

ACCESSIBILITY IS NOT ABOUT THE RAMP
TOWARDS THE PROGRESSIVE REALISATION OF THE RIGHT TO
PHYSICAL ACCESSIBILITY IN UGANDA

Research presented to **Uganda National Action on Physical Disability (UNAPD)** and **Legal Action for Persons with Disabilities-Uganda (LAPD)**

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LIST OF ABBREVIATIONS

Art	Article
AU	African Union
Cap	Chapter
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
ECOSOC	The Economic and Social Council
EOC	Equal Opportunities Commission
ESCRs	Economic, Social and Cultural rights
GOU	Government of Uganda
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KCCA	Kampala Capital City Authority
LAPD	Legal Action for Persons with Disabilities Uganda
MoGLSD	Ministry of Gender Labour and Social Development
MUK	Makerere University Kampala
NBRB	National Building Review Board
NCD	National Council for Persons with Disability
NGO	Non-Governmental Organisation
NODPSPs	National Objectives and Directive Principles of State Policies
NUDIPU	National Union of Disabled Persons of Uganda
OPDs	Organisations of Persons with Disabilities
PIL	Public Interest Litigation
PWDs	Persons with Disabilities
PWPDs	Persons with Physical Disabilities
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UNAPD	Uganda National Action on Physical Disability
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WHO	World Health Organisation
WWD	Women with Disabilities

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ABSTRACT

Disabling conditions have always separated those who have them from the mainstream experience of culture and society. For example, prejudices and stereotyping create barriers on the way to education, employment and/or social involvement. In order to enable PWDs to participate fully in societal activities, and increase the participation of PWDs, it is important to create an environment that welcomes the presence and input of PWDs.

Despite the advances that the Ugandan government has made to create a more accessible environment in Uganda, PWDs, who comprise at least 12.4 per cent of Uganda's population, still face many obstacles to enjoying access to many elements of daily life, including housing, public transportation, public buildings, healthcare facilities, schools, private businesses, and employment.

Throughout the different parts of this report, the research analyses discrimination in a number of spheres of daily life. The UNCRPD defines discrimination on the basis of disability as “any distinction, exclusion or restriction on the basis of disability” that limits or prevents people from enjoying basic rights and freedoms on an equal basis with others in political, economic, social, cultural, civil, or other areas of life. For example, interviewees in the districts and/or cities where the research was conducted spoke of difficulty leaving their homes or accessing private businesses or government buildings due to narrow doorways, no elevators, and steep wheelchair ramps that lack accessible handrails.

Many PWDs also mentioned multiple problems that prevent them from accessing transportation, entering train stations or bus stops, or boarding transport. The lack of accessible transportation further segregates people with disabilities from the rest of society, making it difficult or impossible for them to see friends and family, work outside their homes, date, or enjoy public facilities and institutions, such as museums, theatres, and parks. Although some city governments have begun to provide accessible buses or taxis, many people interviewed said that they were too few in number, service was infrequent, and information was lacking about their schedules. Interviewees also described a dearth of accessible sidewalks and street crossings.

Last but not the least, PWDs also said that they had trouble accessing healthcare facilities and services in part due to lack of access to adequate rehabilitation devices and services. PWDs noted that some healthcare workers refused to speak directly with them or accommodate basic accessibility needs. In terms of strategy, most of the respondents argued to “test the law” which was interpreted to bring the suit before the courts to “punish” the “stubborn” population. Others resorted to advocacy and research as a mechanism to enforce their right to a barrier free environment.

PART I

BACKGROUND AND CONTEXT

1.1. Background:

Disability is part of the human condition. Almost everyone will be temporarily or permanently impaired at some point in life, and those who survive to old age will experience increasing difficulties in functioning. Historically, persons with disabilities (PWDs) in Africa suffer discrimination and exclusion. This is due to the fact that disability is perceived to be a curse on a family or the result of witchcraft practice by the family or its close family members.¹ This cultural belief has victimised PWDs and has enforced their exclusion from the societies or communities in which they live. However, as indicated elsewhere in this paper, African culture is not only discriminatory and exclusionist, but its communitarian ideals offer a potentially rich ground for enabling disability rights in African communities.

At the international level, the Universal Declaration of Human Rights (UDHR) clearly states that all human beings are born free and equal in dignity and rights and it says equally clearly that everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind. But as with other groups who are part of “everyone,” including notably women and children, history and experience have shown the need for additional and more specific recognition and protection of their rights. Despite the very progressive ideas embodied in the UDHR, one must remember that it was a product of its time. One of the problems with the UDHR was that, like other generic human rights documents, many people and governments thought it could not possibly have been meant to apply to everyone, including PWDs.

It is based on the above lacuna that the UN General Assembly conceded, albeit after many years of delay and prevarication, to adopt the UNCRPD global instrument to protect the rights of PWDs across the world in 2006. The UNCRPD is the eighth core human rights treaty of the United Nations; having entered into force on the 3rd day of May 2008.² As such, it is binding international law on all States Parties. As a thematic treaty dealing with the rights of persons with disabilities, the UNCRPD also affects the interpretation of other treaty obligations both directly and indirectly. The United Nations human rights system, particularly with reference to the core treaties, is moving towards harmonisation, with increased co-ordination of reporting and unification of standards.³ Treaty bodies dealing with civil and political rights, torture, children’s rights and other areas will look to the UNCRPD for guidance in developing their own jurisprudence and normative guidelines affecting the rights of PWDs. It underlines the cross-cultural nature of the bane of disability-related discrimination.

¹ Combrinck, H ‘The hidden ones: Children with disabilities in Africa and the right to education’ in Sloth-Nielsen, J (ed) (2008) *Children’s rights in Africa: A legal perspective* Ashgate 299-323

² Uganda took an active part in negotiating the CPD and was one of the 82 signatories to the Convention on 30 March, 2007.

³ Schulze, M *Understanding the United Nations Convention on the Rights of Persons with Disabilities: A handbook on the human rights of persons with disabilities* (2010)

Though the plight of PWDs is more accentuated in the Global South on account of relative material differences and poverty, nonetheless, disability is not the preserve of a particular culture. It is an age-old bane.

Without prejudice to the foregoing, PWDs are joining the world of service in increasing numbers. Just like their counter-parts without disabilities, PWDs see a need in their communities and want to contribute to creating a better world for all irrespective of age, sex, race and disability. Persons with disabilities are contributing either to teaching children to read, helping seniors remain independent in their homes, or increasing public safety. For PWDs, the world of service is often fraught with barriers. These barriers are often inadvertent and exist out of ignorance, fear, and concern. Indeed, a person's environment has a huge impact on the experience and extent of disability. Inaccessible environments create disability by creating barriers to participation and inclusion. The physical environment may prevent PWDs from enjoying the same rights, privileges and opportunities like other members of society.⁴ Challenges posed by the physical environment include access to public buildings and places, public transport and other services that require physical movement. Other than physical access, access to services by PWDs is also constrained due to the lack of facilities and services to cater for their special needs. Examples include sign language and braille services at various places where PWDs seek such services as education, health-care and legal justice. As the World Health Organization (WHO) Commission on Social Determinants of Health has argued, inequality in access created by the physical environment is a major cause of poor health, and hence of disability.⁵ The problem of access may also prevent PWDs from enjoying some of their political rights. The absence of facilities for PWDs at polling stations, for instance, may prevent them from casting their votes, thereby infringing their political right to vote.⁶

As a matter of fact, environments – physical, social, and attitudinal – can either disable persons with disabilities or foster their participation and inclusion. The UNCRPD⁷ stipulates the importance of interventions to improve access to a barrier-free environment including buildings and roads, transportation, information, and communication.⁸ These domains are interconnected – PWDs will not be able to benefit fully from improvements in one domain if the others remain inaccessible.⁹ Remedially, the physical environment may be changed to improve health conditions, prevent impairments, and improve outcomes for PWDs. Such changes can be brought about by legislation, policy changes, litigation, capacity building, or technological developments leading to, for instance: accessible design of the built environment and transport; signage to benefit people with sensory

⁴ See Malcolm Peat 'Attitudes and access: Advancing the rights of peoples with disabilities' (1997) Canadian Medical Association Journal 657.

⁵ See for example, Commission on Social Determinants of Health. *Closing the gap in a generation: Health equity through action on the social determinants of health*. Geneva, World Health Organization, 2008.

⁶ As will be seen later, it is for this reason that through advocacy, several countries have made specific laws to ensure that facilities are put in place to allow PWDs to exercise their right to vote.

⁷ See the preamble of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁸ See Kayess, R & French, P 'Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 1.

⁹ See for instance Sara Bachman, Mark Vedrani, Mari-Ann Drainoni, Caro Tobias & Lisa Maisels 'Provider perceptions of their capacity to offer accessible health care for persons with disabilities' (2006) 17 *Journal of Disability Studies* 130.

impairments; more accessible health, rehabilitation, education, and support services; and more opportunities for work and employment for PWDs. An accessible environment, whilst particularly relevant for PWDs, has benefits for a broader range of people within society. A few illustrations are necessary here to support the assertion. First, ramps assist parents pushing baby strollers and older persons in having access to a steeped surface. Secondly, announcements of each stop on public transit may aid travellers unfamiliar with the route as well as those with visual impairments to get to know of what is transpiring in the environment in which they are travelling. Moreover, these benefits for numerous people can aid in generating widespread support for making changes.

To succeed in creating a barrier-free physical environment for PWDs especially those with physical disabilities, accessibility initiatives need to take into account external constraints including affordability, competing priorities, availability of technology and knowledge, and cultural differences. They should also be based on sound scientific evidence. Often, accessibility is more easily achievable incrementally – for example, by improving the features of buildings in stages. Initial efforts should aim to build a “culture of accessibility” and focus on removing basic environmental barriers. Once the concept of accessibility has become ingrained and as more resources become available, it becomes easier to raise standards and attain a higher level of universal design.

Indeed, even after physical barriers have been removed, negative attitudes can produce barriers in all domains. To overcome the ignorance and prejudice surrounding disability, education and awareness-raising is required by different stakeholders but most especially from PWDs and their organisations. Such education should be a regular component of professional training in architecture, construction, design, informatics, and marketing. Policy-makers and those working on behalf of PWDs need to be educated about the importance of accessibility too. This paper seeks to explore these options highlighted herein in the later part of the paper.

1.2. Context:

One of the fastest growing areas of international human rights law is in the area of the protection and realisation of economic, social and cultural rights (ESCRs). This has been reflected in the propagation of international and regional instruments protecting various categories of ESCRs and in some cases adapting these to particular groups such as women,¹⁰ children,¹¹ migrant workers,¹² and persons with disabilities,¹³ among others. It could be argued that with these developments, the controversies surrounding the justiciability of ESCRs have been overcome. At the domestic level, the Constitution

¹⁰ See for instance Convention Against All Forms of Discrimination Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981 and Protocol to the African Charter on the Human and Peoples Rights on the Rights of Women in Africa.

¹¹ See Convention on the Rights of Children, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, and the African Charter on the Rights and Welfare of Women.

¹² See International Convention on the Rights of Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990.

¹³ See The United Nations Convention on the Rights of Persons with Disabilities, 2006.

of the Republic of Uganda has a comprehensive bill of rights which protects the rights of marginalised groups like PWDs,¹⁴ women,¹⁵ children¹⁶ and minorities¹⁷ among others.

In regard to disability, the Uganda National Housing and Population Census reveals that 12.4% constitutes persons with disabilities in Uganda.¹⁸ Out of 12.4% (twelve per cent), persons with physical disabilities constitute 1,476,959 and continue to face glaring accessibility challenges.¹⁹ This calls for a robust legal, policy and institutional framework to protect rights of PWDs. The example of such a provision is found in Article 35 which specifically deals with the rights of PWDs. It is in this spirit that the Persons with Disabilities Act²⁰ and the Mental Health Act²¹ have been enacted. As shall be seen later on in this paper, a more progressive Act has been enacted to replace the repealed Disability Act.²² In addition to specialised legislation to protect and promote the rights of PWDs, the government has enacted mainstream legislation to advance the general welfare and rights of PWDs.²³

Without prejudice to the foregoing, different initiatives have been done to realise the rights of PWDs. To this end, a number of strategies have been developed by human rights advocates towards the advancement and realisation of disability rights. These strategies identified include research, pilot project development, capacity building of state officials, advocacy organisations and professionals, self-advocacy empowerment, engagement with law reform including lobbying political leaders and other stakeholders including the media, public awareness campaigns and strategic litigation.²⁴

In specific reference to litigation, human rights litigation is one of the fastest growing areas of legal and judicial practice. Indeed, many human rights activists and advocates are embracing litigation as a tool for the promotion and protection of human rights. In this process, courts have been pushed to open up and abandon their conservative positions, sometimes forcing judges to adopt activist stances hitherto unknown in judicial practice.²⁵ To this end, a number of cases have been filed by both natural²⁶ and artificial persons²⁷ in pursuit of the rights of PWDs.

¹⁴ See Article 35 of the Constitution of the Republic of Uganda, 1995.

¹⁵ See Article 33 of the Constitution of the Republic of Uganda, 1995.

¹⁶ See Article 34 of the Constitution of the Republic of Uganda, 1995.

¹⁷ See Article 36 of the Constitution of the Republic of Uganda, 1995.

¹⁸ Uganda Bureau of Statistics 2016, *The National Population and Housing Census 2014 – Main Report*, Kampala, Uganda

¹⁹ *Id.*

²⁰ See the Persons with Disabilities Act No 3 of 2020.

²¹ See the Mental Health Act, 2019.

²² The Persons with Disabilities Act, 2020 repealed the Persons with Disabilities Act, 2006 and is deemed to be more progressive compared with the repealed one.

²³ See for instance the Building Control Act, 2013 which regulates building construction in Uganda. This law emphasises the concept of accessibility of the building whilst does not deal specifically with the rights of persons with disabilities.

²⁴ Bach, M (2012) “Towards a ‘Global Innovation Strategy’ for National-Scale Implementation of Article 12 of the UN Convention on the Rights of Persons with Disabilities” Toronto: IRIS – Institute for Research and Development on Inclusion and Society

²⁵ Mubangizi, J.C, and Mbazira C, Constructing the Amicus Curiae procedure in human rights litigation: What can Uganda learn from South Africa? *Law, Development and Democracy*, Vol.16/2010, p. 210.

²⁶ Prominent individuals like Daniel Iga Mwesigwa, Benon Kabale, Emmanuel Candia and others have filed cases in court to have court pronouncement on issues involving persons with disabilities and their rights.

