

**THE BRIDGE OF ACCESSIBILITY: A COMPENDIUM OF
LAWS ON PHYSICAL ACCESSIBILITY FOR DISABILITY
INCLUSION**

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Research Commissioned by:
**Legal Action for Persons with Disabilities- Uganda
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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CRC	The Convention on the Rights of the Child
CWDs	Children with Disabilities
DRF	Disability Rights Fund.
DPOs	Disabled Peoples' Organisations.
EOC	Equal Opportunities Commission
HRBA	Human Rights Based Approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAPD	Legal Action for Persons with Disabilities-Uganda
MoGLSD	Ministry of Gender Labour and Social Development
NODPSPs	National Objectives and Directive Principles of State Policies
PW(P)Ds	Persons with (Physical) Disabilities.
SDGs	Sustainable Development Goals.
UDHR	Universal Declaration of Human Rights
UNAPD	Uganda National Action on Physical Disability.
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities.
WHO	The World Health Organisation.
WWD	Woman/Women with Disabilities

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LAPD FINAL REPORT

EXECUTIVE SUMMARY

Persons with disabilities (PWDs) often face marginalisation and severe social, economic, and civic disparities as compared with those without disabilities due to a range of factors from stigma to inaccessible environments. Yet PWDs have a significant positive impact on society, and their contributions can be even greater if we remove barriers to their participation. With more than one billion of persons with disabilities in our world today, this is more important than ever.

Worldwide, in recent years, there have emerged many promising initiatives and good practices that have successfully promoted accessibility and the inclusion of persons with disabilities, their rights, aspirations and contributions in the context of urban development. In this regard, a number of statutory and regulatory protections have helped mitigate the bias, out-dated societal assumptions, and negative stereotypes that contribute to accessibility challenges facing PWDs. For example, The Convention on the Rights of Persons with Disabilities (CRPD) recognizes the importance of ensuring that all persons with disabilities, irrespective of age, sex, enjoy the same human rights as everyone else and provides a framework for legal, civic, and socioeconomic empowerment.

It is based on the above background that this review was conducted to ascertain the different laws and policies on a right to a barrier free environment for persons with physical disabilities. The international, regional and national frameworks have been summarised and compiled to form a compendium of provisions of laws on accessibility in the area of health, education, employment, transport and recreation or leisure. The international comparative jurisdiction is also provided.

PART ONE

INTRODUCTION AND METHODOLOGY

1.1. BACKGROUND:

Persons with disabilities, who comprise an estimated 15 per cent of the global population, are one of the largest minority groups in the world.¹ In Uganda, this translates to an estimated 12.4 per cent of the national population, including those with physical disabilities, those who are blind or experience low vision, deaf or hard-of-hearing, and those with learning disabilities, cognitive/developmental disabilities, psychosocial disabilities, deafblind, and those with multiple disabilities.² This figure is expected to increase over the coming decades, owing to population ageing, longer life expectancy, and an increasing number of injuries resulting from situational and natural disasters, among other factors.

Persons with disabilities face numerous barriers that restrict their full and effective participation in society on an equal basis with others and are among those at highest risk of being left behind in the development process. This risk is particularly pertinent given rising inequality across the world, which has a disproportionate impact on PWDs. For instance, the increase of income inequality puts PWDs—who already are less likely to be employed compared with their peers without disabilities—in a particularly vulnerable position.

Furthermore, the rising inequality with regard to access to basic services such as education opportunities often results in PWDs falling behind, as evidenced by their relatively low rates of completing secondary education, gaining full time employment and securing a decent income compared to those without disabilities. The inadequacy and lack of accessible built environments, accessible information and communication, including information and communications technology (ICT), and accessible services are fundamental barriers that widen this inequality. ‘Accessibility’, in simple terms, is the breaking down of the barriers across these sectors that prevent PWDs—and the broader population—from participating in society on an equal basis with others.

To illustrate the fundamental importance of accessibility for reducing inequality for PWDs, it is necessary only to look at daily life. With recognition of the diversity that exists among PWDs and the various barriers they face, activities often taken for granted such as entering or exiting a residential building, crossing a street, a school, or an office building, are common barriers to access of employment and education opportunities. Uneven pavements, steps and unclear signage between a residence and transportation hubs have the same detrimental impact on participation, and this is assuming that public transportation itself is equipped to support persons with diverse disabilities and requirements. Considering public toilet facilities, shops, banks and automated teller machines, voting booths, recreational venues and other typical places for societal gathering and participation, the potential for PWDs and those with specific accessibility requirements to conduct daily life on an equal

¹ WHO 2011, World Report on Disability.

² Uganda Bureau of Statistics 2016, *The National Population and Housing Census 2014 – Main Report*, Kampala, Uganda.

basis with others can be a challenge, let alone achieving educational and career goals. These are just a few examples of barriers to participation which will be explored in more detail in this report.

To break down these barriers, a number of global, regional and national efforts have been taken. The United Nations Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006 and entered into force in 2008, is a landmark document for ensuring the rights of persons with disabilities are upheld, and one of the most prominent and catalyzing means of promoting accessibility at the global level. The CRPD has heralded a dramatic paradigm shift. Before its legislation, society acted on the basis that it was the disabled person who had a ‘problem’ that needed to be fixed or corrected usually using medical interventions; or that such disabled person needed to be taken care of and should be given charity by big capital or by brethren who desired to earn ‘bonga’ points with God. Subsequent to the CRPD, it is clear that the ‘problem’ must be located on the environment in which the PWD lives: it is not my feet that have a ‘problem’; it is the stairs your architect thoughtlessly designed.

