⁴ In some African societies, in contrast to Western societies, where efforts are devoted to improve the lives of people with disabilities, the emphasis is on explaining the

⁴⁶*Supra* 38.

⁴⁷*Supra* 40.

⁴⁸Devlieger *Disability and Culture* (1995) 94.

⁴⁹*Ibid.*

⁵⁰Devlieger *Disability and Culture* (1995) 95

⁵¹Groce (n 22) 756.

⁵²www.reddisability.org.uk (accessed 2007-05-02).

⁵³*Ibid.*

⁵⁴*Ibid.*

reason for a person's disability.⁵⁵ In some cultures the explanations relate to divine displeasure, witchcraft or evil spirits, reincarnation or even tainted blood.⁵⁶ However, it is reported that in Botswana, the birth of a disabled child is viewed as evidence of God's trust in specific parents' ability to care for the 'delicate' child.⁵⁷ For the Shongye, the reason for disability will be sought through analysis of hypothetical levels of relationships between human beings and their environment. The relationship with the physical environment, the relationship with family members through sorcery and bride wealth and the relationship with the ancestors are examined in the quest for the reason for disability. If none of these relationships can be identified as distorted or problematic, God is seen as the cause of disability.⁵⁸ God denotes the sphere beyond human control, the reason that is given when no other causes can be found.⁵⁹ God, as an absolute and unknown force is then the only possible and final cause. Devlieger⁶⁰ claims that in African thinking, the person with the disability is not the direct and primary focus in search of a solution. The broader environment, such as the family of the disabled, ancestors and God is focussed upon. Therefore, the solution within an African approach concerns the meaning, which that biological deviation has for the society, the family and the individual with the disability.

3 International standards

A number of international instruments are applicable to people with disabilities. From the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant of Economic, Social and Cultural Rights of 1966, the Declaration on the Rights of Mentally Retarded Persons of 1971, the Declaration on the Rights of Disabled Persons of 1975, the Declaration on the Rights of Deaf-Blind Persons of 1979, the Convention on the Elimination of Discrimination Against Women of 1979, the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) of 1983, the Convention on the Rights of the Child of 1989, the Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care of 1991, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities of 1993, to the long awaited Convention on the Rights of Persons with Disabilities of December 2006.

Some of the instruments mentioned above are important with regard to the rights of women with disabilities. In 1994 General Comments 5 by the Committee on Economics, Social and Cultural Rights, formulated the obligations of states to

⁵⁵ *Supra* 49.

⁵⁶ *Supra* 50.

⁵⁷ *Ibid.*

⁵⁸ Devlieger *Disability and Culture* (1995) 98.

⁵⁹ *Ibid.*

⁶⁰ *Id* 104.

eliminate discrimination of persons with disabilities in the areas of equal rights for both men and women,⁶¹ as well as the right to take part in cultural life.⁶² The Convention on the Elimination of Discrimination Against Women (CEDWA) does not include any specific article on disability rights, but aims to protect the rights of all women, whether they are disabled or not. In General Recommendation 18, the committee on the Elimination of Discrimination Against Women (the monitoring body of CEDWA) stressed that disabled women suffer from double discrimination and are a particularly vulnerable group.⁶³

The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities of 1993,⁶⁴ adopted by the General Assembly in the aftermath of the Decade of Disabled Persons, which ended in 1992,⁶⁵ do not constitute a legally binding document for member states. However, the Standard Rules were the most comprehensive set of human rights standards for persons with disabilities before the adoption of the 2006 Convention on the Rights of Persons with Disabilities.⁶⁶ The Standard Rules⁶⁷ identify eight target areas of life in which principles of equality regarding persons with disabilities ought to be applied. The purpose of the Standard Rules is to ensure that all persons with disabilities 'may exercise the same rights and obligations as others'.⁶⁸ The Standard Rules establish that states have a responsibility 'to create the legal bases for measures to achieve the objectives of full participation and equality for persons with disabilities'. The eight target areas of life in which principles of equality regarding those with disabilities ought to be concentrated are: (i) accessibility; (ii) education; (iii) employment; (iv) income maintenance and social security; (v) family life and personal integrity; (vi) culture; (vii) recreation and sports and (viii) religion.

