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Abstract

Since 2000, the Ugandan government has implemented a number of policies aimed at combating disability discrimination in the workplace and leap towards equality of opportunities. However, despite the availability of progressive legislation and policies, persons with disabilities continue to face many barriers to accessing employment. This paper reviews the policies and legislation aimed at promoting disability protection in the workplace. Recommendations for reform are made before bringing together the various strands of argument throughout the paper.

Keywords

employment, persons with disabilities, Uganda, employment policy, employment equality, employment inequality, disability in the workplace

Disciplines

Disability and Equity in Education | Disability Law | Labor and Employment Law

Comments

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Access to Employment for Persons with Disabilities in Uganda

By Chrispas Nyombi and Alexander Kibandama

Since 2000, the Ugandan government has implemented a number of policies aimed at combating disability discrimination in the workplace and leap towards equality of opportunities. However, despite the availability of progressive legislation and policies, persons with disabilities continue to face many barriers to accessing employment. This paper reviews the policies and legislation aimed at promoting disability protection in the workplace. Recommendations for reform are made before bringing together the various strands of argument throughout the paper.

I. Introduction

Inequality in employment is one of the main stumbling blocks to social and economic development for persons with disabilities (PWDs) in Uganda. A lack of unemployment benefits in Uganda has meant that all able-bodied individuals must access employment in order to escape poverty. Article 23 of the Universal Declaration of Human Rights (UDHR) 1948 states that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work.”¹ Similarly, Article 27(1) of the UN Convention on the Rights of Persons with Disabilities 2006 (CRPD) provides that state parties must recognise the right of PWDs to work by prohibiting discrimination on grounds of disability. The CRPD requires state parties to establish effective access to general technical and vocational guidance, ensure that reasonable accommodation is provided to PWDs at the workplace, protect the rights of PWDs on an equal basis and promote vocational and professional rehabilitation, job retention and return to workplace programmes for PWDs. Rule 7 of the UN Standard Rules on Equal Opportunities (SREO) also recognises the principle that PWDs must be allowed to exercise their human rights, especially in the field of employment. Thus, states are required to

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implement favourable conditions for PWDs to be able to access employment.

A lack of job opportunities for PWDs often leads to poverty. In Uganda, according to the Uganda Chronic Poverty Report (UCPR), 26% of the total population lives in poverty.² In addition, the 2006 United Nations Health Survey (UNHS) found that almost 80% of PWDs live below the poverty line.³ This is alarming given that poverty has been cited to foster an environment of perverse discrimination, poor health and crime. Furthermore, the UNHS found that over 46% of PWDs declared that they were excluded from accessing employment on grounds of disability. However, disability was largely ignored in official national statistics such as Census 2002 and Population & Housing Survey 2006, which makes it difficult to appreciate the challenges faced by PWDs.

The need to stimulate social and economic development was a major feature of the Government's Poverty Eradication Action Plan (PEAP) in 1997.⁴ As a result, equality was put as the main agenda of the National Development Plan (NDP) whose theme is 'Growth, Employment and Prosperity for All'. The goal was to remove barriers to accessing health, employment and education for PWDs. This action plan was welcomed by the international community since Uganda is a signatory to the International Covenant on Economic, Social and Cultural Rights (CESCR).⁵ Despite the general lack of statistics, the Department of Disability and Elderly and the Ministry of Gender, Labour and Social Development, which is responsible for disability in Uganda, continues to promote and monitor the rights of PWDs through the National Council for Disability (NCD) and they report back to Parliament.

II. Legal Developments

During the 60s and 70s, vocational rehabilitation centers and sheltered workshops offered PWDs an opportunity to train in vocational skills and access employment opportunities. However, they later faded away largely due to the political instability that ensued prior to the economic stability brought about by the incumbent National Resistance Movement (NRM) Government. The NRM Government has championed for the rights of PWDs and this journey began in 1987, when the National Union of Disabled Persons in Uganda (NUDIPU) was formed as a representative group for PWDs. Disability was represented in the 1994-1995 Constituent Assembly Delegates (CAD), a body that passed the Constitution of the Republic of Uganda in 1995. In the Constitution, the rights of PWDs are enshrined under section 21(2). It states that "a person shall not be discriminated against on the ground of sex,

race, colour, ethnic origin, tribe, birth, creed, or religion, social or economic standing, political opinion or disability."⁶ Article 32 allows affirmative action for marginalized groups and the rights of minorities are protected under Article 36. Similarly, Article 14 of the National Objective and Directive Principles of State Policy, require the state to "endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, (XIV (b)) ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits."⁷ Disability specific laws such as the National Council for Disabilities Act 2003 and anti-discrimination provisions in the Employment Act 2006 were enacted in line with the state policies. However, the most significant enactment was the People with Disability Act (Uganda) (Disability Act) which was signed into law on May 24th 2006.