1.2. METHODOLOGY:

This assignment was mainly qualitative, given the nature of the subject matter. It involved a detailed analysis of the UNCRPD, general international law relevant to accessibility rights for PWDs, Ugandan principal and subsidiary legislation as well as a comparative survey of national laws on accessibility and disability in various countries. Case law has also been considered in this report in which interpretation has been offered to the existing legal provisions elsewhere.

1.3. SCOPE:

As accessibility covers a wide range of areas, this report cannot cover all relevant issues. For example, it does not address artificial intelligence in the context of accessibility, or assistive devices in depth. Covering all accessibility needs of persons with diverse disabilities also goes beyond the scope of this report. Nonetheless, it will provide readers with a foundational understanding of the legal provisions that are necessary to effectively invest in and promote accessibility in different contexts for PWDs.

1.4. SYNOPSIS:

This report contains four sections. The first section contains a brief introduction to the rights of PWDs and with specific attention on accessibility. The bulk of the review is contained in the second section and a comparative review provided in the third section, with the last part of the report drawing general conclusions and making suggestions regarding the domestication of the CRPD by Uganda.

PART TWO

THE LEGAL AND POLICY FRAMEWORK ON ACCESSIBILITY

2.1. Introduction:

In this section, a discussion of the legal provisions on accessibility for PWDs is provided. The discussion is done under three sub-headings; international, regional and national framework. The major focus is placed on health, education, employment, transport, leisure and hospitality as well as general environment.

2.2. International Framework:

In discussing the international legal and policy framework, consideration shall be placed on the twin-track approach to the rights of PWDs. To this end, mainstream and specific international conventions and treaties shall be considered.

The current international policy framework guiding disability-inclusive development is largely based on a number of instruments concerning PWDs. The World Programme of Action Concerning Disabled Persons (1982) (A/RES/37/52) views accessibility as an essential means to further its goals of “full participation” and “equality”. The Standard Rules on the Equalization of Opportunity for Persons with Disabilities (1994) (A/RES/48/96) identifies “accessibility” of the physical environment and of information and communication as two “target areas” to ensure equalization of opportunities.

2.2.1. The United Nations Convention on the Rights of Persons with Disabilities:

The UNCRPD is the principal treaty that governs rights of PWDs at the international level. The Convention further strengthened the international normative framework for the advancement of the rights and the socio-economic development of persons with disabilities. Accessibility is defined in the Convention as a cross-cutting issue that enables persons with disabilities to live independently and participate fully in all aspects of life.

Accessibility is provided under Article 9. It is important that this article is stated in detail hereunder before discussing accessibility content under it. The Article states:

Article 9 – Accessibility

1. *To enable persons with disabilities to live independently and participate fully in all aspects of life, States parties shall take appropriate measures to ensure t persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:*
 - (a) *Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*
 - (b) *Information, communications and other services, including electronic services and emergencies services.*

2. *States Parties shall also take appropriate measures:*

- (a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*
- (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*
- (c) To provide training for stakeholders on accessibility issues facing persons with disabilities;*
- (d) To provide in buildings and other facilities open to the public signage in Braille and is easy to read and understand forms;*
- (e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to building and other facilities open to the public;*
- (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;*
- (g) To promote access for person with disabilities to new information and communications technologies and systems, including the internet;*
- (h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.*

The obligation under Article 9 is a very detailed, crucial and far reaching one which is aimed at enabling PWDs to live independently and to participate fully in all aspects of life. In this regard, States Parties are enjoined to take all appropriate measures to ensure to PWDs access to physical environment, transportation, information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. It should be emphasised that the obligation to ensure access by PWDs in all these aspects of life goes hand in hand with the general obligation of states not to discriminate against PWDs. As such what is required is that such access be *on an equal basis* with other members of society, so as to ensure the full involvement and participation of PWDs in the full range of life activities.

The Committee on the Rights of Persons with Disabilities addressed the issue of accessibility in **Nyusti and Takács versus Hungary**.³ The complainants, who had severe visual impairments, entered into contracts for private account services with a local financial institution under which they paid the same fees as other clients. However, they were unable to access the banking services provided by the automatic teller machines (ATMs) on their own because none of the ATMs had braille font

³ Communication No. 1/2010, Views adopted by the Committee on the Rights of Persons with Disabilities on 16 April 2013.

keyboards or voice assistance features. The State party was called upon to ensure that blind persons had access to automatic teller machines (ATMs).

The Committee found that all services provided to the public must be accessible to PWDs in accordance with Article 9 of the CRPD. The duty of State parties to the CRPD to eliminate discrimination on the basis of disability encompasses their obligation to regulate private entities offering services to the public to ensure that they take into account the special needs of PWDs and eliminate barriers to accessibility.

Also relevant to the concept of accessibility is Article 19 on independent living and being included in the community with others. It is fair that the provision is quoted verbatim;

Article 19 – Living Independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*
- (b) Persons with disabilities have access to a range of -in, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

This provision guarantees the right to live independently and be included in the community, which includes the right of access to a range of in-home residential and other community support services. The provision also requires that community services and facilities for the general population are available on an equal basis to PWDs and are responsive to their needs.

Another important Article is 20 on personal mobility. This provision states,

Article 20 – Personal Mobility

States Parties shall take effective measures to ensure mobility with the greatest possible independence for persons with disabilities, including by:

- (d) Facilitating the personal mobility of persons with disabilities in the manner and that the time of their choice, and at affordable cost;*
- (e) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;*

- (f) *Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;*
- (g) *Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.*

This provision mandates state Parties to take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities. State parties are required to among other things facilitate the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost. It is noticeable that this is a complimentary article to article 9 of the Convention on accessibility, and the provisions taken as a whole are aimed at ensuring the capacity of PWDs to be as independent as possible and to fully participate in all aspects of societal life.