²⁷ See for example Legal Action for Persons with Disabilities (LAPD), Centre for Health Human Rights and Development (CEHURD) and Initiative for Social and Economic Rights (ISER). Please note that apart from LAPD which is a DPO,

In regard to the right to access a barrier free environment for persons with physical disabilities, one case, **Legal Action for Persons with Disabilities versus Attorney General**,²⁸ has been filed in court. The applicants, in this case, sued the Attorney General, Kampala Capital City Authority (KCCA) and Makerere University Kampala (MUK) on the grounds that public buildings and facilities within Kampala city and Makerere University (an institution of higher education) were not accessible to PWDs. The applicants relied on the antidiscrimination provisions in the Constitution and the Persons with Disabilities Act of 2006 requesting that all public buildings be made accessible to persons with disabilities to ensure their full inclusion in the society.

The High Court dismissed the application on the following grounds: The KCCA and MUK had taken sufficient reasonable measures within their means to make their buildings and facilities accessible. The court was also of the view that KCCA and particularly MUK had limited resources and could not fully make all buildings immediately accessible and that the current state of inaccessibility was attributable to buildings constructed prior to the period when issues of disability became a pertinent national agenda. The court also noted that to expect MUK to prioritise resources to making buildings accessible would substantially increase the cost of education hence affect other students.

Another important case in the area is **Nyeko Okello & Santo Dwoka versus Centenary Rural Development Bank Limited**.²⁹ The applicants who were PWDs and clients of Centenary Rural Development Bank (CERUDEB) noted that the Bank was not accessible to persons with disabilities as it has no ramps. They approached the Bank to discuss the issue, but to no avail. Therefore, they took the matter to court to compel the Bank to ensure accessibility for persons with disabilities, and before the case was heard the Bank reacted and constructed ramps. Since the breach had been remedied, the judge advised for a settlement out of court. A consent judgment was later entered into by the parties with costs awarded to the applicants, but no damages were awarded by the court.

It should be observed that both of these cases were filed before the Building Control Act and the Building Control Regulations were passed. This was in addition to the limited advocacy done by different OPDs. For instance, UNAPD had just completed the study which led to the promulgation of the Building Standards and another quantitative research which had been conducted by NUDIPU on the subject. These two were a precursor to the study conducted by LAPD which triggered of the case. This could be the reason for the justification of the existing inaccessible buildings as noted by the Court in the Legal Action for Persons with Disabilities case discussed above. The present study presumes that with the passage of the Building control Act, 2013 and the Regulations made thereunder in addition to the two cases highlighted above, accessibility as a right would be considered by the construction industry as an inseparable component for disability rights in Uganda. The presumption has been less unreciprocated with the existing status quo as revealed later on in this report. This study

the remaining two are Civil Society Organisations (CSOs) working on mainstream rights but have placed disability on their agenda.

²⁸ High Court Miscellaneous Cause No. 146 of 2011.

²⁹ (High Court of Uganda Civil Suit No 23/2008 (unreported))

intended to examine the degree of response to the dictates of the existing legal and policy framework on access to a barrier-free physical environment for persons with physical disabilities in Uganda.

1.3. Methodology:

Qualitative techniques of library research and desktop literature review, observation, and in-depth interviews were the more prevalent methods of conducting the research. Qualitative methods help the researcher to understand people as they interacted in various social contexts and to define social reality from their own experience and perspective.³⁰ Qualitative methods allowed for contextuality and continuity, all of which were crucial for the research questions raised.³¹ The study was primarily library and desk based. Information was gathered from the library and the Internet to enable the framing of the questions that would later be used during interviews with the respondents. The purpose of the interviews was largely to solicit information about the major constraints to the protection, promotion and enjoyment of the right in the context of the existing legal and policy framework at the national and international level. A total number of 40 (forty) key informants were interviewed: 1 from the Ministry of Works and Transport, 1 Representative from the National Building Review Board, 4 public building owners, and 4 Representatives from OPDs. Selection was based on their experience and knowledge of the issues and concerns of the study. Furthermore, the research team also interviewed 30 PWDs from the four regions. The guiding principle for selection of respondents was the purposive sampling strategy for selection of key informants. The researcher used their expert judgment to select key informants that are representative of the study population. The researcher considered factors such as knowledge of the subjects, practice in the field of accessibility, work experience working for PWDs. In selecting the respondents, the research team ensured that there was a rural-urban mix among them. All the respondents were selected through purposive sampling.³² Permission to carry out the research was obtained from the relevant authorities. The respondents were informed of the purpose of the research, and informed consent was obtained from them. The names of the respondents are concealed where necessary for confidentiality.

1.4. The Scope:

The notion of accessibility in the area of the human rights of PWDs is very broad; it embraces access to the physical environment, to transportation, to information and communication technologies and systems. This study does not deal with access in its wide context, it is limited to access to the physical environment. The point of emphasis is that the physical environment must be barrier-free for PWDs. It should be emphasised, however, that access in its broad sense is recurring. Unless one has access to the physical environment it may be hard to have access in other respects. It is therefore acknowledged that access to the physical environment could determine access to transportation, and to information,

³⁰This sampling technique enables the researcher to deliberately select respondents whose life situations and experiences reflect the themes of the study. See Sarantakos 1998.

³¹ *Id.*

³² *Supra* at footnote 24.

technology and communication systems. Hitherto, access to these may translate into access to the physical environment.

In terms of geographical scope, this study was conducted in all the regions of Uganda.³³ Whereas this is the representation, it should be noted that respondents were selected from the districts of Arua, Fort Portal, Gulu, Jinja, Kabale, Lira, Masaka, Mbale, Mbarara, Mukono, Soroti, Wakiso, and Kampala Capital City. The choice of these districts was informed by government pronouncement of “city status” upon them to be commenced in different period.³⁴ The study presumed that before consideration of the said city status to these districts was granted, there was a considerable degree of development done in terms of building construction, social goods and services to foster growth within the locality. In the case of Kampala Capital City, as a Capital, it is judicial notice that development of social goods and services is incidental to its location. In this regard, often times, there is a high degree of rural-urban migration with different categories of persons (both those with and without disabilities) crowding the Capital in quest for the said “better and plenty” services offered.

1.5. The Lay out of the Paper:

This paper begins in part 2 with a discussion of the international legal framework and instruments to ascertain the position of these laws on the rights of PWDs in general and the right of access to a barrier-free environment in particular. In this part, the universal and regional instruments as well as national legal framework relevant to the subject are discussed. Part 3 discusses the legal framework governing public interest litigation in Uganda, beginning with the Constitution and judicial decisions. The findings from the study are presented and discussed in part 4. The last part, 5, details the way forward with proposals on what ought to be done to implement the right through litigation.

³³ For the purposes of this paper, the regions of Uganda are categorized into Northern, Eastern, Central and Western.

³⁴ The new cities were to be operationalised in clusters beginning 1 July, 2020, through to July, 2023 with Jinja, Mbarara, Gulu, Mbale, Arua, Fort Portal and Masaka taking effect within FY 2020/2021. The second cluster of cities is to take effect by 1 July, 2021 and these include Hoima, Lira and Soroti, then Entebbe by 1 July, 2022. The last cluster will be Moroto, Nakasongola, Kabale and Wakiso cities that will be operationalized on 1 July, 2023. (**Parliament of Uganda website**).

PART II

THE RIGHT OF PERSONS WITH DISABILITIES IN UGANDA: THE LEGAL AND POLICY FRAMEWORK

2.1. The International Legal Regime in Context:

The sources of international law are found in article 38(1) of the Statute of the International Court of Justice and these are international conventions (as governed by the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on the Law of Treaties between States and International Organisations and between International Organisations of 1986); international custom; the general principles of law recognised by modern states; and judicial decisions and the teachings/ writings of most highly qualified authors.

Although there is no provision for a hierarchy of the sources of international law, it is largely agreed that treaties, multilateral or bilateral, are viewed as the primary source of international law. This is followed by international custom as secondary source of international law. Soft law falls under international custom. Soft law can basically be defined as standards generated by declarations adopted at diplomatic conferences or resolutions by international organisations that are intended to be guidelines regulating the conduct of states is well evidenced by soft law. Such resolutions or declarations are not binding in nature. The law of treaties provides that a state may not invoke its national law as a justification for its failure to perform an international treaty that it has ratified voluntarily.³⁵

2.1.1. The Position of International Law in Ugandan Jurisdiction:

Uganda is a dualist country and international law is not explicitly recognised as a source of law under the Ugandan Constitution, and that, to be applied in Ugandan courts; a treaty must be ratified in accordance with the Ratification of Treaties Act³⁶ and then domesticated by an Act of the Ugandan parliament.³⁷ Section 2(b) of the Ratification of Treaties Act gives parliament the power to ratify treaties by way of resolution of that body where the treaty in question relates to armistice, neutrality or peace; or with regard to a treaty in respect of which the Attorney-General has certified in writing that its implementation would require an amendment of the Constitution. All other treaties can be

³⁵ See Vienna Convention on the Law of Treaties Art 27.

³⁶ Chapter 204, Laws of Uganda, 2000.

³⁷ See for instance the Arbitration and Conciliation Act (Cap 4), the Atomic Energy Act (Cap 143), the Bretton Woods Agreements Act (Cap 169), Diplomatic Privileges Act (Cap 201), the East African Development Bank Act (Cap 52), the East and Southern African Management Institute Act (Cap 126), the Eastern and Southern African Trade and Development Bank Act (Cap 53), the Foreign Judgments (Reciprocal Enforcement) Act (Cap 9), the Geneva Conventions Act (Cap 363), the International Development Association Act (Cap 189), the International Finance Corporation Act (Cap 190), and the Reciprocal Enforcement of Judgments Act (Cap 21).

ratified by Cabinet in accordance with section 2(a) of the Act, provided that they are laid before parliament 'as soon as possible' in accordance with section 4 of the Act.

It should also be noted that the Constitution is the supreme law of the land and has binding force on all authorities and persons throughout Uganda.³⁸ Under Article 2(2), where any other law is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail and that other law or custom shall be null and void to the extent of the inconsistency. To the extent that international law is incorporated into the national legal order as written law, it is subordinated, as a matter of Ugandan law, to the provisions of the Uganda Constitution.³⁹

Regard may also be had to Article 119(5) of the Constitution which provides that no agreement, contract, treaty, convention or document by whatever name called to which the government is a party or in respect of which government has an interest, shall be concluded without the legal advice from the Attorney-General. The Constitutional Court has noted, in the context of a contract signed between a government parastatal and a private entity, that failure to comply with this provision has the effect of rendering a contract null and void in terms of article 2(2) of the Constitution.⁴⁰ It would appear that, as a matter of national law, this would be the same position in the case of an international agreement concluded without the advice of the Attorney-General as required under Article 119(5). Furthermore, the Constitution under Article 123(1) vests the president or a person authorised by him with the power to make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any other international organisation or body, in respect of any matter. Parliament is given the duty under Article 123(2) to make laws to govern the ratification of treaties, conventions, agreements or other arrangements made by the president under Article 123(1).⁴¹

In addition, Article 287 provides that where any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the government on or after 1962 and was still in force immediately before the coming into force of the Constitution,⁴² or where Uganda or the government was otherwise a party immediately before the coming into force of the Constitution to any such treaty, agreement or convention,⁴³ then such treaty, agreement or convention shall not be affected by the coming into force of the Constitution, and Uganda or the government, as the case may be, shall continue to be a party to it.

Finally, it is also important to have regard to the provisions of principle 28(i)(b) of the National Objectives and Directive Principles of State Policy, an introductory section in the Constitution of

³⁸ See Article 2(1) of the Constitution of the Republic of Uganda, 1995 and the case of Saverino Twinobusingye versus Attorney General Constitutional Petition No. 47 of 2011.

³⁹ Of course, as noted elsewhere in this paper, the position under international law is that expressed under art 27 of the Vienna Convention on the Law of Treaties (1969) to the effect that a state cannot invoke the provisions of its internal law as justification for its failure to perform a treaty.

⁴⁰ See *Nsimbe Holdings Ltd v The Attorney General & Anor*, Constitutional Petition No 2 of 2006

⁴¹ The law made under this provision is the Ratification of Treaties Act (Cap 204) and the regulations made there under.

⁴² Article 287(a) of the Constitution of the Republic of Uganda, 1995.

⁴³ Article 287(b) of the Constitution of the Republic of Uganda, 1995.

Uganda, 1995. This principle is to the effect that the foreign policy of Uganda shall be based on, among other things, respect for international law and treaty obligations.⁴⁴ There thus appears to be a positive constitutional requirement upon the executive arm of government to conduct the nation's foreign affairs in a manner that respects international law. It should be noted however that the provisions of principle 28(1)(b) are not in and of themselves a basis for the application of international law in Uganda, but rather provide a domestic legal basis holding the executive accountable in the municipal sphere for infractions of international law. Admittedly, in the course of such enquiry the court would have to enquire into the relevant 'international law and treaty obligations' alleged to have been disrespected, but it would do so only in such manner as it would for instance enquire into the content of French law if the constitutional duty upon the executive were to respect that law in the conduct of Uganda's foreign policy.

All in all, as noted above, Uganda is a dualist country, and therefore requires the domestication of international law for its application at country level. However, the presentation of a treaty to the legislature does not always lead to automatic domestication or application in national law. Oyaro argues that the 'ratification of treaties and their coming into domestic effect has grown out of usage rather than as a result of standardisation by law'.⁴⁵ Notwithstanding, the ambiguity on the status of international law in the legal system, some judges rely on this law. For instance in the case of **Attorney General versus Susan Kigula**,⁴⁶ the Supreme Court referred to international law to inform its decision on the death penalty. Similarly, in **Uganda versus Peter Matovu**,⁴⁷ the High Court relied on provisions of the Committee on the Elimination of Discrimination against Women (CEDAW) to reach its decision.

2.1.2. International Human Rights Law and Rights of Persons with Disabilities:

Uganda is a signatory to several international human rights conventions and treaties. At the universal level, disability has been an invisible concept under international human rights law. PWDs have not been expressly recognised under binding international human rights instruments. The equality clauses within the international Bill of Rights do not explicitly mention PWDs as a protected group. In this regard, international human rights regime has adopted and embedded principles which if observed by States parties could remove some of the obstacles. This is intended to ensure that PWDs are not prejudiced by the obstacles posed by the physical environment in which they live.