However, the biggest driver for reform has been the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, which was ratified on 25th September 2008. This Convention requires all signatories to provide equality under law to all citizens. The NCD was assigned the role of implementing the Convention and since its implementation, a number of legal reforms have followed. The Uganda National Policy on Disability was enacted in 2006 and the rights enshrined in the CRPD were domesticated under the Disabilities Act. In line with Articles 32 and 35 of the Uganda Constitution, the Disabilities Act aims to deter all forms of discrimination against PWDs and promote equal opportunities.⁸

Discrimination, whether it is race, age or disability, is a social evil which must be rooted out of our society. Thus, to combat this scourge and leap towards equality, there has been a progressive and rapid expansion in Uganda's discrimination law since 1987. In the last 20 years, equality legislation has developed in Uganda to varying degrees, on six major grounds: race and ethnicity; gender; disability; religion or belief; and age. Consequently, this ad hoc development has resulted in a complex, calamitous and overly chaotic body of statutory provisions and case law. Thus, to overcome these problems and promote greater equality, in relation to disability, the Disability Act promised the biggest shake up in disability discrimination law since the 80s, through the simplification, abrogation, amendment and extension of existing protection.

The comprehensive legal protection provided by the Disabilities Act provides a good basis for promoters of disability rights. However, these rights have not been transformed into concrete programmes for PWDs. This has left many

gaps that still require advocacy and networking in order to address the challenges posed by the dire state of disability rights in Uganda. Proposals to repeal the Disabilities Act were released in 2009 but nothing has been done since to re-draft the legislation. Since the consultation is ongoing, it is recommended that the Act should remain on the statute book but should be modified to further align it with the requirements of the CRPD. In addition to the NCD, the Equal Opportunities Commission Act 2008 was enacted to oversee the enforcement of Article 32 of the Uganda Constitution. The Act established a Commission in 2009 to promote the rights of all marginalised group in areas such as education, employment and health.

The Disability Act vested authority in the Minister for Gender, Labour and Social Development to enforce the Act. It requires the Minister to determine the percentage of employment quotas for PWDs in consultation with employers. The employment quotas are aimed at improving employment opportunities for PWDs by pushing employers to employ PWDs. Section 17 of the Disability Act entitles an employer who has over 5% of their total labour force with disabilities to tax cuts. This tax reduction was for private employers who employ ten or more PWDs either as regular employees, apprentices or learners, on a full time basis. Previously, employers were entitled to a tax refund of 15% of all payable taxes under the Income Tax Act 2006.⁹ This tax was reduced by the Income Tax (Amendment Act) 2009 to 2%;¹⁰ a figure unlikely to entice companies to hire PWDs. To date, no company has applied for tax reduction. However, companies have started to recruit PWDs, for example, National Water and Sewerage Corporation recruited 2 in 2009 and Entebbe Handling Services (ENHAS) recruited 12.

The Disability Act require employers to submit annual reports showing their compliance with the quota law to the Minister. However, enforcement of this measure has been largely poor since only a handful of employers comply with this requirement. It should be remembered that the main reason behind the drive to promote equality in employment is to combat poverty and discrimination. The 2004 Ugandan National Bureau of Statistics estimated that 72% of people with disabilities in Northern Uganda were living in a state of chronic poverty. However, poverty cannot be combated by merely putting in place quotas, strong legal enforcement is necessary. This was summed up by the NUDIPU in their Strategic Plan 2008-2013:

“Poverty and disability are impossible to disentangle. ... The causes of extreme poverty among the disabled are multiple including; the lack of access to education for most of the PWDs and those

who access education most of them don't complete their education, especially girls and women. Due to lack of access to education most PWDs do not have skills and competencies required to get employment or get involved in any activities that gives them any livelihood. ... Disability and poverty can also be traced from deep rooted negative cultures, where a disabled child is looked at as a curse or more so if the child is a girl then they are denied food, education and health care among others”.¹¹

Since the social and economic status of PWDs in Uganda is in a pitiable state, legal enforcement must improve in order to allow PWDs to earn a living. There is no penalty system to stimulate quota compliance or measures to punish non-complying employers. There is also no record of compliance with quota requirements.

Despite the rapidly changing state of disability policy in Uganda, many challenges remain. First and foremost, there is a dearth of disability regulations in areas such as education and access to services such as transport. In regards to employment, enforcement remains the biggest hurdle. The Disabilities Act has sparked a wave of disability related laws in employment but little has been done to improve enforcement of these laws. There are no cases being brought to court in relation to discrimination at work on grounds of disability or infringement of disability law. It is not because PWDs are not discriminated or denied equal access to employment; it is because they lack the financial resources or legal knowledge to bring these cases to court. As a result, employers do not recruit PWDs to avoid the requirement of making their workplace adequate enough to meet the legal requirements. Thus, even with the presence of disability laws, unless enforcement is improved, PWDs are likely to continue to be discriminated against in employment.

The Disabilities Act has not fully implemented the requirements of the CRPD. Since 2006, regulations for implementing the Disabilities Act have not been issued. Only a handful of policies have been implemented since the passing the Disabilities Act. This was summed up by the Disability Scoping Study: “Uganda is indeed at crossroads with regard to disability policy and practice because on the one hand, it has enacted progressive, forward thinking legislation and ratified the CRPD; on the other hand, it faces a significant challenge in implementing effective and efficient disability services and policies due to a significant implementation gap.”¹²

Second, the Disability Act defines disability as ‘a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and

environmental barriers resulting in limited participation.’ The definition largely follows a medical model which means that only those who meet the medical criteria are entitled to protection under the Disability Act. The medical model requires proof of limitation in daily life activities. However, the CRPD follows a legal model which does not require a health professional to examine physical or sensory limitations of a person. The legal model focuses on the rights of the individual who has been classified as disabled under the Disability Act.