Regarding education, the CRPD notes in Article 24 as follows:

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/ or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

This is one of the most elaborate and detailed provisions of the CRPD, which is a testament to the importance of the right guaranteed therein. It is the provision which guarantees PWDs the right to education and requires States Parties to ensure reasonable accommodation for individual requirements. This is in addition to ensuring that PWDs receive the support required within the general education system to facilitate their effective education.⁴ The Article appreciates the right of PWDs to education on an equal basis with others and enjoins states parties to ensure the realisation of this right without discrimination and on the basis of equal opportunity. In particular, States parties commit to an inclusive education system at all levels as well as lifelong learning as a means of fully realizing the right of PWDs to education.

⁴ Article 24.

In the context of health, the CRPD provides under Article 25 as follows:

Article 25 – Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;*
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*

The provision on the right to the enjoyment of the highest attainable standard of health is also relevant to the extent that it requires states to provide health services as close as possible to people's own communities, including in rural areas.⁵

As far as employment is concerned, the CRPD states under Article 27 as follows:

Article 27 – Work and Employment

- 1. States Parties recognize the right of persons with disabilities to work on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted*

⁵ Article 25.

in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*
 - (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;*
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*
 - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*
 - (g) Employ persons with disabilities in the public sector;*
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;*
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;*
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.*
- 2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.*

The Article on the right to work also has elements that guarantee PWDs safe and healthy working conditions and imposes a duty on states to ensure that PWDs are provided with reasonable accommodation at the workplace.

It is important to note that PWDs are not apolitical. The law allows PWDs to effectively participate in political life. This right is embedded under Article 29 of the CRPD. This proviso states:

Article 29 – Participation in Political and Public Life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*
 - (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;**
- (b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;*
 - (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.**

This provision aims at ensuring the full inclusion of PWDs into the political life of the country and in particular to promote and protect their right to accessible and appropriate voting procedures materials and facilities, and to stand for elective office if they so choose.

2.3. Regional Framework:

At the regional level, the most crucial African human rights instrument is the African Charter⁶ which has been ratified by all AU member states. Under Article 2 of the charter, PWDs are enjoined to enjoy all the rights that other people do under the Charter, despite it not expressly listing disability as a prohibited ground for discrimination under the Convention. Fortunately, the grounds listed are not exhaustive, and disability can be read in as discrimination under the term ‘other status’. However, such an approach does not enhance the visibility of PWDs or their right to equal treatment under the Charter. In this spirit, the African Charter under Article 18 singles out PWDs, women, children, and elderly people as specially protected groups. This means that positive steps need to be taken to protect

⁶ Adopted by the 18th Assembly of Heads of State of the OAU, 27 June 1981.

the 'physical and moral needs' of PWDs. In other words, mere lip-service should not be paid to equality as that would only achieve formal equality. Achieving substantive equality should be regarded as important.

The African Children's Charter has provisions explicitly dealing with disabled children.⁷ Article 13(1) echoes the African Charter by providing that disabled persons' rights must receive special protection in order to ensure their dignity, self-reliance and participation in the community. The African Children's Charter also lists various positive steps that states have to take in the interest of disabled children, especially with regard to education, training and employment.

In addition to the above provisions, Article 23 the Protocol to the African Charter on the Rights of Women in Africa, which has been in force since 2005, binds state parties to protect WWDs, and to take positive steps in ensuring their training, employment and participation in decision-making. It further requires that states ensure that disabled women are treated with dignity and are free from discrimination and violence. The latest important regional instrument is the African Youth Charter adopted in 2006. Article 24 deals with disabled youths and guarantees their equal access to education, healthcare, employment and special care. A duty is also placed on states to eliminate obstacles towards the integration of youths with disabilities.

2.4. Ugandan Legal Framework:

2.4.1. The Constitution of the Republic of Uganda, 1995:

Uganda's domestic legal and policy framework has over years been developed to conform to the international and regional principles and normative standards on human rights. The Constitution of the Republic of Uganda, 1995, just like any grundnorm elsewhere in the world, guarantees the right to equality and freedom from discrimination. In this regard Article 21 of the Constitution prohibits discrimination based on several enumerated grounds including disability. The Constitution also embraces the notion of substantive equality by requiring the state to take affirmative action in favour of groups marginalised, amongst others, on the basis of disability under Article 32(1).

The constitution provides:

32. Affirmative action

Notwithstanding anything in this constitution, the state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability, or any other reason created by history, tradition or custom, for purposes of redressing the imbalances which exists against them⁸.

The Grundnorm further provides:

35. Rights of persons with disabilities

⁷ Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU, 11 July 1990.

⁸ See article 32(1).

- 1) Persons with disabilities have the right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential;
- 2) Parliament shall make laws appropriate for the protection of persons with disabilities.

Under Article 35, PWDs have a right to respect and human dignity. The state and society are therefore tasked to take appropriate measures to ensure that PWDs realise their full mental and physical potential. Parliament is also tasked to make laws for the protection of PWDs in line with articles 21 and 32 of the Constitution. Those laws should be geared towards equality and the protection of marginalised groups of people, respectively. This article has also not been subject to a lot of litigation in Uganda, although a constitutional petition challenging the method of choosing parliamentary representatives of the community has been completed by court. However, it is worthwhile noting that in practice government has not put in place practical and clearly enforceable measures for the realisation of the stipulations in this article.

2.4.2. The Persons with Disabilities Act No. 3 of 2020:

Before any attempt is made to review the existing Access Legislation in Uganda, it is important to define what we mean when we talk of ‘persons with disabilities’ and try to group them into specific categories with the premise that their specific needs of access to the built environment depends on the particular kind of disability. This is to avoid banding PWDs together under 'disabled persons' thus sacrificing and overlooking their varied individual needs as far as facilitating their mobility is concerned.