However, most developments in disability rights at the international level have been in non-binding soft law. As such, efforts to protect the rights of persons with disabilities at the international level can be traced back to the 1948 UDHR; 1950 UN General Assembly and the Economic and Social Council (ECOSOC) resolution on social rehabilitation of the physically handicapped; 1971 Declaration on the Rights of Mentally Retarded Persons; 1975 Declaration on the Rights of Disabled Persons; 1982

⁴⁴ Although the justiciability of such introductory statements in constitutions has been questioned, there is a growing body of jurisprudence to the effect that such sections have a measure of enforceability.

⁴⁵ Oyaro, LO 'Uganda' (2014) 2 *African Disability Rights Yearbook* 247

⁴⁶ (Constitutional Appeal No 3/2006 (2009) UGSC 6 (SC) (21 January 2009) 12)

⁴⁷ Criminal Session Case No 146/2001 (2002) UGHC 72 (19 October 2002)

World Programme of Action concerning Disabled Persons; 1991 Principles for the Protection of Persons with Mental Illness; 1993 Standard Rules on the Equalisation of Opportunities for persons with disabilities; and the Sustainable Development Goals.

Soft Law for the Protection of Rights of Persons with Disabilities:

The UDHR was the first human rights instrument to be adopted by the United Nations.⁴⁸ It guarantees both civil and political rights, and socio-economic and cultural rights. In this regard, the UDHR proclaims that all human beings are born free and equal in dignity and rights and that all human beings are entitled to all the rights and freedoms proclaimed without any distinction of any kind based on a number of grounds stipulated. In essence, the UDHR guarantees the enjoyment of all the generation of human rights by all human beings without any kind of distinction. Although not specifically mentioned in any provision, PWDs are equally covered under the UDHR by its reference to ‘all human beings’.

In 1950, the Social Commission, a subsidiary to ECOSOC, considered two reports: ‘The social rehabilitation of the handicapped’ and ‘The social rehabilitation of the blind’.⁴⁹ Persons with disabilities and rehabilitation were discussed at the Geneva Conference. The report on ‘Social rehabilitation of the physically handicapped’ was later proclaimed by the UN general Assembly to be a common standard of achievement for all peoples and all nations. ECOSOC recommended that states consider measures to help PWDs.

In 1971, the General Assembly adopted a resolution entitled Declaration on the Rights of Mentally Retarded Persons.⁵⁰ Article 1 of the Declaration emphasised that ‘mentally retarded persons’ were to enjoy the same rights as all other human beings. The Declaration also itemised the rights important to PWDs. Such rights included education, training and rehabilitation. However, the Declaration, like most early soft-law instruments on PWDs, reflected the medical model of disability and made use of improper and disempowering terminology like ‘mentally retarded persons’.

In 1975, the Declaration on the Rights of Disabled Persons⁵¹ then followed. The Declaration asserted that persons with disabilities have the same civil and political rights as other human beings. It further emphasised the right of persons with disabilities to protection against exploitation and degrading treatment. Persons with disabilities’ right to participate in matters regarding them was also emphasised under the Declaration. Through these declarations, principles such as equality and non-discrimination, and several substantive PWDs’ rights like right to education, training and rehabilitation started to be articulated. Nevertheless efforts did not end there.

⁴⁸ Adopted by the UN General Assembly Resolution 217A (III) on 10 December 1948.

⁴⁹ UN General Assembly and the Economic and Social Council (ECOSOC) resolution on social rehabilitation of the physically handicapped, 1950.

⁵⁰ Adopted by General Assembly Resolution 2856 (XXVI), 20 December 1971.

⁵¹ Adopted by General Assembly Resolution 3447 (XXX), 9 December 1975.

In 1982, the United Nations adopted the World Programme of Action Concerning Disabled Persons (WPA).⁵² The main aims of the WPA were to prevent exclusion and marginalisation of persons with disabilities. One of the goals of the WPA was the equalisation of opportunities for persons with disabilities. The WPA defined equalisation of opportunities as:

... the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all.

This at least marked the beginning of a significant shift from a medical approach to disability to a focus on human rights and equality in general. As a follow-up to the WPA, the UN launched the Decade of Disabled Persons and it was set from 1983 to 1992. Thus the disability agenda was eventually getting some momentum at least from the standpoint of the United Nations.

In 1991, the UN General Assembly adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.⁵³ The Principles established mental health care standards and procedural guarantees for the protection of persons with mental illness against abuse in health institutions. As an example, excessive or prolonged uses of physical restraint or involuntary seclusion or sterilisation on the grounds of mental illness were all prohibited under the Principles.

In 1993, the UN adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules).⁵⁴ The Standard Rules were firmly built on the above-discussed WPA and clearly emphasised equality of opportunities for persons with disabilities. The main aim of the Standard Rules was therefore to achieve full and effective inclusion of persons with disabilities in all aspects of society. Furthermore, the Standard Rules sought to ensure that persons with disabilities exercise the same rights and bear the same obligations as their non-disabled counterparts.

The Standard Rules developed the work of the WPA in situating impairment as an incident of human diversity. Accordingly, states were urged to incorporate disability into policy and planning. Unlike the above-discussed Declarations, the Standard Rules made clear statements about the rights of persons with disabilities and the promotion of accessible environments. To that extent, the Standard Rules embraced a rights-based approach to disability.

Although international monitoring of disability rights was limited, the Standard Rules made provision for the appointment of the Special Rapporteur on Disabilities. The Special Rapporteur performs duties under the auspices of the UN Commission on Social Development (CSD). The Special Rapporteur may initiate surveys, report to the CSD, render advisory services to states on implementation and monitoring of the Standard Rules and assistance in preparation of replies to surveys, and to initiate

⁵² World Programme of Action Concerning Persons with Disabilities, adopted by UN General Assembly Resolution 37/52 on 3 December 1982 (UN Doc A/ RES/37/52).

⁵³ Adopted by General Assembly Resolution 46/119, 17 December 1991.

⁵⁴ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by UN General Assembly Resolution 48/96 on 18 December 1992 (UN Doc A/RES/48/96)

direct dialogue with states and local non-governmental organisations in sharing their views for purposes of compiling reports to the CSD.

Be that as it may, it is crucial to note that the above instruments, though not binding on State Parties, were still important normative pronouncements with regards to the protection of the rights of persons with disabilities and were to serve as guidelines to states.

Treaty Based Protections To Persons With Disabilities:

It should be borne in mind that in 1966, the International Covenant on Civil and Political Rights (ICCPR)⁵⁵ and International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁶ were adopted. The ICCPR provides for the enjoyment of all civil and political rights by all human beings whilst the ICESCR provides for economic, social and cultural rights in that regard. Although the conventions do not explicitly mention PWDs, it is submitted that PWDs are clearly covered by the provisions therein. For one thing, the covenants are universal in the sense that they cover all human beings. Unlike other treaties like Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)⁵⁷ or the CRC, they do not focus on a specific population group:

The International Covenant on Civil and Political Rights, 1966:

As indicated above, the ICCPR guarantees to all human beings the enjoyment of civil and political rights. Although PWDs are not specifically mentioned in the ICCPR, it is agreed that persons with disabilities are guaranteed the same rights contained therein. The statement in the Preamble to the ICCPR that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ should certainly be interpreted to include persons with disabilities. Rights that facilitate participation such as the right to education and the right to health for persons with disabilities cannot be overstated, for they play an important role in helping to prepare persons with disabilities for a life of active participation in the mainstream society.

The Human Rights Committee monitors the implementation of the ICCPR by state parties. Although the Human Rights Committee has not issued a specific statement in relation to the application of the ICCPR to persons with disabilities, General Comment 18 by the same is worth mentioning. The General Comment deals with the right to equality and non-discrimination. While it is true that the ICCPR does not explicitly mention persons with disabilities, the Human Rights Committee has made it clear that disability is covered by the term ‘other status’ in the ICCPR.

In addition, the Human Rights Committee rejected the concept of formal equality in the human rights context in favour of substantive equality. This is a firm position that was taken by the Committee and has important implications for achieving equality and non-discrimination of persons with disabilities.

⁵⁵ Adopted by Un General Assembly Resolution 2200 A (XXI), 16 December 1966.

⁵⁶ Adopted by Un General Assembly Resolution 2200 A (XXI), 16 December 1966.

⁵⁷ Supra at *note 10*.

The International Covenant on Economic, Social and Cultural Rights, 1966:

Socio-economic and cultural rights at the international level are enunciated in the ICESCR. The Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the ICESCR. Just like the ICCPR, the ICESCR does not explicitly make reference to PWDs. It is however agreed that all the rights enunciated in the ICESCR are applicable to PWDs as well. The right to non-discrimination runs through all the rights in the ICESCR. The same right is captured in the various General Comments of the UN Committee on Economic, Social and Cultural Rights (UNCESCR). In 1994, the CESCR assumed responsibility for supervising disability issues within the area of its competence. The various General Comments construe the substantive content of the rights to include accessibility to a right both in economic and physical terms.

It adopted General Comment 5 on persons with disabilities in 1995. In the General Comment, the Committee recognised that while the ICESCR does not explicitly refer to persons with disabilities, the Convention required that the rights enunciated be exercised without discrimination of any kind, whether on the basis of certain specified grounds or other status.⁵⁸ This therefore clearly encompassed discrimination on the basis of disability. The Committee further stated that both *de jure* and *de facto* discrimination against PWDs have a long history. In essence, General Comment 5 was also the first international document to broadly define disability-based discrimination as follows:

For the purposes of the Covenant, disability-based discrimination may be defined as including any distinction, exclusion, restriction or preference or denial of reasonable accommodation based on disability which has the effect of nullifying the recognition, enjoyment or exercise of economic, social or cultural rights.⁵⁹

The Committee further stressed that where progressive realisation of human rights is foreseeable, its application should not be misinterpreted as depriving the obligation of all meaningful content. States therefore are encouraged to progressively take measures towards full realisation of persons with disabilities' rights.

In addition, General Comment No. 14 on the right to the best attainable standard of health,⁶⁰ for example, defines physical access to imply that health facilities, goods and services must be within safe physical reach for all segments of the population, especially vulnerable or marginalised groups including PWDs. It enhances that accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for PWDs.

⁵⁸ See Article 2(2).

⁵⁹ Committee on Economic, Social and Cultural Rights, General Comment No 5 (1994): Persons with disabilities (UN Doc E/1995/22)

⁶⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 14, Right to the best attainable standard of health E/C.12/200/4, at para 12.

The Convention on the Rights of the Child, 1989:

It is important to note that the Convention on the Rights of the Child (CRC)⁶¹ is the first treaty before the adoption of the UNCRPD to explicitly give reference to PWDs. It is the first binding global human rights instrument to expressly prohibit discrimination on the basis of disability. More substantively, the CRC obliges states to recognise the rights to dignity, self-reliance and active participation in community of ‘mentally and physically disabled children’.⁶² Though it subjects the realisation of the rights of CWDs to the availability of state resources, the article expressly guarantees the right to education, training and health care services, amongst other provisions.

As a matter of fact, many obligations are put on the state to ensure that CWDs receive special care in relation to special needs with a view to them achieving the fullest possible social integration and individual development. However, the main weakness of the CRC is the alignment to the medical model of disability and reference to derogatory terminology like ‘mentally disabled’ or physically disabled children.

The Committee on the Rights of the Child monitors the implementation of the CRC. In 2006, the Committee issued General Comment 9 on the Rights of Children with Disabilities. The Committee thus detailed recommended actions for state parties to fully take measures which ensure that children with disabilities realise their rights at an equal level with their non-disabled counterparts.

Other Treaties:

The Convention on the Elimination of all forms Discrimination Against Women (CEDAW), Convention Against Torture (CAT), International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and International Convention on the Rights of Migrant Workers (ICRMW) also address the rights of persons with disabilities, though not explicitly, by providing for non-discrimination which is a common thread in disability rights. All the other rights embodied in the Conventions are also guaranteed to persons with disabilities.

The Committee on the Elimination of Discrimination against Women issued General Comment 18 on disabled women in 1991. In the General Comment, the Committee urged states to provide information on the status of disabled women in their periodic reports.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also issued a report that addresses persons with mental disability in institutions. The Special Rapporteur condemned the seclusion and involuntary treatment of persons with psychosocial disabilities in institutions.

The United Nations Convention on the Rights of Persons with Disabilities, 2006:

⁶¹ Adopted by General Assembly Resolution 44/25, 20 November 1989.

⁶² See Article 23 of the Convention on the Rights of the Child.

In December 2001, a resolution to develop a binding human rights instrument addressing was adopted during the 56th Session of the General Assembly. An Ad Hoc Committee was established to carry the negotiations further. The UNCRPD and its Optional Protocol were finally adopted on the 13th day of December 2006.⁶³ It entered into force on the 3rd day of May 2008 after receiving twenty ratifications. The UNCRPD became the first UN Treaty to be adopted in the 21st Century and also became the first rapidly negotiated instrument ever. In addition, the UNCRPD is the most ratified treaty to date.

The UNCRPD is the most comprehensive treaty in the field of disability rights. It is both a human rights and developmental instrument. Strictly speaking, the UNCRPD does not create new rights for PWDs but rather, it subtly reformulates and extends existing human rights to take into account the specific experience of PWDs. It contains civil and political rights, and economic, social and cultural rights in one document. At the present moment, more than three quarters of the African continent are parties to the UNCRPD.

The UNCRPD marks a shift of thinking in the disability sector; it lays down the premises for the enjoyment of human rights by persons with disabilities and it demands State parties to put into place proper structures and services to make sure the conditions for enjoyment of human rights are respected. From the experience of the UN Standard Rules, the United Nations have further elaborated on the current international treaty on disability, the UNCRPD, and further deepened its impact at international level. The Convention provides with a legal set of standards on disability rights based on a new approach to disability: the *social model* of disability, which considers society as responsible for disabling persons through its environmental and psychological barriers, thus limiting the interaction of people with the barriers it creates.

In the area of work for instance, the Convention argues employment as a means to gain a living in a work environment that is “open, inclusive and accessible to persons with disabilities”. One of the ways to realise an open accessible environment is to take effective action on removing practical, environmental and societal barriers to access different services, and therefore also by providing satisfactory “reasonable adjustments”, so as to make sure that barriers can be overcome with major positive effects on the lives of people.