Third, the Disability Act only promotes accommodation for PWDs. The focus on physical disability has meant that other types of disabilities are not protected in regards to accommodation. For example, a blind person may need structural adjustments at work to enable them to navigate around. A lack of legal provisions that promote their accommodation rights simply leaves them liable to discrimination and makes access to facilities at work or education very difficult.¹³

Fourth, the Disabilities Act provides for affirmative action which is not promoted by the CRPD. The term affirmative action refers to lawful initiatives aimed at removing the effect of past discrimination and trying to overcome stereotyping. Affirmative action is aimed at increasing the number of PWDs in employment. To ensure that affirmative action is adhered to, the government should only offer public contracts to organisations which can demonstrate a diverse workforce. This would add significant pressure on employers operating in the public sector to recruit more people from under-represented groups.¹⁴ However, affirmative action during recruitment and selection goes against the equality principle because any selection should be based on merit alone.¹⁵ To proceed with affirmative action, candidates must have the same level of skill and experience. However, in practice, it is doubtful how often such equal candidates exist. Thus affirmative action significantly shifts the emphasis of discrimination law away from the right of the individual to be treated on merit alone, to one where being a member of a particular group can determine a person’s employment opportunities. This changes the whole logic and professional approach to recruitment that has been emphasised since the raft of anti-discrimination legislation was passed in early 2000. If all individuals are deserving of equal respect and dignity, then it is a flawed approach to single out particular classifications of people and emphasise special measures to promote their equality.¹⁶ When I call the emergency services, I want someone who will be able to do the job, not someone who has been allocated as sufficiently politically correct. We should not bodge this fundamental principle to retrospectively try to sort out earlier problems with inequality of opportunity.

Fifth, the disability community is silent on the Disability Act. Disability organisations such as Basic Needs (Uganda), the National Union of Disabled Persons of Uganda (NDIPU)¹⁷ and the Federation of Uganda Employers (FUE) have been at the forefront of policy developments in Uganda since the 90s. These organisations have for many years lobbied the Ugandan government to put in place new laws and enforce disability laws. These organisations recognise that PWDs often face mounting challenges in accessing employment and gaining relevant skills to enable them to qualify for skilled labour. Despite having a mandate to alleviate poverty and promote the PWDs, little has been done to push the government to implement the Disability Act. This neglect is even more evident in regards to mental health laws in Uganda. The Mental Health Treatment Act 1964 is nearly half a century old and remains the law that governs mental health in Uganda. The Act continues to refer to persons with mental disabilities as ‘idiots’ and the government has failed to implement any reforms to date. The Mental Health Treatment Bill 2010 has been the government’s response to the outdated Mental Health Act, but it remains on the shelves of Parliament.¹⁸ Thus, disability groups must do more to lobby the government in a bid to implement and reform disability laws in Uganda.

International that Uganda is a signatory to include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR).¹⁹ International treaties allow the Ugandan judiciary to consider international law and have been at the forefront of legal development in the employment sphere. Article 3 of CESCR requires that all citizens to enjoy full economic, social and cultural rights set forth in the covenant. Similarly, Article 2 of the ICCPR require that “each state party undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction, the rights recognised in the present Covenant, 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.”²⁰ These two covenants recognise the need for PWDs to enjoy the same rights as other citizens without disability and the State to defend and promote these rights whenever necessary. The same position is found under section 18 of the 1981 African Charter on Human and Peoples Rights (ACHPR) which requires the state to put in place anti-discrimination policies in order to protect the rights of marginalised groups.

Furthermore, Uganda is member of the International Labour Organization (ILO). The ILO aims to enhance to rights of all workers and specifically promote the rights

of marginalised groups. This is achieved through the ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958,²¹ which was ratified in 2005. Article 11 (1) (a) of the Convention prohibits discrimination “which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” The ILO Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) 1983 was also ratified on 27 March 1990. The Convention focuses directly on the protection of PWDs in employment and it requires all signatories to implement policies that give effect to these provisions.

Prior to 2004, there was nothing done to effect the requirements of these Conventions. This led to the Uganda Labour Law Reform Project, which worked to overhaul the legal framework on employment. As a result, the Employment Act 2006 implemented the provisions of the Conventions such as non-discrimination and elimination of forced labour. The Employment Act 2006 replaced the much-maligned Employment Act 2000 which did not adequately protect the interests of PWDs.

III. A Critical Review of the Employment Act 2006

The Employment Act 2006 is the main legislation that governs employees’ rights in Uganda. The Act promotes the rights of employees from the recruitment and selection stage to the termination of contract or dismissal. The Employment Act 2006 protects PWDs in a number of ways:

First and foremost, section 34 of the Employment Act 2006 requires all employers protect the special categories of employees. Employees that fall under these special categories include ethnic minorities, children, women and PWDs. Thus the Act prohibits discrimination on grounds of race, gender, disability, religion and marital status. The employment Act 2006 prohibits against direct and indirect discrimination. Direct discrimination is where a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. For example, if an employer recruits a man rather than a woman because she assumes that women do not have the strength to do the job, this would be direct sex discrimination. Or if a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her

association with her husband. Indirect discrimination is where A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a protected characteristic. For example, an employer dismisses a worker because she has had three months’ sick leave. The employer is aware that the worker has multiple sclerosis and most of her sick leave is disability-related. The employer’s decision to dismiss is not because of the worker’s disability itself. However, the worker has been treated unfavourably because of something arising in consequence of her disability (namely, the need to take a period of disability-related sick leave).