The Persons with Disabilities Act (hereinafter the “PWDA) is to the effect that disability “*means a substantial functional limitation of a person's daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on equal basis with others and includes an impairment specified in Schedule 3 to this Act.*”

In the context of education, the PWDA provides under section 6 for non-discrimination in the provision of education services. It makes an express prohibition of discrimination on the basis of disability to learners with disabilities in an institution. Section 6(4)(b) provides that an institution of learning which admits learners with disabilities shall make necessary structural adjustments to the buildings and premises of the institution of learning to enable access to the building or premises for learners with disabilities within three months from the date of admission of the learner. Under subsection 8, it is an obligation for an institution of learning which admits a learner with a disability to provide sports facilities and equipment specific to the learner with disability and put in place measures to facilitate the participation of learners with disabilities in sports and other co-curricular activities.

The right to health under the PWDA is provided under Section 7. Section 7(1).of the Act provides that a health unit shall not discriminate against a person with a disability, on the basis of the disability.

The Act further provides under subsection 2 that a health unit shall- (a) comply with the requirements of section 10 (1) and (2); (b) provide wheelchairs and accessible examination tables for persons with disabilities; (c) provide labour beds for expectant women who are persons with disabilities. Another important provision regarding health is outlined under subsection 3 of the Act which is to the effect that a health unit discriminates against a person with a disability where- (a) on the basis of the disability, the person is denied admission or treatment at the health unit; (b) the health unit does not comply with the requirements of section 10 (1) and (2) and is not accessible by persons with disabilities; or (c) the health unit does not provide accessible labour beds, examination tables or wheel chairs for persons with disabilities. Under subsection 4, "accessible labour bed" and "accessible examination table" are defined to mean a labour bed or an examination table that is appropriate for the disability of the person using the bed or table.

In the arena of employment, under section 9(l), an employer shall not discriminate against a person with a disability, on the basis of the disability of that person. Subsection 2 provides that an employer shall- (a) in any advertisement for a job, where appropriate, encourage persons with disabilities to apply for the job; (b) provide an applicant with a disability who applies for a job, reasonable accommodation necessary to undertake the job interview; and (c) provide an employee with a disability reasonable accommodation in the performance of the job or task. Subsection 3 is to the effect that an employer discriminates against a person with a disability where- (a) on the basis of the disability, the employer refuses to accept an application made by the person with a disability, who is otherwise qualified for the job; (b) on the basis of the disability, the employer refuses to accept an application made by the person with a disability, who is otherwise qualified for the job; the conditions for applying for the job or the selection criteria exclude applications by persons with disabilities; (c) the assessment of the performance of an employee with a disability is conducted in a manner that does not correctly gauge the performance of that employee; (g) the employer does not provide reasonable accommodation required by the employee with a disability to perform his or her job or tasks; (i) the services of employment of an employee with a disability, are terminated on the basis of the disability. Reasonable accommodation is defined under subsection 4 to mean necessary and appropriate modification and adjustments where needed to ensure that an employ who is a person with a disability can enjoy or exercise all human rights and fundamental freedoms on an equal basis with others and includes tools, equipment, working environment and where necessary a modified work schedule.

Discussed from the transport view point, Section 11(1) of the Act requires an owner or a person in charge of any means of transport that is used by the public and for which a fare is charged, shall not deliberately or unreasonably refuse to transport a person with a disability. Subsection 2 states that an owner or a person in charge of any means of transport that is used by the public and for which a fare is charged, shall not require a passenger with a disability who uses assistive devices, to pay an extra charge for the carriage of the assistive devices. Disability is not a bar to potential PWDs to drive vehicles. Subsection 3 provides that subject to the Traffic and Roads Safety Act, a person with a disability shall not be unreasonably denied a driving permit or his or her driving privilege by reason only of his or her disability. In violation of the section, subsection 4 provides that a person who

contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding fifteen currency points or a term of imprisonment not exceeding three months or both.

In regard to accessibility generally, the Act provides that an owner or a person in charge of a building to which the public is allowed access shall subject to the requirements of the laws on building standards and other relevant laws provide appropriate access to PWDs to the building under section 10. The phrase “building to which public is allowed access” under section 1 means a building specified in schedule 2 of the Act. Similarly, “appropriate accessibility for persons with disabilities to the building” means under section 10(2), putting in place accessible and easy to find entrances which are connected to accessible pathways and parking areas; providing safe and accessible toilets, urinals and bathrooms; providing safe and well dimensioned staircases with appropriate railing, accessible elevators; and where necessary provide ramps.

In addition, section 10(3) of the Act makes it mandatory for an owner or a person in charge of a building to which public is allowed access to provide parking space for vehicles driven by PWDs or drivers of PWDs which should be marked with a conspicuous sign or the acronym “PWD” according to section 10(4). Drivers without disabilities are prohibited from parking in this designated place under subsection 5. Lastly, the Act creates an offence under subsection 6 for any person who contravenes the law by not providing such parking and is liable on conviction to a fine not exceeding twenty five currency points or a term of imprisonment not exceeding five months or both.

2.4.3. The Universities and Other Tertiary Institutions Act No. 7 of 2001:

This Act regulates public universities and other tertiary institutions. Section 24 provides for the objects and functions of a public university. In addition to any functions that may be set out in the instrument establishing the university stated under subsection 1, a public university shall disseminate knowledge and give opportunities of acquiring higher education to all persons including PWDs wishing to do so regardless of race, sex, political opinion, creed and colour; and it is also obligated to provide accessible physical facilities to the users of the public university.