The Convention introduced a holistic and integrated human rights approach to address social and economic inequality faced by persons with disabilities (Quinn 2002). It clearly acknowledges that societal barriers and prejudices are themselves disabling, therefore it is the society to be demanded to adapt to users - and not the other way around - according to their specific individual needs. Individualised support, personalised planning and empowerment of the users are elements required to be part not only of the outcomes of policies, but should be carefully built in in all processes and policy instruments.

The UNCRPD applies human rights to a specific category of vulnerable persons, namely persons with disabilities. It re-affirms, re-formulates, articulates and sometimes extends the rights of PWDs.⁶⁴ Along

⁶³ Adopted by the UN General Assembly on 13 December 2006.

⁶⁴ See Mégret 2008.

this the Convention calls for a shift of paradigm in the human rights scene setting; it demands a change from a biomedical and paternalistic approach to a social model of care.

In particular, the UN Convention marks an important step in unfolding three key changes in the field of human rights for PWDs:⁶⁵ a shift from “objective needs to *subjective rights*”, that is a gradual development from policies which deal with “objective needs” to policies aiming at the enjoyment of subjective rights; a change of mindset from paternalistic to *interactive ethics*. The Convention displays a gradual replacement of a top-down ethic, which treats persons with disabilities as passive recipients of care, by an interactive ethic, which involves persons with disabilities in decision-making and restores their self-determination; and the demand to look beyond material conditions and *focus also on the empowerment of the individual* with a gradual development from emphasis on providing shelter, food and medical care to growing emphasis on individual choice, autonomy and participation.

The shift of paradigm challenges society as a whole as rights have to be understood according to new interpretations; this means on one side that awareness has to be raised in order to understand correctly the principles behind every article, and on the other side States have to comply to these rights by setting up appropriate support schemes and services and by readapting existing ones according to the international standards set up by the Convention. While the Convention elaborates on a number of issues in all areas of life, some concepts are underpinning its rationale and are therefore key in interpreting the text as they are cross-referenced in the entire text and set the basis for building a society free of stigma and hence of discrimination: inclusion, participation and community living. These principles are widely mentioned through the entire Convention; however a short reference below is worth their importance.

For purposes of clarity in this paper, these principles shall be explained in detail. The principle of individual autonomy entails that, individuals are to be in charge of their own life and have the freedom to make their own choices. Respect for the individual autonomy of PWDs means that they have, on an equal basis with others, reasonable life choices, are subject to minimum interference in their private life and can make their own decisions, with adequate support where required. The participation and inclusion principle is important to correctly identify specific needs, and to empower the individual. Full and effective participation of PWDs in society is recognised in the UNCRPD as a general principle, a general obligation, and as a right. The third principle deals with non-discrimination. Discrimination on the basis of disability is defined in the Convention as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

It has been argued that denial of reasonable accommodation⁶⁶ is included as forms of discrimination prohibited under the convention. The notion of reasonable accommodation was developed to address the issue of impairment and to acknowledge the need of persons with disability to be treated in a

⁶⁵ See Quinn 2002.

⁶⁶ Article 3.

different way than persons without a disability to make rights "real" for them.⁶⁷ Its relevance in the Article is key as it is the precondition to allowing people to have access to an open and inclusive environment through the specific individual adaptations needed. Through reasonable accommodation people with disability may lead a life of participation in the community, fulfilling therefore other basic rights included in the Convention.

The UNCRPD not only necessitates States Parties to ensure and promote the full realisation of all human rights for all PWDs without discrimination of any kind but also to adopt appropriate measures to modify, abolish laws, customs and practices that constitute discrimination against PWDs. This is in addition to taking into account the protection and promotion of the rights of PWDs in all policies and programmes.⁶⁸ To encourage equality and eliminate discrimination, States Parties are required to take all appropriate steps to ensure that reasonable accommodation is provided.⁶⁹ Linked to the principle of equality of opportunities, the UNCRPD imposes an obligation to creating societal conditions that respect difference, address disadvantages and ensure that all persons are treated in a manner that respects their inherent dignity.

Elsewhere in the UNCRPD, there are obligations that must be complied with at an early stage of disability before it may become clear whether an impairment is of long or short duration (such as early provision of services), and obligations of non-discrimination that do not even depend on the actual existence of a disability but would also apply in the case of imputed or perceived disability. The experience of disability depends on the degree to which disability (including discrimination based on imputed disability) has affected and continues to affect one's life, and can vary depending on accommodations and social context.

More important to this paper is the principle of accessibility which runs throughout the Convention. Accessibility ensures empowerment and inclusion. Like the principle of participation and inclusion, accessibility constitutes both a general principle and a stand-alone article.⁷⁰ The obligation under Article 9 is a very comprehensive, important and far reaching one which is aimed at enabling PWDs to live independently and to participate fully in all aspects of life. To this end, 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 noted 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. 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. In this regard, the state must ensure access to

⁶⁷ See Quinn 2002.

⁶⁸ Article 4.

⁶⁹ Article 5.

⁷⁰ Article 9

justice,⁷¹ independent living and social inclusion,⁷² information and communication services,⁷³ education,⁷⁴ health,⁷⁵ rehabilitation,⁷⁶ work and employment,⁷⁷ adequate standard of living and social protection,⁷⁸ participation in political and social life,⁷⁹ and participation in cultural life, recreation, leisure and sport.⁸⁰

Other provisions in the UNCRPD relevant to accessibility include one which 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.⁸¹ This provision also is to the effect that community services and facilities for the general population are available on an equal basis to PWDs and are responsive to their needs. The other crucial provision is the one which imposes an obligation on States Parties to take effective measures to ensure the personal mobility of PWDs. This includes measures that facilitate access by PWDs to quality mobility aids, devices, assistive technologies and forms of live assistance intermediaries.⁸²

Last but not the least; the UNCRPD portrays the respect for the evolving capacities of children with disabilities.⁸³ Children are in a continuing process of learning and development; children with disabilities are no exception to this principle. It is only through respect for their rights that children with disabilities would be able to fulfill their capacities.

In conclusion, it is argued in this part of the paper that the UNCRPD is a wide-ranging human rights treaty covering the full spectrum of civil, cultural, economic, political and social rights. As pointed out above, the UNCRPD does not establish new rights for PWDs; instead, it elaborates on what existing human rights mean for PWDs and clarifies the obligations of states parties to protect and promote the rights of PWDs.

The Committee on the Rights of Persons with Disabilities and Concluding Observations:

⁷¹ Article 13

⁷² Article 19

⁷³ Article 21

⁷⁴ Article 24

⁷⁵ Article 25

⁷⁶ Article 26

⁷⁷ Article 27

⁷⁸ Article 28

⁷⁹ Article 29

⁸⁰ Article 30

⁸¹ Article 19.

⁸² Article 20.

⁸³ See Article 7.

To ensure maximum compliance with the provisions of the convention, an independent body of experts is established under the Convention, the Committee on the Rights of Persons with Disabilities. The Committee is tasked with reviewing states' implementation of the Convention.

Each state party to the Convention has an obligation to report on measures taken to give effect to its obligations under the Convention. The reports are to be submitted within two years after the entry into force of the Convention for the state concerned (initial report) and thereafter, at least every four years (periodic report). The Committee can also request a state to report (reports on demand). State reports are supposed to document the measures that state parties have adopted and the progress they have made in order to guarantee the realisation of all the rights included in the convention. These reports are unlikely to illustrate the whole picture as governments are often reluctant to portray the exact situation regarding human rights in their own country. In order for the Committee to obtain a more comprehensive picture of the human rights situation in a country, more independent sources of information are required.

After consideration of state reports, the Committee makes concluding observations. Thus based on the dialogue with a state and any other information received, the Committee makes concluding observations also known as concluding comments. Concluding observations refer to positive aspects of a state's implementation of the Convention and the areas where the state has to take further positive action.

In 2012, Uganda complied with her international treaty body reporting obligation by submitting its initial report to the Committee of Experts on the UNCRPD. The Committee appreciated the measures taken by the Ugandan government to promote the rights of PWDs, including the reservation of five seats to PWDs in Parliament, and the provision of a special grant for PWDs to support income generating activities for persons with disabilities. Regarding accessibility, the committee was concerned about insufficient resources to implement policies and programmes of government in relation to accessibility, including in the transport sector.⁸⁴ The Committee recommended, in line with General Comment No. 2 (2014) on accessibility that the Ugandan government adopts an action plan to ensure accessibility to the physical environment and transportation with allocation of resources and time bound framework;⁸⁵ introduce a monitoring mechanism and effective sanctions for non-compliance with accessibility standards in all areas covered by the Convention, including in the transport sector;⁸⁶ and pay attention to the links between article 9 of the Convention⁸⁷ and Sustainable Development Goal.⁸⁸

The Ugandan Government committed itself to implement the UNCRPD Concluding Observations from the Committee of experts. In an effort to foster the implementation of the said Concluding Observations, the Government of Uganda's commitment was shown through the 2018 London

⁸⁴ See Para 17(b) of the UN Concluding Observations to Uganda, 2016.

⁸⁵ See Para 18(a) of the UN Concluding Observations to Uganda, 2016.

⁸⁶ See Para 18(b) of the UN Concluding Observations to Uganda, 2016.

⁸⁷ See Para 18(e) of the UN Concluding Observations to Uganda, 2016.

⁸⁸ The Committee specifically made reference to Goal 11, targets 11.2 and 11.7

Global Disability Summit. In fact, Uganda was one of those countries that attended the Global Disability Summit in July 2018. The key objective of the Global Disability Summit was to deliver ambitious new global and national level commitments on disability inclusion. National governments and other organisations made 170 sets of commitments around the four central themes of the Summit (ensuring dignity and respect for all, inclusive education, routes to economic empowerment and harnessing technology and innovation), as well as the two cross-cutting themes (women and girls with disabilities and conflict and humanitarian contexts), and data disaggregation.

A Note on General Comment 2 and the Rights of Persons with Disabilities:

The Committee adopted General Comment 2 on article 9: Accessibility.⁸⁹ The Committee explained that accessibility is a precondition for PWDs to live independently and participate fully and equally in society. Thus without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, PWDs would not have equal opportunities for participation in their respective societies. The extract below is a paragraph from General Comment 2:

13. Article 9 of the Convention on the Rights of Persons with Disabilities stipulates that, “to enable persons with disabilities to live independently and participate fully in all aspects of life, States parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas”. It is important that accessibility is addressed in all its complexity, encompassing the physical environment, transportation, information and communication, and services. The focus is no longer on legal personality and the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication, and services. As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. This approach stems from the prohibition against discrimination; denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity. Accessibility should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, legal or social status, gender or age. Accessibility should especially take into account the gender and age perspectives for persons with disabilities.⁹⁰

⁸⁹ CRPD Committee, General Comment on Art 9: Accessibility (2013) CRPD/C/11/13.

⁹⁰ CRPD Committee, General Comment on Art 9: Accessibility para 13.

In the case of **Nyusti and Takács versus Hungary**,⁹¹ the Committee was of the view that all services open or provided to the public must be accessible in accordance with the provisions of article 9 of the Convention on the Rights of Persons with Disabilities. The state party was called upon to ensure that blind persons had access to automatic teller machines (ATMs). The Committee recommended, inter alia, that the state party establish ‘minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments; ... create a legislative framework with concrete, enforceable and time bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones; ... and ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities’.

In another case of **Ross versus Ryanair**,⁹² a man with a disability who was forced to pay to use a wheelchair at Stansted Airport in Britain won a landmark case against budget carrier Ryanair. Bob Ross, 54, claimed the £18 fee he paid for the use of a wheelchair was discriminatory and was something for which no one should have been charged. In 2004 the Central London County Court ruled that Ryanair acted unlawfully by not ensuring that a wheelchair was provided free of charge for Mr. Ross’s use.

In the same vein, **Zsolt Bujdosó and five others versus Hungary**,⁹³ is another important case in the field of disability rights at the international scene. The case dealt with failure by the Respondent’s authorities to eliminate discrimination on the ground of disability and to respect the obligation to guarantee to PWDs political rights, including the right to vote, on an equal basis with other citizens. The Committee was of the view that article 29 of the UNCRPD does not foresee any reasonable restriction nor does it allow any exception for any group of PWDs.

Furthermore, **Ms Marie-Louise Jungelin versus Sweden**⁹⁴ dealt with the recruitment process, reasonable accommodation in the workplace for PWDs. The Committee held that when assessing the reasonableness and proportionality of accommodation measures, state parties enjoy a certain margin of appreciation. Resultantly, no violation of the UNCRPD was found by the Committee.

The Regional Legal framework and Rights of Persons with Disabilities:

The most important African human rights instrument is the African Charter⁹⁵ which has been ratified by all AU member states. PWDs 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.⁹⁶ 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 singles out PWDs,

⁹¹ Communication 1/ 2010, views adopted on 16 April 2013.

⁹² January 2004, Central London County Court; December 2004, Court of Appeal

⁹³ Communication 4/ 2011.

⁹⁴ Communication 5/ 2011.

⁹⁵ Adopted by the 18th Assembly of Heads of State of the OAU, 27 June 1981.

⁹⁶ See article 2 of the Convention.

women, children, and elderly people as specially protected groups.⁹⁷ This means that positive steps need to be taken to protect the ‘physical and moral needs’ of people with disabilities. 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.⁹⁸ 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, the Protocol to the African Charter on the Rights of Women in Africa,⁹⁹ 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.

Individuals and NGOs may submit complaints to the Commission alleging violations of the Charter. In this context, one of the communications of the Commission dealing with disability rights is **Purohit and Moore versus The Gambia**,¹⁰⁰ which was decided in 2003 and which has been cited and endorsed by some legal scholars as one of the most important human rights cases on behalf of PWDs, decided by any regional human rights body.¹⁰¹ The significance of the *Purohit* decision lies in the Commission’s willingness to find the rights enumerated in the Charter as applicable to people with mental disabilities who had been confined against their will in a state run institution. A rights based approach to disabilities recognizes people with disabilities as rights holders as opposed to the welfare approach which does not. The Commission in the *Purohit* case recognized that people with disabilities are equal in every respect to people without disabilities and have a right to dignity, thereby upholding the rights-based approach to disability, even before the UNCRPD was adopted.

It is significant that the Commission did not find article 6 of the Charter applicable in this case. At issue is the competence of the medical practitioners to detain patients and the period of detention. While the Commission may have been correct to find that article 6 did not apply to the case at hand, this decision provides an example of how relying on pre-existing rights found in the Charter, instead of enumerating disability rights specifically, can leave gaps in the protection of people with disabilities.