The Labour Advisory Board is empowered by section 34 to make regulations that would help PWDs and vulnerable groups to adjust into and access employment opportunities. Thus the section is aimed at promoting equality at work and excluding discrimination on a number of grounds including disability. An employee is entitled to bring a case to court for breach of section 34 but barriers such as cost and legal knowhow often mean that a select few can bring cases.

Second, section 6 prohibits all forms of discrimination. Thus discrimination on grounds of disability is prohibited by the Act. PWDs are prone to discrimination when it comes to pay for equal work. Equal pay has been a struggle for women all over the world. This position was summed up by Lord Lord Denning MR in *Langston v. AUEW*:²² “A parallel can be drawn in regards to women’s work. When a married woman seeks work, she does so when the children grow up and leave the home. She does it, not solely to earn money, helpful as it is: but to fill her time with useful occupation, rather than sit idly at home waiting for her husband to return. The devil tempts those who have nothing to do.” While struggle for gender equality has largely overshadowed the struggle faced by PWDs, especially in third world countries, PWDs are often exploited at work and paid substantially lower than other employees for the same work.

Thus, section 6 prohibition allows any person to bring a claim if any preference, distinction or exclusion has been carried out by an employer in contravention. Section 6 is only relevant to employees and in most cases PWDs do not reach the employee status. In order to qualify for a number of employment rights such as unfair dismissal and redundancy, the complainant needs to satisfy a number of requirements. He or she needs to be an employee, to have built up the requisite continuity of employment with the employer and also to satisfy the statutory definition of dismissal. Again, the hurdles faced in bringing a case

to court have meant that many PWDs who have been discriminated against at the interview/ selection stage never have their cases heard in court. Unless the barriers to legal enforcement are removed, section 6 will remain largely redundant. On the statute book, however, section 6 has allowed PWDs to access equal opportunities at work.

Third, section 5 of the Employment Act 2006 prohibits forced labour. Employers have a tendency to offer voluntary work on a promise of paid work after a successful completion of a certain project. However, this is often extended further and some workers can go many months or even years without being paid since they are working on a voluntary basis. Similarly, and more commonly, employees can go many months or years without being remunerated. This is defined as forced labour under section 5. The section aims to protect PWDs such as those with mental disabilities. Persons with mental disabilities are prone to forced labour and exploitation because of their unsound mind. To deter such practices, section 5(3) allows the court to hand out hefty fines or a two year sentence for those found in contempt of section 5. Although the fine is a major deterrence to such practices, the poor legal enforcement has watered-down its effect. Since passing the Act in 2006, no case has been documented in which section 5 has been breached by an employer.

Fourth, section 59 of the Employment Act 2006 requires that all employees are offered a contract prior to commencing employment. Employers have a choice as to the form of labour they contract for. They can choose whether they employ under a contract of employment or under a contract between employer and independent contractor. An employee has a contract of service. An independent contractor has a contract for services. Only employees have protection under statute. As employers have the choice, they will often make a decision which is suitable to the business. The advantage for the employer in setting up the worker in self-employment is that this incurs fewer obligations. A worker who is a part-time, casual, temporary or seasonal thus suffers a number of disadvantages. Only employees qualify for social security payments e.g. industrial injuries benefits, sickness benefits; employment protection rights e.g. unfair dismissal, statutory redundancy payments, rights to notice and time off; health and safety provisions; the protection of wages and other payments on insolvency of employer and the benefit of employer's common law duty of care. Thus employers cannot offer contracts to only preferred employees or take away fundamental rights of an employee on grounds of disability.

A peculiar trait of the contract of employment is that the parties own will is relatively constrained and limited in deciding over the contents of the contract. In fact, some

essential aspects of the contract are not based on express agreement between the parties but derive instead from external sources, mostly from statute, collective agreements and the common law. As expressed by Deakin and Morris 'the contract of employment is above all a mechanism for expressing the impact upon the individual relationship of one or more of a number of external sources of governance or regulation.'²³ However, contracts of employment are, perhaps inevitably, incomplete. It would be practically impossible, and to many extents undesirable, to spell out in a contract of employment the exact extent and nature of all the reciprocal duties and rights, all the details of the required performances, all rules of behaviour and conduct, etc. Employees would not necessarily want to enter a contract that specified taxing terms and conditions as to the quality, intensity and pace of the work effort required, and employers may well want their workers to be able to use their judgement in performing their duties, not to mention they want to retain some flexibility. Thus, not all the needs or rights of PWDs can be incorporated in their employment contracts.

Fifth, section 69 of the Employment Act 2006 entitles all employees to a fair hearing before dismissal. Thus all employees must be consulted by the employer on the grounds of their dismissal and they must be given a platform to defend themselves against any of the reasons for dismissal. For example, in *Jabi v. Mbale Municipal Council*,²⁴ it was held that any dismissal without a justifiable cause or reasonable notice would be classified as unfair dismissal. This protection is important for PWDs because employers may choose to replace them without cause in order to put in place a non-disabled person. The employee is also entitled to a reasonable notice of dismissal to enable him/her to find alternative employment. Thus section 69 offers a safeguard against unfair dismissal to disabled employees.