Connected to the above, the Act provides for the establishment of the National Council for Higher Education (NCHE) and to streamline the establishment, administration and standards of universities and other institutions of higher education.⁹ NCHE is established ‘to regulate higher education, and to guide the country in the establishment of institutions of higher learning as well as ensure that quality and relevant education is delivered’.¹⁰ The Act places obligations to both the NCHE and the institutions to promote equality of opportunities for disabled people in accordance to their respective roles. On NCHE, the Act requires that one of the NCHE Board Members should be a disabled person.¹¹

⁹ Object of the Act of the University and other Tertiary Institutions Act 2001.

¹⁰ See the provisions of National Council for Higher Education Regulations. Also see s. 4 and 5 of the Universities and other Tertiary Institutions Act 2001(Amendments 2003 and 2006).

¹¹ S .7(j) the Universities and other Tertiary Institutions Act 2001(Amendments 2003 and 2006).

2.4.4. The Building Control Act No. 10 of 2013:

The main piece of legislation which governs the building and construction industry in Uganda is the Building Control Act. As far as the rights of PWDs in the context of the right to access a barrier-free environment, the Act is mandated to promote and ensure planned, decent and safe building structures that are developed in harmony with the environment and for other related matters. Access is defined under section 2 to mean the possibility for any person to reach a place, maneuver with it, use a service, and participate in activities provided in a public place; with dignity, independence and safety on an equal basis with others.

The Act establishes the National Building Review Board. The composition of the Board is provided under section 4 of the Act. As a matter of fact, two of its members are the representatives of persons with disabilities to wit one from the Ministry responsible for persons with disabilities; and nominated for appointment by the National Council for Persons with Disability. One of the functions of the Board is to ensure that the design and construction of buildings and utilities to which the public is to have access cater for persons with disabilities.

Section 28 of the Act establishes Building Committees for each Urban Authority and each district. The Building Committees established shall comprise among its members a representative of persons with disabilities nominated by the NCPWDs according to subsection 2. The functions of the Building Committees are among others to ensure that the design and construction of buildings and utilities to which the public is to have access cater for persons with disabilities.

2.4.5. The Children's Act, Cap 59 as amended:

Prior to the amendment, the Children Act Cap 59 had gaps in protecting the rights of children with disabilities including the lack of clear provisions on the principle of non-discrimination. Section 9, on the rights of children with disabilities was “unclear” with regard to the responsible duty bearer to fulfill and protect rights of children with disabilities. “It places the obligation of early assessment, appropriate treatment, rehabilitation and equal opportunities upon both the parents of children with disabilities and the State without clarifying who is actually responsible.”

Section 9 was amended in the Children Amendment Act, 2016 to insert new subsections which read:

- (1) A parent or guardian shall in liaison with a qualified medical practitioner be responsible for the identification of a child with disabilities or a child with special needs.
- (2) In the event that a child is identified with any disability or special needs, such child shall be afforded such facilities as are necessary to address their needs by government.
- (3) A child with disabilities or a child with special needs shall have access to such education suitable to address their disabilities or special needs.
- (4) A child shall not be discriminated against on account of their disability or special needs.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a term of imprisonment of five years, or to a fine not exceeding one hundred and fifty currency points or both.

(6) The Board shall give first priority in funding and implementation of programmes for children with special needs and shall not divert funds for such programmes.

The Amendment to the Act also establishes a National Children Authority whose functions include monitoring the implementation of the Act and advising the Government on formulation of children rights programmes. The Government is commended for the additional legal safeguards to ensure that children with disabilities enjoy their human rights and freedoms.

2.4.6. The Equal Opportunities Commission Act No. 2 of 2007:

The Equal Opportunities Commission Act, 2007 is a very important piece of legislation in the operationalisation of Article 32 (2) of the Constitution that requires Parliament to enact legislation establishing the Equal Opportunities Commission (EOC) for purposes of giving effect to the provisions on affirmative action in Article 32(1). The Act gives the term “discrimination” a very broad definition to mean any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference, which, directly or indirectly, has the effect of nullifying or impairing equal opportunities of a marginalised section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms.¹²

The Act establishes a five member Commission whose mandate is defined in section 14(1) as follows:

14. Functions of Commission

(1) The functions of the Commission are to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of—

- (a) organs of the state at all levels;
- (b) statutory body and agencies;
- (c) public bodies and authorities;
- (d) private business and enterprises;
- (e) non-governmental organisations; and social and cultural communities

are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reasons created by history, tradition or custom.

Amongst others, the EOC has the power to investigate or inquire into any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or otherwise undermines equal opportunities.¹³ The Commission also has powers to examine any law, proposed law, policy, culture, tradition, usage, custom or plan which is likely to have

¹² Section 2.

¹³ Section 14(2)(a), EOC Act.

the effect of nullifying or impairing equal opportunities.¹⁴ In the exercise of its powers and discharge of its functions, the EOC has the powers of a court and can compel the attendance of witnesses or production of evidence.¹⁵ In addition to settling disputes by mediation, negotiation, conciliation or other means, the EOC has powers to hear and determine complaints in what appears to be a judicious manner.

2.4.7. The Physical Planning Act No. 8 of 2010:

This Act is a principal statute governing physical planning in Uganda. The planning process is greatly detailed under this act. Part I Section 3 of the Act declares the entire country a planning area. For any declared planning area, an outline scheme and/or a physical development plan are by this law required to be formulated.

One of the areas covered by the Act is that concerning building operations. The Act defines building operations under section 1 to include any building or erection operations, rebuilding operations, structural alterations or additions to buildings and other similar operations and the making of access roads, railways, waterworks, sewerage and drainage works, electrical and telephone installations and any road works preliminary to, or incidental to, the erection of buildings. In the form filled for the grant of permission to develop a building, question seven requires an applicant to state whether the development requires the construction of a new or an alternative of an existing means of access to or from a road. This law designate planning areas and make provisions that govern the location, purpose and nature of construction of buildings in the various planning areas including cities, municipalities, and towns.