⁹⁷ See Article 18 of the African Charter.

⁹⁸ Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU, 11 July 1990.

⁹⁹ See Article 23 of the Maputo Protocol.

¹⁰⁰ (2003) AHRLR 96 (ACHPR 2003).

¹⁰¹ See for example Kanter, A (2014) *The development of disability rights under international law: From charity to human rights*, Routledge.

The competence of medical professionals and the length of detention were not specifically addressed in the *Purobit* decision.

The East African Community and Rights of Persons with Disabilities:

Originally, sub-regional blocs were established to ensure sub-regional economic integration for the development of Africa at large. However, their mandate has evolved to include human rights.¹⁰² The East African Community (EAC) which comprises Uganda, Tanzania, Kenya, Rwanda, Burundi and of late South Sudan, protects human rights in its requirement for gender mainstreaming, as well as the respect for human rights as condition to admit new members which is set out under the treaty.¹⁰³

As far as disability rights are concerned, the EAC treaty clearly mentions PWDs which underlines the necessity to adopt an ‘education and training programme for people with special needs and other disadvantaged groups’.¹⁰⁴ In addition to this, the Treaty stresses the need for a common approach to empower disadvantaged and marginalised groups comprising of PWDs.¹⁰⁵ Furthermore, in order to crystallise disability rights in the EAC, stakeholders came together and adopted a policy on disability rights.¹⁰⁶ Moreover, to ensure that disability rights become a reality in the EAC, the East African Legislative Assembly (EALA) has adopted a resolution advising member states to ratify and implement the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).¹⁰⁷ The prospect for disability rights in the EAC was good because future plans such as the Strategic Plan on Gender, Youth, Children, and Persons with Disability, Social Protection and Community Development (2012-2016) clearly captured disability as an area of focus. Although this plan could have been criticised for being welfare approach centred, it could also be argued that its coverage of disability rights was a step in the right direction,¹⁰⁸ even if it required improvement.

2.2. The Rights of Persons with Disabilities at the National Level:

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

At the national level, the 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 the Constitution prohibits discrimination based on several enumerated grounds including disability.¹⁰⁹ 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.¹¹⁰

¹⁰² Viljoen, F (2012) *International human rights law in Africa* Oxford: Oxford University Press at pp 481-512.

¹⁰³ See Article 3(3)(b) of the Treaty.

¹⁰⁴ See article 102(2) of the Treaty.

¹⁰⁵ See Article 120(c) of the Treaty.

¹⁰⁶ See the EAC Secretariat, EAC Policy on Persons with Disabilities (2012).

¹⁰⁷ See the resolution of EALA 37th sitting, second meeting, second session 24 September 2008.

¹⁰⁸ See for example Murungiet al, 2013, 380.

¹⁰⁹ Article 21.

¹¹⁰ Article 32(1).

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.

It is important to take note that the article brings PWDs to the fore as marginalised persons who need special attention. The article however is vague; it does not state the appropriate measures that the state and society are to take so as to help realize their full potentials. The article also does not use the same vigour of language as that used in Article 32 and consequently has not been treated with the seriousness and importance that it deserves by the state and society. Despite enacting progressive legislation to give effect to the provisions of Article 35, the state still lags behind in ensuring the more comprehensive respect and protection of the rights of PWDs. The state should therefore be tasked to ensure that appropriate mechanisms are implemented in order to achieve the aim of the legislation that has been made to address this issue. Other articles that address disability directly include National Objective XVI, National Objective xxiv(C) and Article 37.

2.2.2. The Persons with Disabilities Act, 2020:

The Persons with Disabilities Act¹¹¹ (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.*” Whereas the Act appreciates that disability is a social phenomenon that arises out of an interaction between impairment and external barriers,¹¹² it only recognises environmental barriers and not attitudinal ones which are also covered by the UNCRPD. The fundamental rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons in respect to persons with disabilities.¹¹³

According to the Act, 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.¹¹⁴ The phrase “building to which public is allowed access” means a building specified in schedule 2 of the Act.¹¹⁵ Similarly, “appropriate accessibility for

¹¹¹ Act No. 3 of 2020.

¹¹² Office of the High Commissioner for Human Rights (OHCHR), *A Review of the Ugandan Legal Framework relevant to Persons with Disabilities: Comparative Analysis to the Convention on the Rights of Persons with Disabilities*, at p.2.

¹¹³ See Section 3 of the Act.

¹¹⁴ Section 10(1) of the Act.

¹¹⁵ See Section 1 of the Act.

persons with disabilities to the building” means putting in place accessible and easy to find entrances which are connected to accessible pathways and parking areas;¹¹⁶ providing safe and accessible toilets, urinals and bathrooms;¹¹⁷ providing safe and well dimensioned staircases with appropriate railing, accessible elevators;¹¹⁸ and where necessary provide ramps.¹¹⁹ In addition, 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 PWDs¹²⁰ which should be marked with a conspicuous sign or the acronym “PWD”.¹²¹ Drivers without disabilities are prohibited from parking in this designated place.¹²² Lastly, the Act creates an offence 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.¹²³

The PWDs Act is commended for adopting some of the recommendations from PWDs around the country particularly: key definitions from the UNCRPD such as discrimination on the basis of disability, reasonable accommodation and universal design; provision of reasonable accommodation to PWDs in employment;¹²⁴ recognition of the right of PWDs to practice any profession and participate in politics; and provision of supportive social services to PWDs. It further provides that affirmative action in favour of PWDs for the purpose of redressing imbalances, which exist against them, should be pursued by government.¹²⁵ Indeed, the Minister is required under the Act to report to parliament every two years on the measures undertaken by government for the purpose of implementing affirmative action in favour of the rights of PWDs.¹²⁶ Albeit, the PWDs Act is relatively new and the actual implementation has not been tested yet, it is better than having no law at all.

2.2.3. The Building Control Act, 2013 and the Regulations:

The principal law which governs the building and construction industry in Uganda is the Building Control Act.¹²⁷ The long title of the Act is to consolidate, harmonise and amend the law relating to the erection of buildings; to provide for building standards; to establish a National Building Review Board and Building Committees; to promote and ensure planned, decent and safe building structures that are developed in harmony with the environment; and for other related matters. Regarding the

¹¹⁶ See section 10(2)(a) of the Act.

¹¹⁷ See section 10(2)(b) of the Act.

¹¹⁸ See section 10(2)(c) of the Act.

¹¹⁹ See section 10(2)(d) of the Act.

¹²⁰ See Section 10(3) of the Act.

¹²¹ See Section 10(4) of the Act.

¹²² See section 10(5) of the Act.

¹²³ See Section 10(6) of the Act.

¹²⁴ See Section 9 of the Act.

¹²⁵ See Section 14 of the Act.

¹²⁶ See Section 14(2) of the Act.

¹²⁷ Act No. 10 of 2013.

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 the Act to mean the possibility for any person to reach a place, maneuver with it, use a service, participate in activities provided in a public place; with dignity, independence and safety on an equal basis with others.¹²⁸

The Act establishes the National Building Review Board¹²⁹ hereinafter referred to as the Board, which shall be a body corporate with an official seal and may, for the discharge of its functions under the Act sue or be sued in its name; and do all acts and things as a body corporate may lawfully do.¹³⁰ 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.¹³¹ 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.¹³²

Just like the Board, the Act establishes Building Committees for each Urban Authority and each district.¹³³ The Building Committees established shall comprise among its members a representative of persons with disabilities nominated by the National Council for Persons with Disabilities.¹³⁴ 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.¹³⁵

Last but by means the least, the Board may, on the advice of the Executive Secretary, engage the services of experts and consultants in respect of any functions of the Board with which they are considered to have special competence.¹³⁶ Experts and consultants engaged under the subsection may be paid such fees and allowances, and may be afforded such facilities as the Board may determine.¹³⁷ As it is the mantra in the disability movement, “nothing about us without us,” the wider interpretation of this provision would mean that persons with disabilities or their organisations shall be considered in the execution of this service under the Act. This is because they have the requisite expertise in the field of disability and development.

Other Laws and Disability:

In addition to the extensive provisions of the PWD Act and the Building Control Act, accessibility is also provided for in other laws such as the Universities and Tertiary Institutions Act (2001), which stipulates the provision of accessible physical facilities to users as one of the functions of public

¹²⁸ See Section 2 of the Act.

¹²⁹ See Section 3 of the Act.

¹³⁰ See Section 3(2)(b) and (c) of the Act.

¹³¹ See Section 4(1)(e) and (h) of the Act.

¹³² See Section 9(b) of the Act.

¹³³ See Section 28 of the Act.

¹³⁴ See Section 28(2)(j) of the Act. See also Section 28(4)(c) of the Act.

¹³⁵ See Section 29(1)(c) of the Act.

¹³⁶ See Section 18(1) of the Act.

¹³⁷ See Section 18(2) of the Act.

universities¹³⁸ as well as the Children Act, Cap 59, as amended which requires parents of CWDs and the state to afford these children, among other things, facilities for their rehabilitation and equal opportunities to education.¹³⁹

2.2.4. The Human Rights (Enforcement) Act, 2019:

The Human Rights (Enforcement) Act is very important piece of legislation to the protection, preservation and promotion of human rights of PWDs in Uganda. The long title of the Act is to give effect to Article 50(4) of the Constitution by providing for the procedure of enforcing human rights under chapter four of the Constitution; and for related matters.

In the same vein, part two contains the substantive provisions of the Act. Section 3 reinforces article 50(1) of the Constitution and states the main function of the proposed law. It confers a right on any person or organisation to bring an action for the enforcement of rights. This is the provision that provides a basis and *locus standi* for actions filed in the High Court under this law. The Act sets out the boundaries of the High Court's jurisdiction in terms of the Human Rights (Enforcement) Act. The provision is to the effect that if there is a remedy available to an applicant under any other law, the High Court ought to not exercise its jurisdiction in terms of article 50 of the Constitution. It also provides that the High Court shall hear and determine *any* application relating to the enforcement or violation of human rights.

However, it should be noted that the Act does not specify which other laws could provide redress in matters of human rights violations other than this one. If the intention of section 4 is to avoid having the same matter heard concurrently by the High Court and a body like the Uganda Human Rights Commission and the Equal Opportunities Commission,¹⁴⁰ then this should have been made clear and safeguards against that put in place. In the circumstances, considering that this is the principle law providing for remedies of human rights violations, using other laws to limit the jurisdiction of the court in awarding such remedies is a claw back, which might have the effect of limiting the applicability and efficacy of this law.

The Act also provides for the procedure by which an application for redress in case of violation or enforcement of human rights should be made.¹⁴¹ The procedure provided for is by plaint. The proviso also makes provision for the quorum of judges to hear applications of enforcement and violation of human rights as a single judge, and in open court. It is important to note that the hearing of applications on human rights shall be done in open court as it fosters transparency, accountability and encourages persons to apply to courts for redress.

¹³⁸ Section 24 (2) (c).

¹³⁹ Section 9 (c). See generally Mbazira, 2009 at p.23.

¹⁴⁰ It is worth noting that both the Uganda Human Rights Commission and the Equal Opportunities Commission are tribunals established by the Constitution to handle some aspects of human rights complaints or violations.

¹⁴¹ See Section 5 of the Act.

The Act makes provision for human rights references to the High Court.¹⁴² Like it is common practice with courts and tribunals given special mandate to handle a special type of cases, the proviso requires that if there is a question as to enforcement of human rights or violation of human rights that arises in any case that is being tried by a court or tribunal subordinate to the High Court, then such question should be referred to the High Court for determination, as it is vested with the mandate to handle such cases. This is usually intended to create uniform jurisprudence regarding a certain nature of cases.¹⁴³ The provision also requires that when such reference is made, then the proceedings in the subordinate court should be stayed until the reference to the High Court is determined. Normally this is required when the issue that has been referred is essential to the determination of the case from which it arose. Although it might not be in all cases that a question of whether there was a violation of human rights or not is essential to the determination of a case that is not in itself a case on violation of human rights, there is need for the safe guard to be put in place, such that even other types of cases can be decided with a human rights based approach, where need be.

The power of the High Court in human rights cases is provided under section 7 of the Act. The section provides for the remedies that can be awarded by the High Court in cases brought under this law. The provision is kept as wide and open as possible to give court wide discretion to grant as many remedies as it deems fit, without being constrained. The provision also provides a safe guard against this wide discretion by expressly stating that the High Court shall not make any declarations relating to the interpretation of the Constitution. This is important as human rights are provided for in the Constitution and their enforcement is direct enforcement of the Constitution. This could easily be mixed up with interpretation of the Constitution, which is the constitutional preserve of the Constitutional Court.

Last but not the least, the Act provides for the right of appeal in case a person is not satisfied with the decision of the High Court.¹⁴⁴ This is an important provision as the right to appeal is statutory and not a matter of course.¹⁴⁵ Considering that the High Court is the court of first instance in cases under this Act, it is important that there is an appeal avenue to further interests of justice.

2.2.5. The Equal Opportunities Commission Act, 2007:

The Equal Opportunities Commission Act, 2007 is another relevant and very important piece of legislation.¹⁴⁶ This Act was an offshoot of Article 32(2) of the Constitution requiring 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 EOC 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

¹⁴² See Section 6 of the Act.

¹⁴³ The same procedure is laid down under Article 137(5)(a) of the Constitution and has received judicial pronouncement in *Simon Kyamanywa versus The Attorney General* Constitution Reference No. 10 of 2000.

¹⁴⁴ See Section 8 of the Act.

¹⁴⁵ See for example the case of *Pius Niwagaba versus The Law Development Centre* Court of Appeal Civil Appeal No. 10 of 2005.

¹⁴⁶ Act No. 2 of 2007.

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.¹⁴⁷

The EOC has among others, 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.¹⁴⁸ The Commission also has powers to examine any law, proposed law, policy, culture, tradition, usage, custom or plan which is likely to have the effect of nullifying or impairing equal opportunities.¹⁴⁹ 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.¹⁵⁰ 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.

All in all, it is clear from the discussion above that the legal environment in Uganda is supportive of the rights of PWDs. This creates an enabling platform to include and advocate for the rights of PWDs in different service sectors at the national and district levels. It is important to turn the legal and policies on paper into reality in order to enhance the rights of people with psycho-social disabilities in Uganda.

PART III

PUBLIC INTEREST LITIGATION IN UGANDA: THE LEGAL AND INSTITUTIONAL FRAMEWORK:

3.1. The Legal Framework:

It is important to note from the very start that compared to its neighbours in the East African region, Uganda has a fairly progressive legal and policy framework that allows for public interest litigation

¹⁴⁷ See Section 2 of the Equal Opportunities Commission Act.