Sixth, section 71 of the Employment Act 2006 entitles employees to compensation in cases of unfair dismissal. Unfair dismissal was introduced as a response to the failure of the remedy of wrongful dismissal to provide adequate compensation to employees. A wrongful dismissal is a termination of an employment contract in breach of contract. The breach will often be a failure to give notice, in circumstances where the employer was not entitled summarily to dismiss. It may, however, be a dismissal in breach of another term, for example that the contract be terminated only in a particular way (e.g. after a disciplinary procedure has been gone through). Thus, an action is available for wrongful dismissal where an employer dismisses without notice or insufficient notice unless he has a good cause to dismiss. Damages or compensation is available

for breach of contract where the employee suffers loss as a result of the wrongful termination of the contract by the employer. Compensation could be high in the case, say of a footballer, whose contract is terminated before it is due to expire. However in many cases, damages will be limited to the period of notice that an employer may lawfully give. Wrongful dismissal is also important in cases where for some reason, the claimant is not able to claim for unfair dismissal, for example, where he/she does not have sufficient continuous employment to qualify. The statutory remedy of unfair dismissal is more popular than wrongful dismissal and is potentially a more powerful way of challenging bad employer practices which lead to dismissal. The reason for this is that whereas wrongful dismissal is merely an action for breach of contract, unfair dismissal allows the employee to question the actual fairness of the dismissal itself, including the process which led to dismissal.

Last but not least, section 55 of the Employment Act 2006 entitles PWDs to sick pay. To qualify, the employee must be employed for at least 16 hours a week with no less than one month of continuous service. The employee is entitled to full wages and other benefits as agreed in the contract during the first month of illness. However, if the illness persists into the second month, section 55(1) (b) allows the employer to terminate the contract. This section does not protect the rights of PWDs because they may experience long absences from work due to illnesses connected to their disability. The two month period is too short to provide a sufficient safeguard.

IV. A Critical Review of the Disability Act 2006

As aforementioned, the Disability Act implemented the provisions of the CRPD. It expanded the protection of PWDs in a range of areas such as education, access to services, health and employment. First and foremost, in regards to the latter, section 12 of the Disability Act prohibits discrimination of any kind in regards to the job application procedure, hiring, promotion, compensation, job training and other terms, conditions and privileges of employment. All qualified persons must be treated in the same way and only selected on merit for any rewards or benefits. Despite having a strong anti-discrimination stance, enforcement of this legislation remains the main hurdle. There are many barriers which continue to deter plausible claims from reaching court such as costs and knowhow or avenues to seek legal recourse. Although poor enforcement has largely watered-down the effect of section 12, it is still a positive step towards equality at work.

Secondly, sections 19 and 20 of the Disability Act require all employers to make their premises suitable for PWDs. This requirement is probably the most challenging for employers in Uganda because few are willing to commit to improving their premises to accommodate workers with physical disabilities. In most cases, employers prefer to screen out PWDs at the recruitment and selection stage to avoid the obligations under sections 19 and 20. Even those employers who hire PWDs are largely non-compliant with the requirements of the Disability Act. The government has inserted this requirement in a number of legislations including the Employment Act 2006 and The Equal Opportunity Act 2006. The latter require employers to have adequate premises for PWDs. While the statutory requirements are a much-welcomed move, all in all, employers have been largely non-compliant.

Thirdly, section 2 of the Disability Act provides a right to education, health and vocational rehabilitation. In regards to education, many laws and policies have been implemented to bring about equality in education. However, very few PWDs attend mainstream education largely due to discrimination and a lack of appropriate resources and support.²⁵ Despite that, section 5 requires the government to promote equality in education for PWDs. Education is important because it is channel through which one can escape poverty. Thus, some of the resources dedicated to improving equality of opportunity in employment should be deployed towards skill and educational development for PWDs. Section 2 of the Act also promotes equality in regards to health, thus PWDs should not be discriminated against in regards to health. PWDs, especially women, are at high risk of sexual exploitation. With illnesses such as HIV/AIDS prevalent in Uganda, PWDs in Uganda need protection in accessing health care. Thus, sections 7 and 8 require PWDs to enjoy the same rights as other citizens in all public health institutions. Protection in accessing healthcare is important because it impacts on their ability to engage in continuous employment.

In a bid to improve the skills of PWDs, in 2006, the government introduced vocational training programme (Community Based Rehabilitation). The Uganda National Household Survey²⁶ found that over 60% of PWDs in Uganda do not receive any kind of rehabilitation and approximately 90% fail to access secondary education. The purpose of the vocational training and rehabilitation programme is to promote more inclusive employment opportunities for PWDs in Uganda. This programme is driven forward by the Disability Policy 2006. It is also supported by the Business, Technical, Vocational Education and Training (BTJET) Act 2008²⁷ which aims to promote access to education and training for vulnerable

groups such as PWDs. The Ministry of Gender, Labour and Social Development established vocational rehabilitation and resettlement centers to serve the employment and skills needs of PWDs. So far, 8 vocational rehabilitation training centers have been set-up across the country. These are: Mbale Sheltered Workshop, Masaka Vocational Rehabilitation Center, Lweza Vocational Rehabilitation Center, Ruti Vocational Rehabilitation Center, Mpumude Vocational Rehabilitation Center, Ocoko Vocational Rehabilitation Center, Kireka Vocational Rehabilitation Center and Jinja Sheltered Workshop. These centers offer training in skills such as computer lessons for the blind, carpentry, tailoring and nursery teaching. According to Mr Herbert Baryayebwa, the Commissioner on Disability and Elderly, *“every year, about 280 PWDs graduate from these centers.”*²⁸ Since there are no statistics to measure the general effectiveness of these programmes, it is hoped that vocational rehabilitation will achieve the goals their predecessors in the 60s failed to achieve.