2.4.8. The Public Health Act Cap 281:

The main legislation regulating public health in Uganda generally and infectious or communicable diseases in particular is the Public Health Act Cap 281, which seeks to ‘consolidate the law regarding the preservation of public health’. Under the Act, “building” includes any structure whatsoever whether permanent or temporary for whatsoever purpose used; and “public building” means a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship or as a theatre, public hall, or as a public place of assembly for persons admitted by ticket or otherwise, or used or adapted to be used for any other public purpose;

The Minister may under section 70, make rules and may confer powers and impose duties in connection with the carrying out and enforcement of the rules on local authorities, owners and others as among others to, the construction of buildings, the provision of proper lighting and ventilation and the prevention of overcrowding.

Section 71 provides for the rules as to buildings. It states that the power under section 70 to make rules relating to the construction of buildings shall include the power to regulate the following matters:

¹⁴ Section 14(2)(b), EOC Act.

¹⁵ Section 15.

the construction of buildings and the materials to be used in the construction of buildings; the space about buildings, the lighting and ventilation of buildings and the dimensions of rooms intended for human habitation; the height of buildings among others. It is in this spirit that the Public Health (Buildings) Rules SI 281-1 were enacted. In summary, the Public Health Act, read together with the Building Regulations, for instance, makes detailed provisions on the design and structure of buildings.

All in all, Uganda is tasked with establishing definite time frames; allocating adequate resources for the removal of existing barriers; setting effective monitoring mechanisms to ensure accessibility; and monitoring sanctions against anyone who fails to implement the national accessibility standards. The duty to observe established accessibility standards applies equally to both the public and private sector. However, the Committee also tasks Uganda to go a step further and incorporate aspects of accessibility in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination. Denial of access to PWDs should be clearly defined as a prohibited act of discrimination.

PART III

GOOD PRACTICES FROM OTHER JURISDICTIONS

3.1. Introduction:

In the area of accessibility for PWDs, it suffices to note that some countries have put in place laws and regulations which enhance the enjoyment of the right to a barrier-free environment or what can

be termed as the right to accessibility. In this paper, Kenya, South Africa, United Kingdom, India and United States of America have been considered for some of their good practices.

3.2. Good Practices from Other Jurisdictions:

3.2.1. Kenya's accessibility legislation and practice:

One of the economies in East Africa which is taking off at the terrific speed is Kenya. This is not only reflected in the economy but also governance and constitutionalism with an increased recognition of human rights. Disability rights are not exceptional to this.

In 2003, the Kenyan government recognised disability on its agenda. This was shown in the adoption of the Persons with Disabilities Act No. 14 of 2003 to provide for the rights and rehabilitation of PWDs and to achieve equalisation of opportunities for PWDs. This was in addition to establishing the National Council for Persons with Disabilities. This Act has provisions on accessibility, which guarantees PWDs the right to a barrier-free and disability friendly environment to enable them have access to buildings, roads and other social amenities. This is in addition to providing for accessing assistive devices and other equipment to promote mobility under section 21. Indeed, section 22 requires proprietors of public buildings to adapt them to suit PWDs in such manner as may be prescribed by the Council. The same obligation is imposed on proprietors of public service vehicles under section 23(1).

The Council has powers under section 24 to issue what the Act describes as “Adjustment orders”, served on the owner of any premises or provider of services or amenities with a demand that the owner undertakes such action as is prescribed in the order for the purposes of securing reasonable access by PWDs to the premises, amenity or service. Failure to comply with the adjustment order constitutes an offence under the Act under section 26. One limitation though is that adjustment orders cannot be served upon government hospitals, schools and training institutions without the consent of the minister as provided under section 27. This is unfortunate because it gives preferential treatment to these institutions and potentially keeps the government above the law. The net effect is that the prosecutor must seek the permission of the offender to have them prosecuted.

3.2.2. Indian Jurisprudence:

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was adopted by the Indian government to enhance the protection of the rights of persons with disabilities. The non-discrimination provision under section 44 of this Act requires establishments in the transport sector, within the limits of their economic capacity and development, to adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to PWDs. The government is also compelled, within the limits of its economic capacity and development, to among others cause curb cuts and slopes to be made in pavements for easy access to wheel chair users. This is in addition to engraving on the edges of zebra crossings and on the edges of railway platforms for blind or persons with low vision, and placing warning signals at appropriate places as provided under section 45. The Act under section 46 requires the government to provide for ramps in public

buildings, braille symbols and auditory signals in elevators and ramps in hospitals, primary health centres and other medical-care and rehabilitation institutions. To ensure that PWDs enjoy their right to work, the Act imposes a number of obligations on employers, some with the effect that the physical environment must be made conducive for an employee with a disability.

The Provisions of the Indian legislation have been the subject of litigation in the Supreme Court. In the leading case of **Javed Abidi versus Union of India & Others**,¹⁶ the government and Indian Airlines were dragged to court by a PWD who wished to compel government to establish institutional structures envisaged in the Act. This was in addition to requiring Indian Airlines to provide ambulift facilities at all Indian airports; make provision for aisle seats on aircraft for PWDs; and extend to PWDs suffering from locomotor disability the 50% concession on flight dues that the airliner had provided to blind persons. The case with regard to the institutional structures and the provisions of ambulift and aisle chairs was disposed without much contention, the defendants having indicated to Court the steps they were taking to discharge their obligations. What remained contentious was the extension of the flight due concession. The airline argued that it was economically unviable for them to extend the concession to all PWDs; that it was actually considering withdrawing the concession from the blind. The Court recognised the fact that persons suffering from locomotor disability would stand by a separate class in itself because of their immobility and the restriction of the limbs, which makes it hard for them to travel by train. For this reason, they too deserved the concession. Acting pragmatically, in what has become characteristic of the Indian Courts, the Court described the class of persons that would be entitled to the concession to be restricted to those suffering at least 80% locomotor disability.