¹⁴⁸ See Section 14(2)(a) of the Act.

¹⁴⁹ See Section 14(2)(b) of the Act.

¹⁵⁰ See Section 15, of the Act.

(PIL) to flourish, especially with regard to the enforcement of human rights. Indeed, the legal, policy and institutional framework in some contexts compares well with merchants in PIL like the South African one. In the first place, the Constitution of Uganda includes a Bill of Rights, which creates a wide array of rights, including civil and political, and ESCRs.

There are several strategies that have been adopted to enforce human rights norms at the international and regional levels and on the domestic front. At the international/regional level, these strategies include the promotion and protection of human rights, the former entailing activities that promote an understanding of the obligations that human rights law imposes on states. In all these processes, PIL has played a very crucial role in ensuring that cases are brought to court, argued effectively and that any relief obtained is enforced. PIL in Uganda is a relatively new frontier in the advancement of human rights, especially economic, social and cultural rights. As such the legal framework is still narrowly established. On that note, whereas some commentators argue that PIL is relatively a new subject in Uganda legal spheres, it has considerable legal and institutional framework which was enabled its operation.

3.1.1. Article 50 of the Constitution of the Republic of Uganda, 1995:

As noted somewhere in this paper, the Constitution is the supreme law of the land and all other laws derive their legitimacy from it. One of the most progress aspects of the 1995 Constitution is with respect to judicial constitutional review. In the first place, the Constitution relaxes the rules of *locus standi*, allowing any person who alleges violation of any of the rights in the Bill of Rights to approach a competent court to enforce the Bill of Rights and provide redress.¹⁵¹ The persons seeking to enforce the Bill of Rights need not be the victim,¹⁵² and includes artificial persons.¹⁵³ This provision, as indicated above, allows for individual enforcement of rights and in some respects can be used to mirror tortious or delictual claims.

Article 50 provides that any person who claims that a fundamental or other right has been infringed or threatened with infringement is entitled to apply to a competent court for redress which may include compensation. The Article also empowers a person or an organisation to take action against the violation of another person's or group's human rights, and allows a person aggrieved by a decision of any court to appeal to the appropriate court. This Article is very important insofar as it not only guarantees the individual the right to apply to a competent court so as to seek recourse for the violation of the individual's rights but it also empowers other persons or organisations to pursue a case of human rights violation in the interest of another person or group of persons. This is what has been described as a 'busy-body' provision in that it does away with the restrictive rules of *locus standi* which restricts the legal capacity to sue in court only to an individual/group who can show a direct interest in the matter.

¹⁵¹ Article 50.

¹⁵² See *Greenwatch v Attorney General & Anor*, High Court Misc Application No. 140 of 2002.

¹⁵³ *Ibid*.

The phrase “*any person or organisation*” in article 50(2) allows any individual or organization to come before the courts of law and seek enforcement of the rights of another even though that person or organization is not suffering the injury complained of. This article is the embodiment of the spirit of PIL. To justify Article 50, the courts have adopted the biblical metaphor of “brother’s keeper” to argue that violation of any human right of one person is the violation of the rights of all.¹⁵⁴ This has given the green light for PIL cases to come before court.

Article 50 is particularly important because it directly operationalises and enforces the rights and freedoms of the individual enshrined in Chapter Four of the Constitution in as far as it provides for the right to apply to court in case of any violation or threat to the right and it also empowers courts to give the appropriate redress including awarding compensation for such violation. In other words it provides a right of access to justice in respect of human rights. By empowering other persons to take action in favour of another or of a given group of persons this enables even those who are not in position to take an action or those who may be unaware of their rights to also benefit from the operation of the Bill of Rights.

Indeed, since the enactment of the 1995 Constitution, human rights and women’s rights organisations have invoked Article 50 while petitioning court to make declarations most of which favour other marginalized groups of people. Article 50(3) gives individuals the right to appeal any decision of the court to the appropriate appellate court, be in line with the provisions of Articles 28 and 42 of the Constitution. Lastly, the Article empowers Parliament to make such laws as are necessary for the enforcement of rights and freedoms under Chapter Four.¹⁵⁵ As far as Parliament’s obligation under article 50(4) is concerned, the passage of the Human Rights (Enforcement) Act 2019 means that this glaring gap in the law on PIL has finally be plugged.

3.1.2. Article 137 of the Constitution of the Republic of Uganda, 1995:

It should be borne in mind that the Constitution also establishes a specialised Constitutional Court,¹⁵⁶ with jurisdiction to interpret the Constitution and annul as void any legislation or conduct deemed to be inconsistent with the Constitution.¹⁵⁷ It is these powers that the courts have used to interpret provisions of the Constitution related to ESCRs to wit rights of PWDs. In fact, this article provides another legal avenue for PIL. In this respect the Constitution introduced a rather unfortunate dichotomy between the question of enforcement and that of interpretation of the Constitution. The power of constitutional interpretation—given to the Constitutional Court via Article 137—has often been misconstrued with the question of enforcement of rights. This provision gives the Court wide discretion to in addition to a declaration craft remedies that provide appropriate redress. This means that the Constitutional Court is not restricted to making declarations of invalidity where an Act of Parliament or anything done under the authority of law if found to be inconsistent with the

¹⁵⁴ Mubangizi, J.C, and Mbazira C, Constructing the Amicus Curiae procedure in human rights litigation: What can Uganda learn from South Africa? Law, Development and Democracy, Vol.16/2010, p. 210.

¹⁵⁵ See Article 50(4).

¹⁵⁶ See Article 137(1) and (2).

¹⁵⁷ See Article 137.

Constitution. Unfortunately, the Constitutional Court has not taken full advantage of the remedial discretion which the law has accorded it.

As regards interpretation, the courts have adopted special rules of interpreting the Constitution, based on the reasoning that the task of expounding the Constitution is crucially different from that of construing other statutes. According to the courts, the Constitution must be interpreted in a manner that makes it capable of growth and development overtime to meet new realities unimagined by its framers. The Courts have also adopted the two-stage approach in interpreting the rights in the Bill of Rights. Under this approach, at the first stage, all that a petitioner does is to prove facts which establish violation of a protected right. At the second stage the burden shifts to the respondent to justify the violation as falling within the limitation provision in Article 43.

Although a number of decisions enforcing various aspects of the rights in the Bill of Rights have been made, the courts have not been consistent as regards the enforcement of ESCRs under PIL. In **Salvatori Abuki and Another versus The Attorney General**,¹⁵⁸ the Court relied on the Indian approach to use the right to life read together with the NODPSP to find that a law which authorised the banishing from the village of a “witch” was unconstitutional to the extent that it excluded the person banished from shelter, food and to land which is a means of sustenance. The approach in this case suggests that the Court was prepared to use the integrated approach as used in India to uphold enforce the various economic and social rights reflected in the NODPSP.

The Court has applied its remedial powers narrowly, in most cases by simply declaring legislation or conduct unconstitutional, without exploring the other remedies. As the Court stated in **Re Sheik Abdul Sekimpi**,¹⁵⁹ there is an important difference between the two: “However much a party may request, he cannot have referred (to the Constitutional Court) a matter that does not involve interpretation of the Constitution.”

To that end, in the case of **Simon Kyamanywa versus The Attorney General**,¹⁶⁰ the Supreme Court was both candid and critical, accusing the Constitutional Court of abdicating its primary duty of interpretation. In this regard, in the case of **Ismail Serugo versus Kampala City Council and Another**,¹⁶¹ the Constitutional Court provided guidance on invoking its jurisdiction observing that the matter in issue must involve a question of interpretation of the Constitution. This provision has given birth to countless PIL cases some of which have been ground breaking and instrumental.

In addition to the above provisions, Article 126(2)(e) is another vital gear in the development of PIL in Uganda. The provision mandates courts to administer substantive justice without undue regard to technicalities when adjudicating cases. In the early days of the Constitution, a number of PIL cases were struck down on legal technical grounds until resort to article 126(2)(e) saved many others. It should be noted that citing a wrong provision of the law or failure to cite a provision of the law under

¹⁵⁸ Constitutional Petition No. 2 of 1997.

¹⁵⁹ Constitutional Reference No. 7 of 1998.

¹⁶⁰ Constitutional Reference No. 10 of 2000.

¹⁶¹ Constitutional Appeal No.2 of 1998, also cited in Behangana & Anor v Attorney General Constitutional Petition No.53 of 2010, Alenyo George William v Attorney General & Others Constitutional Petition No.5 of 2000

which a party seeks a redress before court has been held to be a technicality which should not obstruct the cause of justice. It can be safely ignored in terms of this article of the Constitution.¹⁶²

Under the Constitution,¹⁶³ it is the duty of every citizen to respect the rights and freedoms of others. In addition, under Article 17(c), every citizen has a duty to protect children and vulnerable persons against any form of abuse, harassment or ill-treatment. Article 3(4) of the Constitution and the National Objectives and Directive Principles of State Policy (NODPSP)¹⁶⁴ require every citizen to uphold and defend the Constitution. Under clause 4, it also gives Ugandan citizens the right and duty to defend the Constitution. Several attempts have been made to invoke the provisions of Article 3, most without much success because the courts have held it not applicable to the particular cases filed which have not involved an illegal capture of state power. The most successful recourse to Article 3 has been with respect to clause 4. Thus in the **FIDA-U** case, the judges of the Constitutional Court ascribed a wider meaning to the clause, asserting that the right and duty to defend the Constitution was to be exercised *at all times*, and not exclusively if or when the Constitution had been overthrown.¹⁶⁵ These provisions encourage the spirit of public concern and give legitimacy to public spirited persons to seek redress from the courts of law.

3.2. The Institutional Framework on PIL in Uganda:

3.2.1. The Judiciary (Courts of Judicature):

There is no doubt that the Judiciary is perhaps the most important institution with respect to the enforcement of human rights, standing together with the Uganda Human Rights Commission,¹⁶⁶ which is the principal organ of the state entrusted with this task. That role is manifest through both enforcement of the provisions of the Bill of Rights by a ‘competent court’¹⁶⁷ and interpretation of the Constitution by the Court of Appeal sitting as a Constitutional Court.¹⁶⁸

The provisions of Chapter VIII that govern the institution, particularly Article 126 on the exercise of judicial power, 128 on the independence of the institution and 144 on the tenure of judicial officers have been particularly helpful in marking out a distinctive mode of operation for the Judiciary in comparison to the pre-1995 era. Through the mechanism of PIL in particular, the judiciary has demonstrated that it is responsive to a public that often felt that it had no outlet for its many frustrations about the manner in which the state operated.¹⁶⁹

¹⁶² This was a Supreme Court ruling in *Alcon International Ltd v The New Vision Printing & Publishing Co. Ltd and Another*, Supreme Court Civil Application No. 4 of 2010.

¹⁶³ Articles 17 (b) and 20(2).

¹⁶⁴ See Objective XXIX (g)

¹⁶⁵ See judgement of Justice Twinomujuni at 13, confirmed in the case of *Fox Odoi_Oyvelowo & Anor. v. Attorney General*, Const. Pet. No. 8/2003.

¹⁶⁶ The Uganda Human Rights Commission is established under Article 51 of the Constitution.

¹⁶⁷ See the provisions of Article 50.

¹⁶⁸ See Article 137.

¹⁶⁹ For an account of the rise and development of PIL under the 1995 Constitution see Phillip Karugaba, ‘Public Interest Litigation in Uganda: Practice & Procedure, Pitfalls and Landmarks,’ *Makerere Law Journal*, [2004-5].

As a matter of fact, the understanding of PIL by the Ugandan courts is well enumerated by the Supreme Court in **Muwanga Kivumbi versus Attorney General**¹⁷⁰ where Prof. Lillian Tibatemwa-Ekirikubinza observed:

I conclude that Public Interest Litigation is litigation for the protection of Public Interest and it is not required that for the exercise of the court's jurisdiction it is the person whose rights have been violated that brings the complaint to court. The salient ingredient of Public Interest Litigation is that the suit is brought for and in the interest of the Public. Such litigation is initiated only for redress of a public injury, enforcement of a public duty or vindicating interest of public nature.¹⁷¹

Indeed, the outcome of such litigation is important in that it is likely to impact not only the individual litigant filing the suit, but also a larger cross-section of the society.¹⁷² Although the beneficiaries of PIL can be wide ranging and indiscriminate, focus tends to be placed on vulnerable members of society. The High of Uganda has identified PIL beneficiaries to include:

“groups of people who because of inability or incapability engendered by say ignorance, poverty, illiteracy, and etcetera cannot sue or be sued or defend a suit for simple reasons that apart from being indigent, they cannot even identify their rights or their violations. These are groups that badly need the services of public interest groups.”

Last but by means the least, in the celebrated case of **Muwanga Kivumbi versus Attorney General**,¹⁷³ the Supreme Court also distinguished cases which are filed and prosecuted by an individual or group in the interest of the public and those which are filed for private benefit but whose benefits end up accruing to the wider public, observing that while the former constitutes PIL, the latter category cannot be classified as such. In the same respect, the Constitutional Court emphasised in **Jjuuko Adrian versus Attorney General**¹⁷⁴ the right of any concerned person, even if such a person is not personally affected by the violation complained of, to file a court action in public interest.

3.2.2. The Uganda Human Rights Commission:

The Constitution creates the Uganda Human Rights Commission.¹⁷⁵ The proviso in the Constitution states that the Commission shall be composed of a chairperson and not less than three other persons appointed by the President with the approval of Parliament. The chairperson of the Commission shall be the judge of high court or a person qualified to hold that office. The chairperson and members of

¹⁷⁰ Constitutional Appeal No. 6 of 2011

¹⁷¹ *Id.*

¹⁷² *British American Tobacco Limited v The Environmental Action Network* High Court Civil Suit No. 27 of 2003

¹⁷³ *Supra* at note 77.

¹⁷⁴ Constitutional Petition No. 1 of 2009.

¹⁷⁵ See Article 51.

the commission must be persons of high moral character and proven integrity who serve for six years and be eligible for reappointment.

Article 52 lays down the functions of the Commission, ranging from investigations, visiting jails, making recommendations to Parliament, to overseeing programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and appreciation of their rights and obligations. The Commission also has to publish a periodic report on its findings and submit an annual report to Parliament on the state of human rights and freedoms in the country. In the performance of its functions, the Commission has to establish operational guidelines and rules of procedure, request the assistance of any department or bureau in the performance of its functions and also observe the rules of natural justice. This Article provides the main engine for the operations of the Commission in protecting and defending people's rights.