Since 2001 there has been a serious movement towards an international treaty on disability rights. The rights of women with disabilities are addressed in many of the articles of the draft convention on the Rights of Persons with Disabilities. A proposal that there should be an additional article on women's rights to specifically highlight the fact that disabled women suffer distinct discrimination from disabled men was also accepted. The final text contains an article on women with disabilities,⁶⁹ as well as several references to girls, women and gender issues.

History was made in August 2006 at the United Nations when the text of the Convention was agreed upon, followed by the subsequent unanimous adoption of the Convention on the Rights of Persons with Disabilities in December of the same

⁶¹Art 3 of the ICESCR.

⁶²*Id* art 15.

⁶³<http://www1.umn.edu/humanrts/gencomm/gener18.htm> (accessed 2007-05-08).

⁶⁴<http://www1.umn.edu/humanrts/instree/disabilitystandards.html> (accessed 2007-05-08).

⁶⁵<http://www.un.org/esa/socdev/enable/diswpa00.htm> (accessed 2007-05-08).

⁶⁶Res 61/611 2006-12-06.

⁶⁷Res 48/96 1993-12-20.

⁶⁸Cooper and Vernon *Disability and the law* (1996) 43.

⁶⁹Art 6 of the Convention on the Rights of Persons with Disabilities, A/61/611 2006-12-06.

year. The Convention and the Optional Protocol to the Convention opened for signature at the United Nations Headquarters in New York on 2007-03-30. BBC reported⁷⁰ that the UN Deputy Secretary General, Mark Malloch Brown, said the convention was the most rapidly negotiated human rights treaty in the history of international law, and the first such treaty in the 21st Century.⁷¹ A further historical event took place when the European Union signed the convention as a legal entity on 2007-03-30, a first in the field of human rights.⁷²

The long awaited convention sets out in detail the rights of persons with disabilities. It covers civil and political rights, accessibility, participation and inclusion, education, health, employment and social protection. Furthermore, the treaty recognises that attitudes need to be changed if persons with disabilities are to achieve equality. This aspect is of particular importance to persistent cultural, religious and gender-based barriers women and girls with disabilities have to face as victims of multi-discrimination.

The newly adopted convention contains the following references to women with disabilities. Firstly, paragraph (p) of the preamble states that state parties to the Convention are concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. Furthermore, the preamble recognises in paragraph (q), that women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Lastly, the preamble emphasises, in paragraph (s), the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.

Article 6, in which the Convention specifically highlights the fact that women with disabilities suffer distinct discrimination, recognises that women and girls with disabilities are subjected to multiple-discrimination. In this regard, state parties are enjoined to take measures to ensure the full and equal enjoyment by women with disabilities of all human rights and fundamental freedoms. Furthermore, state parties are obliged to take all appropriate measures to ensure the full development, advancement and empowerment of women with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention. Article 16 calls on state parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities. These measures include certain gender-based aspects. The article furthermore calls for effective legislation and policies focused on women and

⁷⁰http://news.bbc.co.uk/2/hi/in_depth/6173073.stm (accessed 2007-05-09).

⁷¹<http://explore.georgetown.edu/blogs/?ID=21327> (accessed 2007-05-07).

⁷²<http://www.ohchr.org/english/countries/ratification/15.htm> (accessed 2007-05-08).

children to be put in place by state parties to ensure identification of, investigation in and prosecution of exploitation, violence and abuse.

It is envisaged that the new and long awaited convention will provide a broad framework in international law to promote the rights of women with disabilities globally. In this regard it is important to note that countries that adopt the treaty will have to ensure that their laws, customs and practices that discriminate against persons with disabilities should be brought in line with the Convention. However, the treaty will only enter into force thirty days after twenty countries have ratified it. According to the website of the offices of the United Nations High Commissioner on Human Rights,⁷³ only one country, Jamaica, has so far ratified the Convention, although eighty five countries were signatories of the Convention on 2007-03-30.⁷⁴