However, the vocational training centers have inadequate facilities due to a general lack of financial support from the government. Furthermore, a large majority of graduates fail to find jobs after graduating. This concern was expressed by the Assistant Executive Director of NUDIPU, Ms. Helen Grace Ajamo: *“even the few that have been trained at the centers remain unemployed since there are no places to practice their skills.”*²⁹ A report by the International Organization of Migration (IOM) supports these observations. They found that graduates from vocational training centers end up jobless due to a lack of capital to set up a business and personal vulnerabilities such as trauma.³⁰ Even some of the skills being taught at the centres such as nursery teaching are neither comprehensive nor suitable for the current labour market. Thus, even if vocational training serves the skills need, it falls short due to barriers to accessing employment such as discrimination.

Employees are also protected in course of employment by the Workers Compensation Act 2000. The Act entitles an employee to compensation for any personal injury from an accident arising in course of employment. This legislation supports employees even in cases of employee negligence. Employers are strictly liable which means in all eventualities, the employer must compensate the injured employee for the injury. This Act brought much needed relief to PWDs who, depending on the nature of their job and disability, may be at risk of injury. However, the poor enforcement and barriers to accessing legal recourse has meant that many PWDs are often injured at work and end up without any compensation for their injuries.

The Occupational Safety and Health (OSH) Act 2006 reinforces the need for protecting employees in the

workplace. Employers are required to ensure that the working environment and conditions are suitable for all employees. Safety requirements are important for PWDs because it enables them to work in a safe environment and thus minimise the risk of injury. However, putting in place adequate facilities for PWDs requires financial commitment which few employers are willing to commit. A lack of compliance is also strengthened by the poor enforcement.

Despite the growth of the disability movement in Uganda, there has been little improvement in regards to access to employment for PWDs. They are routinely discriminated against in the recruitment and selection process and remain liable to exploitation at work. While the protection of PWDs is necessary for the common good, adding further legislation designed to protect those rights may be counter-productive. The Ugandan government thinks that eliminating discrimination and promoting equality is a matter of detailed rules imposed by Parliament rather than the responsibility of organisations and individuals to change themselves.³¹ Given the plethora of legislation already in place, the emphasis now should shift to implementation, education³² and advocacy in order to more effectively embed equality in our society, being that a number of vital preconditions for tackling disadvantage, such as the strengthening of collective action, civil society and social policy initiatives that would seek to address the economic, social and political causes of disadvantage, lie outside the field of discrimination law.

V. Access to Employment

Although the law has been strengthened to protect PWDs in employment, recent studies and statistical data have highlighted the enormity of the task. As aforementioned, access to education is a crucial factor in the battle against poverty. However, the Uganda Population and Housing Survey 2006³³ revealed that PWDs are largely uneducated which makes attracting skilled labour in an overly competitive jobs market very difficult. The Survey found that the labour force in Uganda has become very educated which is reflected in the annual growth in a number of students graduating from Universities such as Makerere and Kyambogo. The lack of relevant skills and education has been the stumbling block to improving the lives of PWDs in Uganda. Without a formal education, many employers in Uganda are unwilling to employ PWDs. Even with formal qualifications, the legal enforcement is not strong enough to deter discrimination and guarantee equal opportunities.

For PWDs aged between 14 and 64 years, the Survey found that 46% were discriminated against or deterred from

participating in employment activities. Only 8% reported that they were not affected; a figure that highlights the scale of the problem. While a lack of education is often cited to be the main factor behind the poor employment statistics, discrimination is one of the key factors. For persons with physical disabilities, employers are required to ensure that facilities are adequate for wheelchair users. According to the Research and Information Officer of Action on Disability and Development, Mr. Baraza Deusdedit: “when it comes to the area of employment, PWDs may not compete favourably due to most employers claiming that it is expensive to hire PWDs.³⁴ Similarly, the Gulu District Chairperson of People with Disabilities, Mr. Simon Ongom, stated: ‘most employers operate in rented structures thus landlords may be adamant to provide accessibility to workplace areas for PWDs since it is likely to distort the whole structure.’³⁵ Thus, in order to improve access to employment for PWDs, a culture of discrimination and non-compliance with the regulatory requirements is needed. In most cases, the employer fails to comply and resorts to screening out PWDs at the recruitment and selection stage. Employers must reject the view that hiring PWDs is costly and embrace the disability movement which is starting to take shape in Uganda.

The scale of the problem was highlighted by the 2009 report by the Foundation for Human Rights Initiative (FHRI). It referred to a study carried out in Kasese district, where out of a total of 14,728 registered adult PWDs in the district, only 633 (4%) were employed. The majority of those without formal work, (6,690 (45%)) were involved individual income generating activities. The remaining 7,404 (50%) had no income and were dependent on their families for support.³⁶ However, even with qualifications, PWDs find it extremely difficult to access employment. For example, the report found that less than 10% of PWDs in Kasese District were engaged in active employment despite holding relevant qualifications for the available jobs.³⁷ This is reflective of the national trend, where the majority of PWDs are self-employed and engaging in activities such as tailoring, carpentry, shoe shinning and retail trade. However, PWDs are also discriminated against when applying for loans because it is assumed that such borrowing is risky and the individual will encounter difficulties in paying back the loan on time. The discrimination in the credit market is compounded by the general lack of education for PWDs, which is taken into consideration before advancing financial aid or loans.