The powers of the Commission are provided for under the Constitution,¹⁷⁶ which range from issuing summons, committing persons for contempt of its orders, to requiring the disclosure of any information important to its investigations. However, Article 53(4) states that the Commission shall not investigate any matter which is pending before a court or judicial tribunal, a matter involving the relations or dealings between government and government of any foreign state or international organization, a matter relating to the exercise of the prerogative of mercy. Although this provision gives the Commission a wide range of powers all of which are very essential for the execution of its functions under Article 52, the provision also limits the powers of the commission not to investigate certain issues.

It is notable that since its establishment, the UHRC has been a prominent actor on the human rights scene in the country. It has been particularly helpful in shining a spotlight on the most notorious institutions of government involved in human rights violations, as well as in cataloguing and reporting on those violations. In this respect, the Commission has played an important role in the dissemination of human rights ideals and in improving the enforcement of the Bill of Rights provisions of the Constitution. However, not many or no cases on PWDs have been reported by the Commission. It is important for the disability fraternity to make use of the Commission as an institution to file matters involving PWDs under the auspices of PIL.

3.3. The Conclusion:

In conclusion, three aspects need to be recorded about PIL. First, it can be argued that PIL in Uganda is supported in the existing legal, policy and institutional framework. The review of literature in this part reveals that PIL has its foundation stone in the Constitution of the Republic of Uganda, 1995. This brings out the enforcement of human rights provision under Article 50 and interpretation clause

¹⁷⁶ See Article 53.

under Article 137. While the legal system offers a number of opportunities for PIL to flourish, it is also riddled with a number of challenges that stifle this form of litigation.

The courts of judicature and commissions like UHRC and EOC have been instrumental in promoting PIL through exercising powers conferred on them under the legal framework to dispense justice in the interests of the people. It is also noteworthy that although the courts have progressively enforced the provisions of the Constitution by relaxing the rules of standing, the courts have not been as pragmatic as one would have expected them to be in giving meaning to the rights in the Bill of Rights. ESCRs (including PWD rights) have suffered the most in this respect. This is partly attributable to the manner in which cases have been instituted and argued, sometimes by lawyers with limited experience and knowledge of human rights litigation. This is in addition to the failure to build strategic partnerships that would bring value to the cases. It is hoped that this legal, policy and institutional framework is utilised by OPDs and PWDs to realise enjoyment of their fundamental human rights.

PART IV

THE RIGHT TO A BARRIER-FREE ENVIRONMENT IN CONTEXT: INFUSION OF THE STUDY FINDINGS

4.1. The Introduction:

This part presents, interprets and discusses the findings from the study. The study sought to enhance the protection, promotion and preservation of the right to a barrier free environment for PWDs in Uganda with a clear focus on the right to access public buildings in Uganda. From the preceding analysis it is quite clear that legally, PWPDs have a right to accessibility, including access to a barrier free environment. However, the protection of this right is hampered by a number of internal and external constraints that cut across the legal and political spectrum. Some of these constraints affect the state's capacity to protect the rights of PWDs generally and the right to access a barrier free environment for PWPDs in particular. Others directly impact on the ability of PWPDs to access and utilise different services provided by the community members where they live. Below, I present a discussion of the findings from the study.

4.1.1. Understanding the Issue: *Rationale*

The purpose for accessibility provisions in the law to PWPDs is to provide the framework for the provision of access to a barrier free environment for all persons regardless of age and disability in Uganda who qualify for the enjoyment of those services. As indicated above, the current landscape of access to a barrier free environment is limited and excludes the majority of Ugandans from accessing crucial services from society. This is because in the absence of a defined legal and policy framework, the right to access a barrier free environment remains very limited in geographic and environmental scope. Only certain places within urban areas are likely to observe the provision of the right. Even those who do not adhere to the law are likely to have less attention and interest in the subject matter. The rest of the places will not make accessibility an issue on their menu.

4.1.2. The Legal framework: Mainstream and Specific Legislation

International human rights law accentuates the adoption of legislative measures as one of the major means through which rights enshrined in various human rights instruments can be realized in the domestic arena. Although the Committee of the UNCRPD recognises that each state has a margin of discretion in assessing the apposite feasible measures for implementing the right to a barrier free environment, it enjoins states to consider adopting a framework law to operationalise the right. Such a law should include, inter alia, provisions on the targets to be achieved, the time frame for their achievement, and the means by which the right to access to a barrier free environment benchmarks could be achieved. In Uganda, there are laws that specifically deal with the right to accessibility and its components like the right to access a barrier free environment for PWPDs. Most of the international and regional human rights instruments that recognise the right to accessibility have been directly incorporated into the domestic legal system.

The main legislation on the protection of rights to access to a barrier free environment for PWPDs is the Persons with Disabilities Act, 2020 and its counterpart the Building Control Act, 2013. The Persons with Disabilities Act, 2020 has a specific provision on accessibility that incorporates the right to a barrier free environment for PWPDs. The Building Control Act, 2013 has an assortment of provisions which when bundled make the right to a barrier free environment for PWPDs meaningful. Most of the respondents revealed during the interview that the legal and policy framework gives a

pathway for the enjoyment of the right to a barrier free environment for PWPDs. Other pieces of legislation that have a bearing on protection of the right are those regulating education like the Universities and Other Tertiary Institutions Act, 2001.

With the specific observation on the right to a barrier free environment, the Persons with Disabilities Act, 2020 is the overarching legal framework for protections of people with disabilities in Uganda. The law requires that all physical infrastructure, regardless of whether it is state- or privately-owned, be accessible to people with disabilities and establishes administrative responsibility for the failure to do so. However, because the Ugandan law does not specify enforcement mechanisms, monitoring and enforcement of this provision are left to the discretion of regional and city governments.

The law also provides considerable leeway for both private and government structures to avoid implementing accessibility standards. For example, Section 10 states that when buildings cannot be completely adapted to meet the needs of people with disabilities, the buildings' owners should coordinate with disabled persons organizations (OPDs) to ensure that certain minimum standards of accessibility are met. This law does not specify who is responsible for determining when facilities cannot be adapted and what alternative minimum construction requirements should be implemented for buildings the government designates as having historical significance.

Uganda has a series of national construction norms in place to ensure accessibility of the physical environment for persons with disabilities. It is not within the scope of this report to evaluate the range of national accessibility norms, but Ugandan disability rights activists have indicated that Ugandan construction norms have some flaws.

4.1.3. The Interaction of PWPDs with the physical environment: Experience from the Respondents:

This Part details some of the obstacles that the PWPDs whom the researcher interviewed encounter in their daily lives, including inaccessible buildings, private businesses, healthcare facilities, and public spaces such as street crossings and sidewalks. In the most serious cases, physical barriers confine PWPDs to their homes, severely limiting their possibilities to work, go to school, obtain necessary medical or other services, socialise, or attend cultural events.

Architectural barriers to accessibility often prevent PWPDs from safely entering a building, conveniently moving around inside it, or participating fully in its activities. These barriers typically impact those with temporary or permanent immobility, visual and hearing impairments, and those who use wheelchairs, crutches, or canes. Among structures that may need to be addressed are parking and paths; ramps and stairs; doors and doorways; worship, lecture, social and recreational spaces; bathrooms and water fountains; and elevators and lifts. Most of the respondents revealed that access to the physical environment

Even for many PWDs who are able to leave their homes more easily, obstacles in public spaces – such as stairs, narrow doorways, or cars parked in front of accessible entrances – prevent them from fully participating in society and enjoying even the most basic daily tasks that most people take for granted,

such as going to the supermarket or retail shop. Similar problems of inaccessible infrastructure exist in countries around the world and are not unique to Uganda, and Uganda has acknowledged the pressing need to address accessibility through the adoption of a specialised law “the Building Control Act.” However, to close the gap between the rights of PWDs in theory and their experience in practice, there is a need to create concrete enforcement mechanisms that would ensure the law is implemented effectively throughout Uganda, as well as for well-publicised and effective complaint mechanisms for users of these buildings.

4.1.4. What is difficult with accessing public buildings: The challenge

It is worth noting that creating an inclusive service environment is challenging, thought provoking, and rewarding. It is a continuous process, one that evolves and responds to changes in the environment or in policies. It becomes an integral part of all that you do, from kick-offs to celebrations, from recruitment to retention, from policy to practice. It impacts team-building and participant development. It is an integral part of strategic planning and meeting planning. It benefits individuals with disabilities and those without. It guides those who are served and those who serve, those who direct and advise, and those who lead. An inclusive service environment ensures the respect and dignity of individuals with disabilities. It does not pry into medical histories or diagnoses, and it guards against the casual exchange of privileged information. It speaks and listens to the individual with a disability. It understands that personal preference in accommodation is often a personal need. It is flexible when necessary.

In an inclusive service environment, persons with disabilities are welcomed and are valued for their contributions as individuals. The presence of a disability is not seen as a detriment. Rather, disability is valued as part of the range of diversity that exists in the human condition. In some cases, a disability can present challenges that allow program staff and participants to grow and to enhance their knowledge and skills. In an inclusive service environment, staff and participants work with the goal of ensuring full inclusion and participation of an individual with a disability. Many PWDs whom the research team interviewed said that they would like to work full time, go to school or be involved in their children’s schools, socialise with friends, and enjoy public spaces. However, many were almost completely confined to their homes due to a lack of basic accommodations to allow them to enter and exit these buildings hence resorting to remaining home to avoid the embarrassment.

The majority of respondents we interviewed worked in inaccessible buildings work in municipal buildings owned and maintained by governments. As matter of fact, public buildings constructed before 2013, prior to the development of Building Control Act establishing minimum accessibility standards, have doorways and elevators that are too narrow for wheelchairs to fit through and lack elevators and appropriate ramps. In some cases, buildings constructed after 2013 lack these accommodations as well. For example, Namatovu Asher., a woman who uses a wheelchair, works in a place near the bus park owned by her employer in Kampala. When we met her, she had not been able to go to her work place often due to inaccessible environment.

People with limited mobility stressed that narrow doorways, crowded interiors, and a lack of accessible ramps make it difficult to visit private facilities such as cafes, salons, and boutiques. For example, Namatovu A., who uses a wheelchair, told the research team, “Without ramps, you can’t go anywhere. You can’t go to the boutiques to buy your make-up. There are places with elevators. There’s the [beauty shop] for example. But the elevator there doesn’t work.”

From Lira, Aisha Binti Abudul, also has a physical disability and moves with the help of crutches. Because most public transport is also inaccessible to her, she relies on the facilities in the immediate vicinity of their residence. However, Namatovu, who cherishes beauty and styles, reported that many of these businesses are physically inaccessible to her: “I can’t even get my hair worked on easily. The salon directly across the yard is accessible only by a long staircase leading to the basement.” The stories of Namatovu and Aisha echo what we heard from many other people with limited mobility in different cities or districts who stressed the difficulties they face doing basic errands and meeting with friends.

4.1.5. Lack of accessible privately owned businesses:

Many respondents interviewed in this research reported being unable to enter or comfortably use private businesses because of physical inaccessibility, such as narrow doorways or no ramps. They also had difficulty indicating to shop attendants what they wished to purchase in cases when products were stacked behind store desks. This was caused by the inability to enter into the building to identify what they needed for themselves. Some PWDs emphasised their experiences trying to go to shops, cafes, theatres, salons, pharmacies, and other commercial enterprises more so than they raised concerns about government buildings such as healthcare clinics. This was not necessarily because the latter are more accessible; rather, socialising and self-care, such as purchasing groceries, are more central to the experiences of people with whom we spoke.

4.1.6. Neglect of Business Owners and Staff to Ensure Accessibility:

Persons with physical disabilities also noted that business owners and staff often do not take the necessary measures to ensure accessibility. For example, in November 2020, Ddiba Ephraim, a Kampala based disability rights activist, suggested that we meet him at a certain café because it has two accessible ramps to the entrance and wide doorways. When the researcher arrived, one ramp leading to the doorway was blocked by an illegally parked car and the second was crowded. The café employee refused to clear the crowded entrance. When the researcher asked him to call the manager to clear the place, he refused again, without explanation. As a result, Bibba’s helper had to forge a way with him up the café steps.

In addition to the need for consistent enforcement of accessibility and parking laws, discussed in the previous section, these examples also suggest the need for more concerted awareness-raising campaigns targeting business owners, staff, and the public and aimed at fostering respect for the rights of PWDs to an accessible physical environment. Such campaigns would provide concrete examples of actions – such as parking one’s car in front of a ramp – that business owners and the public must avoid in order to enable PWDs to enjoy this right.

4.1.7. Inaccessible government buildings:

People with disabilities whom this research interviewed also cited many obstacles to accessing city administrative buildings in order to vote, fill out benefits forms, and participate in public hearings.

In Kampala, for example, Musana Joel, a disability rights activist, frequently consults with the city administration on accessibility for PWDs. He told this research that he is unable to attend public meetings at the Kampala City Administration because the building does not have ramps where the meetings are held: “They used to lift me up the stairs, but this became so unpleasant that I stopped wanting to go.”¹⁷⁷

4.1.8. Lack of access to health care

The PWDs whom the research team interviewed reported a variety of obstacles accessing healthcare and rehabilitation facilities and services. These obstacles included difficulties accessing healthcare clinics and diagnostic equipment; a lack of rehabilitation facilities and appropriate healthcare specialists in or near peoples’ communities; and a lack of knowledge of and access to rehabilitation devices and services.

Persons with disabilities described a range of barriers to accessing healthcare facilities and services. Some reported that their local clinics lack ramps. A respondent, who uses a wheelchair, described a January 2011 visit to her local healthcare clinic in Kampala to seek treatment for a broken nose. She said, “There was no ramp. I waited outside for 40 minutes for someone to come and help me into the clinic.”¹⁷⁸ The respondent added that the wheelchair lift next to the stairway was not working.

4.2. What next: The strategies to enforcing the right to a barrier free environment:

Having identified the challenges faced by PWDs in accessing various services offered in an environment which is often times hampered with barriers, the research mapped a number of strategies to be employed by different actors in making accessibility a realisable right to PWDs. There are a number of strategies, but for the purpose of this research, the following are important.