4 The European experience

4.1 Disabled women in Europe

More than half of the disabled population in Europe are women and girls.⁷⁵ As disabled women and girls within the European Union have been discriminated against in the past, a compilation of recommendation to improve the lives of women and girls with disabilities within the European Union was adopted on 1997-02-22.⁷⁶ According to the Manifesto by Disabled Women in Europe the purpose of the document is to inform and alert women and girls with disabilities regarding their position, their rights and their responsibilities. According to the Manifesto's preface, the Manifesto also informs and alerts the European Commission, the European Parliament, Member States, the European Disability Movement, as well as Women's Movements regarding the absence of gender related thinking in relation to disabled women and girls.⁷⁷ The Manifesto therefore serves as a tool, which could be used to promote the empowerment of women with disabilities. It is important to note, given the European focus of the document, that the Manifesto recognises the existence of cultural differences between different countries, within the European Union.⁷⁸ Furthermore, the Manifesto recognises that multiple-discrimination of disabled women and girls can be based on different levels, such as, ethnic background, sexual orientation, age and socio-economic background. The Manifesto contains the submission that since the notion of multiple-discrimination on the ground of gender and disability is complex, the struggle for equal opportunities must take place on different levels and in different places simultaneously.⁷⁹ In article 2 of the Manifesto it is envisaged that legislation should be

⁷³Last updated 2007-04-19 (accessed 2007-05-09).

⁷⁴*Supra* 71.

⁷⁵Manifesto by disabled women in Europe by the European Disability Forum (1997) 5.

⁷⁶Adopted in Brussels on 1997-02-22 by the European Disability Forum Working Group on Women and Disability.

⁷⁷*Supra* 71.

⁷⁸(n 75) 7.

⁷⁹*Id* 8.

introduced to protect the rights of women with disabilities with regard to sexual abuse and violence. It is clear from article 2 that the Manifesto recognises the vulnerability of women with disabilities in particular. Article 2⁸⁰ furthermore refers to the development of a new European Union strategy, which should be gender-specific. Article 2.6 calls for disability policies and legislation at European level to take account of the specific situation of women with disabilities.⁸¹ Article 7 makes specific reference to women with mental health problems and their accommodation in 'women-only' wards, where services should be made available with due regard to the different cultural or ethnic background of the women with mental health problems.⁸² The article also recognises the major problem of violence against women and girls with disabilities, who are more likely to be victims of violence because of their vulnerability. The Manifesto refers in article 9 specifically to women with disabilities with different cultural backgrounds living outside their own country. According to article 9.1 these women should be uplifted from of their vulnerable positions, and be entitled as well as encouraged to use the same facilities and opportunities to develop their potential, as those available to women with disabilities of the host country. Article 9.3 recognises the multicultural European society and the possible disadvantages due to the socio-economic situation of many immigrants and women with disabilities from third world countries. The article further requires special attention to be devoted to removing obstacles that migrant women with disabilities may be faced with. Girls and women with disabilities, in need of technical aid and assistance specifically designed to meet their unique needs, should be provided with these services while having regard to the cultural and religious traditions of those concerned.⁸³ According to article 11.7, women who are deaf, should have free access to sign language interpreters whenever needed so as to allow their full participation and active integration into social life. Occasions where such need may arise would include for example, community, religious, cultural and political activities. Furthermore, women with hearing impairments should have the option of the services of either a female or a male interpreter. In this regard the Manifesto emphasises the training of female sign language interpreters, which should be encouraged.⁸⁴

Although the Manifesto supports independent living, in some cases, women with learning disabilities still live in institutions. These women should have a choice of single-sex or mixed-sex accommodation. Similarly, these women should also have the right to same-sex staff and personal assistants.⁸⁵ With regard to social security, health and medical care, and rehabilitation article 12.2 dealing with the respective roles of the sexes, points out that the role of women is generally assumed by society to be of service to others. In this regard the Manifesto suggests that the roles of the sexes should be redefined

⁸⁰*Id* art 2.5.

⁸¹*Id* 12.

⁸²*Id* art 7.4.

⁸³*Id* art 11.4.

⁸⁴*Id* art 11.7.