Even in absence of discrimination, PWDs face challenges in getting to know about job opportunities. This was summed up by Mr. Baraza Deusdedit, Research and Information Officer; Action on Disability and Development: “Due to communication barriers, many may not have heard or read the job

advertisements since they are over the radio or in newspapers thus eliminating the deaf and blind. In addition, PWDs are usually the poorest among the communities and as such, may not afford to buy the newspapers. The adverts are sometimes put on notice boards which are at times high so a disabled person may fail to access it.... Sometimes they give the information on the radio, and unless you have someone who is going to tell a deaf person, they won't know.”³⁸ Thus, depending on the type of disability, some job posts become difficult to know about for PWDs. Due to such inequality of opportunities, many PWDs end up as beggars on the streets or in outright poverty.

VI. Recommendations

The first recommendation is to establish research bodies to inform the government on the performance of its programmes aimed at reducing inequality in Uganda. The function of these bodies would be to document the impact of government policies on its targeted beneficiaries. Currently, there is a dearth of empirical research and statistical data on which to measure the performance of programmes such as vocational training for PWDs. The statistical data will help to identify specific variables which are hampering the performance of government programmes. In terms of legal research, there is a dearth of disability related research literature on Uganda. Few researchers have been able to comment on the subject. Thus, commitment from the government and academic circles is needed to highlight the challenges faced by PWDs in Uganda. However, they will need financial commitment from the government which is very difficult to guarantee.

The second recommendation is to find innovative pathways to increasing access to employment for PWDs. Although policies and programmes to help PWDs access employment have been put in place, little has been done to persuade employers to hire PWDs. The tax reduction measures for employers who more hire than ten PWDs have been largely unsuccessful because no employer has applied for the tax reduction. This shows that legal developments alone will go a long way to bringing about equality of opportunities. Since the financial reward for hiring PWDs has failed, the government should come up with new measures such as high penalties for employers found guilty of disability discrimination. However, this would also require the strengthening of enforcement powers and legal aid for those with credible cases. Innovative pathways may include tax cuts for PWDs who setup businesses, although such affirmative action is unlikely to yield support from the business community and essentially goes against the equality principle. Although it is challenging and costly to find credible pathways to improving employment for

PWDs, the onus is on the government, guided by the CRPD, to find and implement these solutions.

The third recommendation is to increase awareness of legal requirements. Few employers are aware of the state of disability law in Uganda largely due to weak enforcement. Awareness is also a problem for PWDs, unless they are informed of their rights by a charitable group or organisation, they remain largely uninformed. Since both the employer and employee are unaware of the legal requirements, this essentially leaves the danger of perverse discrimination and abuse. To improve awareness, the government must engage with the business community and disability organisations to work towards increasing awareness of legal requirements. Furthermore, the law should be taught in primary and secondary schools so that the majority of PWDs leave with a basic understanding of their legal rights and avenues. Unless awareness of legal requirements is improved, PWDs will continue to experience difficulties in accessing employment.

The fourth and final recommendation is to increase financial support for disability related activities and programmes. The financial support could go to organisations that support PWDs. In order to ensure that the financial support reaches the intended beneficiaries, improved accountability and monitoring will be necessary. Alternatively, the financial support could go directly to the beneficiaries by offering grants to those who complete vocational training or intend to engage in trade. Increased financial support is something PWDs can lobby for since the 1997 Local Government Act allows the inclusion of disabled representatives on district service commissions and representation of marginalised groups on the commissions. Although the government has enacted a number of legislation to give effect to the requirements of the CRPD, implementation remains the main concern. Unless more commitment, in terms of financial aid and increased awareness are realised, PWDs will remain marginalised in society and unable to experience equality in employment.

VII. Conclusion

By enacting progressive disability laws, Uganda took a significant leap towards promoting equality of opportunity

and encouraging full participation of PWDs in economic and social activities. The Disabilities Act has transformed the face of disability law in Uganda and empowered PWDs with strong legal safeguards. However, few cases ever make it to the courtroom and in most cases the employers avoid such responsibility by not offering PWDs contracts or not hiring them at all. The government should set aside funds to assist marginalised groups to bring cases to court and special committees should be set up to investigate any allegations of discrimination on grounds of disability. Unless legal enforcement is improved and penalties for breach of legal provisions are put in place and enforced, then little is likely to change.

Furthermore, in implementing the provisions of the CRPD, the government missed a critical step, to allocate necessary resources and to put in place institutional frameworks to implement disability policies. Institutional frameworks such as vocational training centers lack adequate funding and in most cases train skills which are largely irrelevant to the current jobs market. Despite that, some PWDs have graduated from these centers and managed to put their skills into practice. However, the vast majority of graduates have so far failed to find meaningful work. Thus, it is recommended that the government assists those who have gained relevant skills by connecting them to employers or offering them financial aid to setup businesses or any trade in which they can apply their skills.