3.2.3. The United Kingdom:

In the United Kingdom, the Disability Discrimination Act, 1995 (as amended in 2005) makes provision for the eradication of discrimination against PWDs in a number of contexts. Section 1 of the Act defines “disability” and “disabled person” in terms that describe a person with a disability to be a person who has a physical or mental impairment which has a substantial and long-term adverse effect on that person’s ability to carry out normal day-to-day activities.

The Act, under section 6(1), for instance, provides that where any physical feature of premises occupied by the employer places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it shall be the duty of the employer to take reasonable steps to prevent the feature having that effect. In order to give this provision a wider scope, its application extends to leased property occupied by an employer; the Act implies provisions in the lease which authorize the occupier to for instance make alterations to accommodate persons with disabilities under section 16. The Act also imposes obligations on providers of services to ensure that physical features that make access to the service for PWDs are removed.

3.2.4. The United States of America:

¹⁶ W.P. (C) No. 326 of 1997.

Conceivably the most elaborate domestic law regulating accessibility to the physical environment for PWDs is Americans with Disabilities Act, 1990 of the United States. However, the city of San Francisco had initiated efforts to make its transportation system accessible for persons with disabilities decades before the ADA, and accessibility considerations, including efforts to exceed ADA requirements, are still on-going. This law makes provisions that regulate accessibility to public places, including private establishments providing public services and transport.

The Act under section 12102 defines disability with respect to an individual to mean a mental or physical impairment that substantially limits one or more major life activities of such an individual. Major activities are defined to include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

As a matter of fact, the Act adopts zero tolerance to inaccessibility as a form of discrimination and to outlaw the same. For example, section 12146 of the Act provides that it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Discrimination in public accommodation is also outlawed. The Act defines public accommodation under section 12181 to include Hotels, motels, restaurant, inn, bar, Laundromat, drycleaner, bank, shop, barber shop, beauty shop, travel service, gas station, office of lawyer or accountant, pharmacy, hospital, health care provider, library, museum, gallery, park, zoo, motion picture house, recreation place, day care centre, gymnasium, grocery store, clothing store, hardware, lecture hall, stadium, concert hall.

Section 12182 provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodation of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. In the transport sector, all people travelling within the city of San Francisco benefit from the accessibility of the transportation system, both people with disabilities and members of the general public for whom travel is made easier by improvements such as curb cuts on sidewalks and ramps on buses.

Section 12183, requires the design and construction of facilities for first occupancy of places that are readily accessible to and usable by PWDs, except where an entity can demonstrate that it is structurally impractical, to make places accessible for PWDs in accordance with regulations. The same obligation applies in respect of any alterations, path of travel to altered area and bathrooms, telephones, and drinking fountains; these must be made readily accessible. A proviso, however, reads that the above should not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 sq ft per story unless the building is a shopping centre, a shopping mall, or the professional office of a health care provider.

USA has also adopted laws that make it possible for PWDs to exercise their rights to vote without physical hindrances presented by the environment. An example of such laws is the Voting

Accessibility for the Elderly and Handicapped Act of 1984. This law requires that polling places be accessible, and if not accessible, another way of voting for PWDs must be allowed. The Act also requires states to assist PWDs to register to vote. In specific mandatory terms, The Help American Vote Act of 2002 requires polling stations to meet the American with Disabilities Act Accessibility Guidelines.

Last but by means the least, the National Voter Registration Act (1993), popularly known as the "Motor Voter Act," makes it easier for all Americans to exercise their fundamental right to vote. One of the basic purposes of the Act is to increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of State-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, to assist them in completing the forms, and to transmit completed forms to the appropriate State official.

3.2.5. The South African Experience:

Known for its vigilance in the protection and promotion of economic, social and cultural rights, South Africa has not placed much attention in developing legislation that supports rights of persons with disabilities. As a matter of fact, it relies on mainstream legislation to provide for the rights of PWDs. Indeed, there is no specific law protecting the rights of PWDs in South Africa. To this end, their protection is to be found in the provisions of the laws that guarantee the right of everybody to equality and non-discrimination. Section 9 of the Constitution proscribes unfair discrimination based on a number of grounds including disability. The most comprehensive anti-discrimination law is the Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000. Section 9 of the Act is dedicated to the prohibition of discrimination on the ground of disability. It prohibits the denial or removal of supporting or enabling facilities from PWDs and considers the failure to eliminated obstacles that unfairly limit or restrict PWDs from enjoying equal opportunities a form of unfair discrimination. This is in addition to the failure to take steps to reasonably accommodate the needs of PWDs.