⁸⁵*Id* art 11.8.

in a spirit of equality. With regard to rehabilitation, article 12 requires rehabilitation services to be provided without sexual bias, and therefore freely available to girls and women with disabilities.⁸⁶ Furthermore, article 12.6 determines that medical rehabilitation services should be gender-neutral and available to all women with disabilities regardless of their age.

Article 14.1 states that all countries should ensure that women and girls with disabilities are integrated into, and allowed full participation in cultural activities on an equal basis with others. Places for cultural activities should be accessible and available to women with disabilities.

From the above it is clear that the Manifesto by disabled women in Europe recognises the vulnerability of women with disabilities and the multilayered discrimination experienced by them.

4.2 The European Convention on Human Rights and the European Social Charter

The Council of Europe, an international organisation with its seat in Strasbourg, has not adopted any specific human rights instruments on persons with disabilities. However, worth mentioning though, is that for a long period the European Social Charter was the first human rights treaty in which persons with disabilities were explicitly mentioned⁸⁷ as carriers of human rights.⁸⁸ The European Social Charter works as the counterpart of the European Convention and addresses social and economic rights.

The European Convention on Human Rights is designed to protect individuals' fundamental rights and freedoms. The European Convention empowers persons with disabilities with the means to enforce rights such as the right to life (art 2), the right not to be subject to torture or to inhumane or degrading treatment or punishment (art 3), the right to liberty and security of person and the right to respect for private and family life, home and correspondence (art 8), the right to freedom of thought, conscience and religion (art 9), and men and women of marriageable age have the right to marry and family life (art 12). Article 14 protects the enjoyment of the rights and freedoms provided for in the Convention without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Although disability is not mentioned as a specific ground, it is obviously covered in terms of the words 'any other status' at the end of article 14. Therefore, the rights contained in the Convention apply to all persons, including persons with disabilities, and more specifically women with disabilities irrespective of their culture or religion.

⁸⁶*Id* art 12.6.

⁸⁷*Id* art 15 part I; art 9 part II; art 15 art II and art E part V.

⁸⁸Art 15 of the European Social Charter of 1961.

Forty-five European countries fall under the jurisdiction of the European Convention on Human Rights. The influence of this Convention has grown steadily since its adoption in 1950. The judgments of its Strasbourg Courts have been highly influential in shaping the legislative framework of many countries.⁸⁹ Although no formal survey of the Court's activities has been conducted in this regard, the right to a fair trial provided for in article 6 gives rise to the highest number of complaints, followed by the right not to be unlawfully detained in terms of article 5.⁹⁰ According to Clements and Read,⁹¹ only a handful of judgments delivered by the Strasbourg Court relates to the rights of persons with disabilities. This is particularly curious given that there is substantial evidence of human rights violations against persons with disabilities. It seems that although the Convention is obviously of immense relevance to persons with disabilities in so far as the protection of their human rights is concerned, they do not avail themselves to any significant extent of this protection. One reason probably being the inaccessibility of the Strasbourg Court to persons with disabilities.⁹² As indicated above, action based on article 5 of the Convention (in terms of which the right to be unlawfully detained is protected) is often resorted to. In this regard the provision in article 5 that the right to liberty and security can be infringed upon on grounds of mental disability is of particular significance and cause for concern because women with mental disabilities (and for that matter men) who are detained in institutions may thereby in effect be devoid of the protection which may be available to other detainees. It is therefore not surprising that the Manifesto by Disabled Women in Europe refers specifically in article 11.8 to the right of women with mental disabilities to be entitled to same-sex care staff and personal assistants attend to them.

5 South African perspective

Since 1994, concrete steps have been taken to address the human rights of people with disabilities in South Africa. The Bill of Rights is the cornerstone of democracy in South Africa and it enshrines the democratic values of dignity, equality and freedom of all people in our country, also persons with disabilities. The Bill of Rights (chap 2 of the South African Constitution) and more specifically the provisions of section 9(3) and (4) protect a person with disabilities' human rights. According to these provisions the State or any person may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture,

⁸⁹Clements and Read 'The dog that didn't bark: The issue of access to rights under the European Convention on Human Rights by Disabled People' in *Disability rights in Europe* (2005) 21; In this regard, with reference to the rights of the disabled, the United Kingdom's Mental Health Act of 1983 is highlighted.