4.2.1. Awareness-Raising:

Often, violations of the human rights of persons with disabilities occur because people (employers, educators, family members, policy makers, etc) are simply not aware of the rights of persons with disabilities. Hence, awareness-raising is identified under article 8 of the UNCRPD as being a core state obligation. Article 8 of the UNCRPD requires states parties to adopt immediate and effective measures to “raise awareness throughout society ... to foster respect for the rights and dignity of persons with disabilities; to combat stereotypes, prejudices and harmful practices relating to persons with disabilities ... in all areas of life; and to promote awareness of the capabilities and contributions of persons with disabilities.” Measures to this end include but are not limited to: initiating public awareness campaigns

¹⁷⁷ Interview with a respondent conducted on 8th October, 2020.

¹⁷⁸ Interview with Jane (not real name), disability rights activist, conducted on 25th October, 2020.

that “promote positive perceptions and greater social awareness towards persons with disabilities” and promoting “recognition of the skills, merits and abilities of persons with disabilities.”¹⁷⁹

Article 8 is based on the recognition that no amount of law reform will positively impact on the rights of persons with disabilities unless general attitudinal barriers are also removed.¹⁸⁰ Hence, awareness-raising is about bringing an issue to the knowledge of a person or a group. It strives to address attitudes, social relationships and power relations to effect social change. However, it is often only a first step towards changing practices. Awareness-raising on the situation of PWDs can, for example, help a decision-maker to realise that there is a significant proportion of PWDs in the community that s/he administers; but it may not be sufficient to ensure that priorities of PWDs/disability issues are systematically included in community development planning.

In reality, the extent to which states are aware of the rights of PWDs remains in doubt. Hence, it is critical that in this issue, states involve and work closely with persons with disabilities and their representative organisations, in line with article 4(3) of the CRPD. Awareness activities on disability should never be planned without close consultation with, and involvement of, persons with disabilities themselves or their representative organisations. Awareness-raising can be conducted using a variety of mediums and tools selected according to the type of audience, such as street theatre, posters, interactive sessions at the local shopping centre, media campaigns, and demonstrations, amongst others.

Most respondents to the study suggested that whereas the law and policy framework seems clear on the subject, most people including PWDs themselves are not aware about the legal provisions. The respondents accused the advocates of not simplifying the law into accessible formats for the recipients. In this regard, continuous awareness raising is key to realising the right to a barrier free environment for PWDs.

4.2.2. Self-Advocacy Empowerment:

Self-advocacy is about PWDs speaking up for themselves, making their own decisions and taking control of their lives. It does not preclude support but emphasises the fact that the person with a disability is the one in charge of their life.¹⁸¹ The research established that whereas these barriers affect PWDs, most of them could not voice for their right. In fact, some of them revealed that accessibility is a privilege which could be bestowed upon them by the merciful. Self-advocacy is a tool that can be used by all people who experience discrimination.

4.2.3. Strategic Interest Litigation/Public Interest Litigation:

¹⁷⁹ UNCRPD, Art. 8, part a.

¹⁸⁰ Kamundia, E ‘Kenya’ (2014) 2 *African Disability Rights Yearbook* 185

¹⁸¹ Inclusion International <http://www.inclusioninternational.org/self-advocacy/about-self-advocacy/> (accessed on 9th September 2020)

Strategic litigation, also called impact litigation or test case litigation, has been defined as a method used by public interest organisations and lawyers through test cases in the judicial system, to create lasting effects beyond individual case and thus further the enforcement of human rights and make social change eventually.¹⁸² In strategic litigation, public interest organisations or law firms usually determine in the first place a certain sphere of human rights violations in which they would like to use litigation as a tool to enforce human rights, and then try to find victims of such violations in order to file a law suit. Thus, strategic litigation pursues broad social justice, rather than individual justice.¹⁸³

According to Kalaluka, strategic litigation in disability rights refers to the entire process of prosecuting the rights of persons with disabilities before national or international courts or tribunals. This includes obtaining instructions to litigate, preparing briefs for trials, conducting trials and enforcing court decisions. Disability rights litigation emanates from society's failure to take appropriate measures to ensure that PWDs are able to participate fully in society and to enjoy their fundamental human rights on an equal basis with others.¹⁸⁴

Objectives of strategic litigation in disability rights would include: Creating progressive jurisprudence which advances the rights of persons with disabilities at national, regional or international level;¹⁸⁵ Instigating reform of national laws which do not comply with the UN CRPD in countries that have ratified the Convention; Ensuring that laws that aimed at promoting and protecting the rights of persons with disabilities are interpreted and enforced properly; Seeking a new interpretation to existing laws, where the interpretation would advance the rights of persons with disabilities; Enabling individual persons with disabilities to seek remedies for human rights violations; Empowering people with disabilities who have been victims of human rights abuses and rebalancing the historic injustices against people with disabilities.

Important factors to consider when using strategic litigation as a mechanism for bringing social change: What is the potential impact of a piece of litigation? What resources and expertise does the organization have/would more value to derived from collaborating on a case with other actors? What level of involvement with a case allows the organisation to bring real added value? (for example, simply providing advice, co-representing applicants in partnership with local lawyers or intervening on issues of public interest as a third party or *amicus curiae*). Are there potential negative effects to consider? For example, what would the impact be of a negative decision? Could a successful decision have negative consequences, for example by causing a public backlash against the very people a case is aiming to defend?¹⁸⁶

¹⁸² Yitong, J 'Strategic litigation as a trigger to enforce human rights in China: From the perspective of the rights of the disabled' (2011)

¹⁸³ *Id.*

¹⁸⁴ Kalaluka, L 'Towards an effective litigation strategy of disability rights: the Zambian perspective' (2013) 1 *African Disability Rights Yearbook* 165

¹⁸⁵ The International Centre for the Legal Protection of Human Rights (InteRights) <http://www.interights.org/ourcases/index.html>.

¹⁸⁶ The International Centre for the Legal Protection of Human Rights (InteRights) <http://www.interights.org/ourcases/index.html> (accessed on 9th September, 2020).

4.2.4. Capacity building/strengthening/development:

Over and beyond raising awareness, it is important to strategically build the capacity of certain key actors on disability rights. This is especially relevant with regards to the rights in the UNCRPD that aim to really change the way in which disability issues have been addressed in the past. The examples include; Building the capacity of judges, magistrates and other judicial officers on the principle of reasonable accommodation as it pertains to non-discrimination in the context of disability; building the capacity of journalists regarding how they portray disability in the media; and building the capacity of architects and civil engineers who are key players in the construction industry.

In order to be efficient in capacity building, civil society actors, including OPDs should first build their own expertise on disability issues. Although OPDs are composed of persons who have a personal experience of disability, OPDs and their members often lack opportunities to develop their knowledge and understanding of new disability models and related rights and legal instruments. Unintentionally, OPDs can therefore contribute to sustaining charity model approaches. OPDs should therefore seek training that can complement their practical experience of disability in order to equip them with relevant knowledge and critical arguments to better explain disability. Developments in the field of disability at the international level, such as the emergence of the social model, the entry into force of the UNCRPD and inclusive development are essential references on which OPDs should become expert.

4.2.5. Research:

The study also established from the respondents that continuous research is important to the realisation of the right under scrutiny. An important tool to employ towards taking disability rights forward is research. From the outset, it is important to emphasise that disability rights research should be conducted in partnership with organisations of persons with disabilities, and should be cognisant of the multiple identities of persons with disabilities (should not approach persons with disabilities as a homogenous group).

Disability rights research could be geared towards a number of different ends: exposing human rights violations against PWDs; building the case for changes in law or policy (based on specific recommendations generated from research); assessing the most urgent needs amongst persons with disabilities and using such information to inform budgetary allocation; creating awareness on the rights of people with disabilities; making the case for strategic litigation; building a database on specific issues in order to inform the formulation and implementation of policies; documenting good practice on disability rights from civil society and urging the state to fund such practices; and building the case for international cooperation, for example with regard to access to scientific and technical knowledge. Civil society, including OPDs is likely to leverage their influence and impact by coordinating research. Joint reports are welcomed by consumers and are generally viewed as having greater authority and credibility.¹⁸⁷

¹⁸⁷ CSIS Report http://csis.org/files/media/csis/pubs/070918_49steps_english.pdf

4.3. The Conclusion

The Persons with Disabilities Act, 2020 is the overarching legal framework for protections of people with disabilities in Uganda. The law requires that all physical infrastructure, regardless of whether it is state- or privately-owned, be accessible to people with disabilities and establishes administrative responsibility for the failure to do so. However, because the Ugandan law does not specify enforcement mechanisms, monitoring and enforcement of this provision are left to the discretion of regional and city governments.

The law also provides considerable leeway for both private and government structures to implement accessibility standards.¹⁸⁸ For example, Section 10 states that when buildings cannot be completely adapted to meet the needs of people with disabilities, the buildings' owners should coordinate with OPDs to ensure that certain minimum standards of accessibility are met.¹⁸⁹ This law does not specify who is responsible for determining when facilities cannot be adapted and what alternative minimum construction requirements should be implemented for buildings the government designates as having historical significance.

Uganda has a series of national construction norms in place to ensure accessibility of the physical environment for persons with disabilities.¹⁹⁰ It is not within the scope of this report to evaluate the range of national accessibility norms, but Ugandan disability rights activists have indicated that Ugandan construction norms have some flaws.¹⁹¹

In terms of strategies, long-term processes for national-scale change to implement disability rights would benefit from: keeping the 'big picture' of change in mind. Short-term successes in law reform efforts may not result in desired outcomes, but if OPDs and their allies undertake strategies in a participatory, open, respectful manner, in the long run they will have prepared the ground for reform and transformation with the relationships and alliances they build along the way.¹⁹² Long-term processes for national-scale change to advance the rights of persons with disabilities would benefit from intentional initiatives that combine a number of strategies, including the strategies identified above.

¹⁸⁸ Interview with Ms. Miriam Kiconco, Deputy Executive Director, Legal Action for Persons with Disabilities Uganda.

¹⁸⁹ Interview with Mr. Vicent Kafeero, the Programmes Coordinator of Uganda National Action on Physical Disability.

¹⁹⁰ Interview with Eng. Flavia , the Executive Secretary of the National Building Review Board conducted on 13th November, 2020.

¹⁹¹ Interview with Arch. Edward Ssimbwa conducted on 10th November, 2020.

¹⁹² See Bach, M (2012) "Towards a 'Global Innovation Strategy' for National-Scale Implementation of Article 12 of the UN Convention on the Rights of Persons with Disabilities' Toronto: IRIS – Institute for Research and Development on Inclusion and Society.

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PART V

CONCLUSION AND RECOMMENDATIONS

4.4. The Conclusion:

The Government of Uganda has committed to protecting a range of rights and freedoms for persons with disabilities under international and national law, which would enable people to live full lives in their communities. Uganda's international obligations to PWDs include ensuring the right to non-discrimination; accessibility of the physical environment, services open or provided to the public, and information; and the right to education, work, rehabilitation services, a high standard of health, and to found a family.

Ugandan national laws are also broad in scope, emphasising regional and city governments' obligations to secure access to information, infrastructure, and rehabilitation services, among other rights and entitlements. However, inadequate enforcement mechanisms, flaws in federal construction norms, and employment quotas for persons with disabilities rather than antidiscrimination laws specifically protecting people with disabilities all limit Uganda's legal commitments to ensuring an accessible environment and inclusion for persons with disabilities, as well as its ability to realize its commitments under international law.

From the findings, it is clear that access to a barrier free environment is such an area that requires specific policy attention because of its critical locus in ensuring enjoyment of the rights of PWDs. The study established that most of the respondents know about their rights as PWDs and particularly the right to a barrier free environment as stated under the UNCRPD and other domestic legal documents. The study also revealed that in terms of implementation, these laws have been implemented in piecemeal in spite of the progressive advocacy done by different OPDs and CSOs. In fact the study establishes that most of the buildings erected post-2013 were not disability friendly and so were those that existed before. This leaves issues of accessibility in the hands of few individuals who may profess lack of knowledge on the same subject.

It is imperative to note that issues to do with physical access are not a preserve of the central government alone, but rather require a concerted effort of various stakeholders including the district, sub-county and the general public. At the level of the district and sub-county, political and technical support supervision, monitoring and inspection becomes vital. Also regarding the existence of the Building Control Act which is considered as a legal document to guide the construction of buildings, the study established that most of the respondents were not aware about the law and those who "knew" about it could not explain it in detail showing the strengths and gaps within the law.

4.5. The Recommendations:

The following are the recommendations from the study:

The Government:

- Develop and disseminate information pamphlets for persons with disabilities informing them of their rights under the UNCRPD and Ugandan law and listing the names and contact information of government and independent bodies to whom they can address rights-related complaints. Ensure that these pamphlets are available in formats accessible to persons with sensory, developmental, or intellectual disabilities.

National Building Review Board:

- Establish a committee with the participation of international accessibility experts, including those with disabilities, to conduct a detailed evaluation of Uganda's federal construction norms to ensure that they meet the needs of PWDs.
- Establish and fund independent inspectors in each region to monitor compliance with construction norms from planning through to their completion. Ensure that PWDs are included among the inspectors in each region and that each of these inspectors has completed courses in universal design. The commissions should include persons with disabilities and work closely with OPDs to ensure effective monitoring and follow-up.

Ministry of Gender, Labour and Social Development:

- Collect annual statistics on the number of people with disabilities disaggregated by gender, age group, and specific impairments. Ensure that these statistics are available at the district levels and accessible to the public free of charge.
- Ensure that specific information enumerating the rights of persons with disabilities to rehabilitative devices and services is made publicly available in accessible formats.

Ministry of Health:

- Develop a plan to increase the availability of accessible medical equipment such as accessible x-ray machines and examination tables in hospitals and clinics in regions throughout Uganda. Ensure that all state medical facilities are accessible to people with disabilities.

The International Development Partners:

- Press Uganda to ensure the rights of PWDs, and support the government in its efforts to do so, including through financial, technical, and other means. Share models of best practice with Uganda on guaranteeing accessibility for PWDs on an equal basis to all government and private goods and services.
- Continue to consult with and support DPOs and CSOs working in the sphere of disability rights and services to PWDs.
- Ensure that all development projects implemented in Uganda comply with minimal international accessibility and universal design standards and are inclusive of and accessible to PWDs.

Organisations of Persons with Disabilities:

- Create awareness campaigns among PWDs on their right to a barrier free environment.
- Encourage the creation of self-advocates to champion change among PWDs on their rights and have a streamlined mechanism of reporting cases of human rights abuses.

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