Another important law dealing with access to a physical environment and specifically in the transport sector is The National Land Transport Act No. 5 of 2009. The National Land Transport Act identifies vulnerable groups who currently have difficulties using transport as special needs passengers. The Act states that "**persons with disabilities**" means all persons whose mobility is restricted by temporary or permanent physical or mental disability, and includes the very young, the blind or partially-sighted and the deaf or hard of hearing. The minister has a function under section 5(4)(h)(iii) to promote public transport that is of an acceptable standard and readily accessible and is operated in conjunction with effective infrastructure provided at reasonable cost. Under section 8(1) of the Act, the Minister may, after consultation with the MECs, make regulations relating to the requirements and time-frames for vehicles and facilities to be made accessible to persons with disabilities, including principles for accommodating such persons in the public transport system

3.2.5.1. Case Law and Rights of PWDs in South Africa:

3.2.5.1.1. Singh v Minister of Justice and Constitutional Development & Others 2013 (3) SA 66 (EqC)

A woman with a disability had applied to serve in one of the vacant and advertised positions of Magistrate. She was not offered the job. She took the matter to court on the basis that the state had failed in its duty to promote employment opportunities for persons with disabilities. Her claim was based on the argument that the criteria used by the third respondent in short-listing candidates for posts as entry level Magistrates and the application thereof at the named places was unfairly discriminatory in that the applicant's (complainant) gender and/or disability was not appropriately considered when the short-listing was done by the third respondent. (Disability was not listed in the factors to be considered in the guidelines). The Court observed that in terms of sec 9(3) of the Constitution, which recognises the right to freedom from disability based discrimination, the government has a duty to advance and promote the position of persons with disabilities, including in the field of employment.

3.2.5.1.2. Standard Bank SA v CCMA & Others [2008] 29 ILJ 1289 (LC)

The employee in this case was involved in a fatal motor vehicle accident. She suffered severe back pains. She found it difficult to continue doing 'normal' duties. The employer, "Bank" sympathised with her and offered a light administrative work. She found it to be uninspiring and requested telephone sales job. She then found it difficult to sit and requested headset to enable her to work properly and the employer refused and relegated her to paper shredding job. A year later after the accident, she was frequently absent from work. The Bank acknowledged that she is unlikely to be able to resume her 'normal' functions and asked to be medically boarded, which application was refused. Two years after the accident, she was dismissed. She referred the matter to the CCMA for unfair dismissal. The Commissioner held the dismissal was unfair.

On review, the Court held that employers were required to adopt a four-stage inquiry before dismissing employees for incapacity, namely, (i) whether the employee is unable to perform his or her work, and if not; (ii) the extent to which the employee is capable of working; (iii) whether the employee's work circumstances can be adapted and, if not; (iv) whether alternative work is available.

The Court observed that if an employer dismisses an 'incapacitated' employee without taking these steps, the dismissal is automatically unfair because it constitutes a 'designated group' (as discussed in 3.1 above). It was found that in the particular case the Bank failed to investigate if it could assist the employee and yet a number of simple measures would have made it possible for the employee to continue in her employment. These include adapting her workstation around her disability; purchasing and allowing her to use a headset for the telephone; purchasing a special chair for the employee; or allowing her to work half day only. The Court further held that it would be a case of automatic unfair dismissal when an employee who had a disability but was not incapacitated was dismissed. The Court also found that the dismissal had been procedurally unfair since the Bank did not discharge its duty to consult with the employee on the ways she could be accommodated by also engaging with technical

experts who could accommodate and adjust the work environment to enable the employee to continue working.

LAPD FINAL REPORT

PART IV

CONCLUDING REMARKS

4.1. Conclusions:

Uganda is required to take all appropriate steps to ensure that reasonable accommodation is provided to PWDs. The duty to provide reasonable accommodation is enforceable from the moment an individual with impairment needs it in a given situation, in order to enjoy her or his rights on an equal basis with the rest of the public in a particular context. However, unlike the duty to ensure accessibility

for PWDs, the duty to provide reasonable accommodation is not absolute because it exists only if implementation constitutes no undue burden on the State or other responsible entity. Nonetheless, it is noteworthy that the denial of reasonable accommodation amounts to discrimination on the basis of disability.

The Committee on Rights of Persons with Disabilities, in the CRPD General comment No. 2 on Accessibility, explains that accessibility is a vital precondition for persons with disabilities to live independently, participate fully and equally in society and realise effective enjoyment of their human rights and fundamental freedoms on an equal basis with others. The duty to provide accessibility is an ex ante duty which means that State parties are obliged to ensure accessibility before receiving an individual request from a PWD to enter or use a place or service. The State must ensure accessibility for PWDs in both urban and rural areas. The obligation to implement accessibility is unconditional hence any omission to provide accessibility for PWDs on the ground that it is a burden is unacceptable.

The Committee on the Rights of Persons with Disabilities emphasises that State parties to the CRPD should observe the right to accessibility through setting national accessibility standards. States parties, in consultation with PWDs, must set broad accessibility standards which need to be specifically targeted towards service-providers, builders and other relevant stakeholders. Barriers to access to existing facilities, goods and services open to the public must be removed gradually in a systematic and continuously monitored manner, with the aim of achieving full accessibility.

At the national level, factors leading to this state of affairs can be speculation ranging from lack of awareness on the side of government officials; traditional beliefs that, at best, PWDs should be treated with sympathy and pity and hence accord them welfare services on humanitarian grounds; lack of enthusiasm and a looking down on those with disabilities with the old belief that they are less human and hence no need to bother with them, etc. This, as has been seen above, is reflected in the complete omission of accessibility legislation in the various acts governing the construction industry. Such acts as the Physical Planning Act, 2010, the Public Health Act, etc. have some relevance in these areas. However, for the purposes of this paper a number of laws have been reviewed to map out the provisions on accessibility. The others, though important, are completely silent on the issue of accessibility and to review them will amount to repeating ourselves. Nevertheless, in the event of Access Legislation in this country, all these Acts and any other related to accessibility of the individual should be redefined to incorporate accessibility to PWDs.

This publication aimed to illustrate good practices and legal framework for promoting environmental accessibility in the context of development. It is premised on the notion that environmental accessibility is a member of the set of global public goods and not a defined benefit for specific members of the population. Once provided, no one person can be excluded from accessible environments. The benefit that any one end-user can experience from accessible environments, urban infrastructure or information and communication technology does not diminish opportunities for others to enjoy the “ease and flexibility” of accessible environments.