⁹⁰*Id* 21.

⁹¹*Id* 22.

⁹²*Id* 23.

language and birth. Section 9(2) stipulates that to achieve equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, may be taken. Furthermore, section 9(4) provides for national legislation to be enacted to prevent or prohibit unfair discrimination. Although anti-discrimination laws such as the Promotion of Equality and Prevention of Unfair Discrimination Act⁹³ was enacted, comprehensive disability legislation that guards against discrimination of the disabled as a category of persons has not been adopted in South Africa. However, the South African government is a signatory of the 1993 United Nations Standard Rules on the Equalization of Opportunities for People with Disabilities and of the 2006 Convention on the Rights of Persons with Disabilities. However, the Standard Rules with the supporting resolutions and the 2006 Convention are not self-executing. Each United Nations member must enact and implement domestic legislation, policies and programmes, to give full effect to the rights of persons with disabilities envisaged by the abovementioned Standard Rules and 2006 Convention. The Standard Rules established a set of clear guidelines for actions to be taken by governments regarding disability. The Standard Rules also influenced the development of the South African White Paper on an Integrated National Disability Strategy, which were adopted by the South African government in 1997. The newly adopted Convention on the Rights of Persons with Disabilities have been signed by South Africa, but not yet ratified and the Convention will only enter into force thirty days after twenty countries have ratified it. Although the level of awareness as to the needs of persons with disabilities has undoubtedly increased significantly over the last two decades in South Africa, realistically speaking, major challenges still lie ahead. During an address in 2005 of the President of South Africa, Mr. Thabo Mbeki (on the Occasion of the National Women's Day Celebration on 2005-08-09) stated:

Of importance, we need to deal better with the challenge of gender and disability, because women with disabilities face double jeopardy as women and as disabled people. This applies equally to young and adult women. I am saying that we have to pay special attention to this challenge because women with disabilities are open to more abuse than other women and in cases where a disabled child is born, even if the parent is not disabled, some men will abandon the family. Disabled girls and women face many challenges as learners and if they are lucky to be employed, they still face formidable obstacles ...

Information on the nature and prevalence of disability within South Africa is limited and estimates vary. According to the 2001 South African Population Census there are 2.2 million people with disabilities, constituting 5.9% of the total population. The census statistics furthermore show that African women with disabilities constitute the greatest proportion of disabled persons in South Africa, in comparison with men and women from other racial groups.⁹⁴

⁹³Act 4 of 2000.

⁹⁴*Prevalence of disabilities in South Africa* by Statistics South Africa (Census 2001) 11.

South Africa is a multicultural, multiracial and multilingual nation with different religious, traditional and cultural practices. Different belief systems give rise to different attitudes, beliefs and practices relating to disability.

Furthermore, in South Africa with its history of colonial subjugation and racial oppression, racial inequalities, poverty and disability are intertwined in complex configurations. These are difficult to unravel, in particular, when one has to unravel the complexities of the relationship between disability, gender, race, culture and religion.

African women with disabilities are amongst the most marginalised and 'invisible' sectors of society on the African continent. African women with disabilities suffer multiple-discrimination. This could be attributed to a dominant patriarchal system,⁹⁵ as well as varying degrees of racism, conservative traditionalism, fundamentalist religious interpretations and class inequalities. According to the Integrated Disability Strategy's White Paper of 1997 the South African society at the time was still very patriarchal and discriminatory. Although attitudes have been changing and are changing as we speak, women, and particularly African women with disabilities are still typically viewed as second-class citizens, subservient to men and in need of protection.⁹⁶ Research in the prevalence of disability in South Africa, suggests that disability, poverty, gender and race are intimately associated with one another. The cumulative impact of disability, poverty and other social disadvantages such as gender,⁹⁷ race/ethnicity and religion can therefore create extreme vulnerability and exclusion of women with disabilities who are subjected to multiple and overlapping discrimination and disadvantages.