To address the significant gaps in disability policy, Uganda needs immediate and deliberate political action, strong advocacy by the disability community and civil society, above all, support from academics. In regards to the latter, there is a dearth of research literature on disability in Uganda. The academic community needs to wake up and realise that unless there is research literature that highlights the challenges faced by PWDs in areas such as employment, education and health, they would be failing PWDs who are looking at them for support and direction. Advocacy also needs to improve since poor legal enforcement continues to cast a shadow of doubt over most of the progressive government policies. All in all, these shortfalls indicate that the protection of PWDs in employment is in a progressive but still dire state.

ENDNOTES

¹ Universal Declaration of Human Rights (UDHR)- United Nations General Assembly (10 December 1948 at Palais de Chaillot

² Uganda Chronic Poverty Report' (2006): Targeting and Protecting the Chronically Poor in Uganda: A Case for the Elderly.

³ Uganda National Household Survey (2006): Housing and Population Census by Uganda Bureau of Statistics.

⁴ Government of Uganda, (2004) Poverty Eradication Action Plan 2004/5-2007/8 Kampala, MFPED

⁵ CESCR (<http://www2.ohchr.org/english/law/cescr.htm>) Accessed 12/02/2013

⁶ Constitution of the Republic of Uganda (1995) Section 21(2). Available at <http://confinder.richmond.edu> (Accessed 12/02/2013)

⁷ Ibid Article 14

- ⁸ Section 12(a) The Persons with Disability Act 2006
- ⁹ Section 17, The Persons with Disability Act 2006
- ¹⁰ S. 4 of the Income tax Act (Amendment Act) 2009
- ¹¹ NUDIPU, (2008), *Strategic Plan 2008-2013*, NUDIPU p. 9–10
- ¹² Lang R and Murangira A (2009) Disability Scoping Study. *Commissioned by DFID Uganda February*, Final Report p.9
- ¹³ Nyombi, C & Kibandama, A. (2013) "Access to education by persons with disabilities in Uganda's education system" *East African Journal of Peace and Human Rights*, Volume 19: Issue 1, 74-94.
- ¹⁴ Thomas, R. R. (1990) 'From affirmative action to affirming diversity' *Harvard Business Review*, March/April: 107-117
- ¹⁵ Kymlicka, W. (1995) *Multicultural citizenship: A liberal theory of minority rights*, Oxford: Clarendon Press.
- ¹⁶ Evadre G (2007). "Dignity and Equality", *Human Rights Law Review*, Vol. 7, No.2, , p.300
- ¹⁷ NUDIPU (<http://www.nudipu.org.ug/>) Accessed 13/02/2013
- ¹⁸ Nyombi, C. (2012). "A critical review of the Uganda Mental Health Treatment Bill, 2011" *East African Journal of Peace and Human Rights*, Volume 18: Issue 2, 499-513
- ¹⁹ CESCR (<http://www2.ohchr.org/english/law/cescr.htm>) Accessed 12/02/2013
- ²⁰ ICCPR (<http://www2.ohchr.org/english/law/ccpr.htm>) Accessed 12/02/2013
- ²¹ ILO convention number C111 (ratified by Uganda in 2005) (6) ILO Convention Concerning Discrimination in Respect of Employment and Occupation (1958) ILO Convention C111.
- ²² [1974] ICR 180
- ²³ *Deakin S and Morris B* (2009) *Labour Law*, Oxford: Hart Publishing. p.217
- ²⁴ [1975] HCB 191
- ²⁵ Nyombi, C & Kibandama, A. (2013) "Access to education by persons with disabilities in Uganda's education system" *East African Journal of Peace and Human Rights*, Volume 19: Issue 1, 74-94.
- ²⁶ Uganda National Household Survey 2005/2006
- ²⁷ The Business, Technical, Vocational Education and Training (BTVET) Act, No. 12, 2008
- ²⁸ FHRI 'Disability is not inability' report (2009) Interview with Mr. Herbert Baryayebwa, Commissioner, Disability and Elderly: p.46
- ²⁹ FHRI 'Disability is not inability' report (2009) Interview with Ms. Helen Grace Ajamo on 6th November 2009 p.46
- ³⁰ The New Vision Newspaper, "Vocational trainees stay jobless" By Flavia Nalubega, Wednesday November 11th 2009
- ³¹ Westen, P (1982). "The Empty Idea of Equality", *Harvard Law Review*, Vol. 95, No.3, p.537.
- ³² Feinstein, L. (2003), *Inequality in the Early Cognitive Development of British Children in the 1970 Cohort*, *Economica*, 70, 277, p 73-98.
- ³³ Uganda National Household Survey 2005/2006
- ³⁴ FHRI 'Disability is not inability' report (2009) Interview with Mr. Baraza Deusdedit, Research and Information Officer; Action on Disability and Development on 1st July 2009 P.43
- ³⁵ FHRI 'Disability is not inability' report (2009) Interview with Mr. Simon Ongom, Gulu District Chairperson of People with Disabilities on 2nd October 2009 P.43
- ³⁶ FHRI 'Disability is not inability' report (2009) p.34
- ³⁷ FHRI 'Disability is not inability' report (2009) Interview with Mr. Baluku Peter, Kasese District Union Development Worker on 31st August 2009 P.43
- ³⁸ FHRI 'Disability is not inability' report (2009) Interview with Mr. Baraza Deusdedit- Research and Information Officer; Action on Disability and Development on 1st July 2009 p.44

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