6 Conclusion

It is clear from the said that the impairment of a woman affects her value as a human being, and her position as a social person within a specific culture and religion. The personhood of women with the disabilities is not only to be 'found in' a cultural analysis. It is unfortunately also asserted by society, by media, health personnel and negotiated by parents and family.⁹⁸ Therefore, disability, its causes and remedies, are understood in a variety of ways, which depends on the culture, religion and equality in that society. Furthermore, the conceptual frameworks applied by law and policy-makers, as well as programme designers, influence the way they frame and address the needs of persons with disabilities and particularly women with disabilities. Similarly, the ways in which ordinary able-bodied people think about (or make sense of) women with disabilities determine how they respond to these women.

⁹⁵Crenshaw (n 13) 1254.

⁹⁶Integrated National Disability Strategy, White Paper, Office of the Deputy President of the Republic of South Africa November 1997.

⁹⁷Emmet (n 28) 228.

⁹⁸Ingstrad and Whyte *Disability and Culture* (1995) 25.

Underlying the multi-discrimination which women with disabilities face is the negative attitudes about women compounded by negative attitudes towards disability that often cut across cultures and levels of development.⁹⁹ In order to understand the woman with a disability one must go far beyond the individual characteristics of the person, and place the particular women in a wider socio-cultural system.

Discrimination against women with disabilities is not culture specific. It is a socially created attitude, which must be addressed within the context of the social model. The social model of disability sees disability mainly as a socially created problem rather than an attribute of individuals. According to Emmet¹⁰⁰ this approach is particularly helpful when one's attention is focussed on those aspects of disability that emphasise the commonality of disability with other forms of social disadvantages and marginalisation, such as poverty, race and gender. Albert, McBride and Seddon draw attention to the commonalities¹⁰¹ when they define disability as:

A complex system of social restrictions imposed on people with impairments by a highly discriminatory society. Disability, therefore, is a concept distinct from any particular medical condition. It is a social construct that varies across culture and through time, in the same way as, for example, gender, class or caste. . . In this sense, disability as a policy issue becomes a cross-culture social one, rather than something primarily associated with health and individual well-being.

We have seen the recognition of civil and political rights in new domains in the past. Such rights include the rights of women, racial minorities and those of gay and lesbian people. The recognition and development of all these rights required vision. From these endeavours in the past we have seen courts conceptualising principles such as 'separate but equal',¹⁰² 'indirect discrimination',¹⁰³ 'positive obligations'¹⁰⁴ and 'legitimate expectations'.¹⁰⁵ Similarly, the new domain of disability rights, and in particular the rights of women with disabilities also requires vision. The vision has to establish modes of communication, requiring the language of 'justiciable rights' to be used in new ways to accommodate new paradigms and create new conceptual vehicles.¹⁰⁶ One can only hope that the long awaited and newly adopted Convention on the Rights of Persons with Disabilities will be the first step towards a better life for women with disabilities, irrespective of her nationality, culture or religion.

⁹⁹Rousso (n 7) 2.

¹⁰⁰Emmet (n 28) 208.

¹⁰¹Albert, McBride and Seddon *Perspectives on disability, poverty and technology* A report to Healthlink Worldwide and GIC Ltd. Norwich, University of East Anglia 2002 (16) in Emmet (n 28) 208.

¹⁰²*Brown v Board of Education* 347 US 483 (1954).

¹⁰³*Griggs v Duke Power Co* 401 US 424 (1971); *Pretoria City Council v Walker* 1998 2 SA 363 (CC).

¹⁰⁴*Government of the RSA v Grootboom* 2000 11 BCLR 1169 (CC), 2001 1 SA 46 (CC) para 34; *Minister of Health v Treatment Action Campaign (1)* 2002 10 BCLR 1033 (CC), 2002 5 SA 703 (CC) para 46; De Vos 'So much to do, so little done: The right of access to anti-retroviral drugs post-Grootboom' 2003 (1) *Law, Democracy and Development* 88-89 and *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 12 BCLR 1696 (CC), 1998 1 SA 765 (CC) para 21.

¹⁰⁵*Administrator, Transvaal v Traub* 1989 4 SA 731 (A); The term 'legitimate expectation' is generally attributed to Lord Denning in *Schmidt v Secretary of State for Home Affairs* [1962] 2 Ch 149.

¹⁰⁶Clements and Read *Disability rights in Europe* (2005) 27.