

**The Realisation of Human Rights for Disabled People in Higher
Education in Uganda: A Critical Analysis Drawing on the UN
Convention on the Rights of Persons with Disabilities**

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Submitted in accordance with the requirements for the degree of
Doctor of Philosophy in Law

The University of Leeds- School of Law
Centre for European Law and Legal Studies

January, 2014

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Dedication

I dedicate this thesis to my wife, Mrs Evaline Isakuny Emong and my children, Christine Elisabeth Acam, Tabitha Blessing Akello, Jesper Opio and Comfort Esaete, for missing me during the time of this study.

Acknowledgements

My doctoral studies and the rare opportunity for people like me to study in a prestigious and outstanding world university like Leeds University, is regarded by people in my community in Uganda as an act of luck for me. To a large extent I do agree with their point of view, in light of my experience going through all levels of education in Uganda as a disabled person and as a person from an impoverished family. In fact, at the time I started primary education, the concepts of a right to education and equal opportunities for disabled people were remote in the experiences of my community. Thus, I acknowledge God's blessing in my education.

Inevitably, there are those people without whom it would not have been possible to accomplish work like this at this level. Immediate to this are my supervisors, Anna Lawson and Mrs Ann Blair to whom I am heartily thankful. Their constructive criticism of my work from the initial stage to the final enabled me to develop an understanding of legal research. It is an honour for me to have received their professional insight, support and guidance. I also would like to thank David Newman for language editing an earlier version of this work.

I would like to extend thanks to all the students and staff at universities in Uganda who participated in this research. Their diverse views and perspectives, suggestions and reflections provide a rich resource in this research and generally provide an insight into improving the rights of disabled people at higher education in Uganda. I also wish to thank Isaac Kato, Boaz Muhumuza, Samuel Okello and Jacob Iramiot for mobilising the participants, without their support, interviews would have not been possible.

I would like to extend my appreciation to my colleagues, the doctoral candidates at the law school. The jokes we made, the support they individually offered to me and above all they being great and supportive friends made my life much easier and

enjoyable at the law school. The space is not enough to list all here. I wish to single out Trisha Rajput for always being around to lend a hand.

I am indebted to the members of Gate [Way] Church and International Students Bible discussion at Emmanuel Centre for their social and spiritual support.

The funding for this PhD study was provided by FORD Foundation - the International Fellowship Programme (IFP). It is a pleasure to thank them for their generous contribution to my studies and for providing me with an opportunity to undertake a doctoral programme abroad. I would like to thank Mr. Andrew Omara, at IFP contact office in Uganda, for supporting my endeavour by ensuring that all administrative matters were taken care of. I applaud the cause of social justice issues FORD-IFP stands for and am greatly indebted to them. I extend my appreciation to Julie Smearton, Claudette Coke and Christine Hayes at the British Council, Manchester for ensuring that I have a comfortable stay in the UK. The Snowdon Award Scheme also deserves my gratitude for the support I received from them.

During my childhood as a disabled person coming from the rural part of Uganda, my education as well as my future was bleak. To come this far, I am gratefully indebted to my parents (RIP) - Mr. John Emong and Mrs. Elizabeth Emong Acam, and to my siblings - Sam Caleb Opiio, Hellen Lucy Ariim (RIP), James Okodel, Salume Amoding (RIP), Leah Ajuwat and Simon Olagai for the invaluable support they have offered to me. I am grateful in particular for the inspiration from my parents at the time I was giving up education at primary level due to the long distance commute. My father passionately encouraged me to brave through difficulties I encountered during school. My zeal to study was powered by his words of encouragement: 'I give you a pencil; you will eat out of it. It will get you out of poverty, prejudice and the debilitating issue surrounding your disability. If you abide by its rule, you yourself will be a witness of this gift.' He has remained with me forever through these words and they were a constant source of strength during my research.

Additionally, I would like to thank Rt. Reverend Geresem Ilukor (RIP), Mr. Charles Oyuruka, and my uncles Ven. Canon Job Osuret, Joseph Amukun and JLP Okiria Iriso (RIP) for supporting me during secondary education. I will always be so grateful to them as they helped me to overcome the difficult hurdle which arose before me in the form of secondary education. In fact, they laid the foundation for the education I was to receive later. I also wish to wholeheartedly thank those students during my secondary education who passionately supported me. The list is long, and only a few can be mentioned here – Otai Isaac Peter, Ekoju John and Iriso Godfrey. Similarly, I extend my appreciation to those pupils in primary school who at times would carry me when walking on muddy paths became difficult.

Lastly, I thank my wife Evaline, my children Elizabeth Christine Acam, Tabitha Blessing Akello, Jesper Opio and Comfort Esaete for their prayers, encouragement and bearing with me as they felt forgotten during this study. I wish to say thank you to my mother-in-law, Mrs Margaret Esaete Ogole, for supporting my family.

Newton said, ‘If I have seen further than others, it is by standing upon the shoulders of giants’. All those who contributed to my education to this PhD offered me their shoulders to stand upon to see further. I am greatly indebted to their noble contribution to my education.

Abstract

The UN Convention on the Rights of Persons with Disabilities (the CRPD) guarantees disabled people a right to education without discrimination and on the basis of equal opportunities. Uganda is a State Party to the CRPD. This research, examines the extent to which Uganda is realising a right to education for disabled people in higher education as per the UN human rights law obligations. To that effect, the research through an empirical study, analyses how the current Ugandan disability law implements the UN human rights law obligations in higher education, its effects on policy for disabled people and the effects of those policies on the lives of disabled people in higher education.

This study reveals that, while Uganda has proliferation of disability legal provisions, their ideals have not yet being adequately translated to the reality of disabled people in the institutions of higher education. This is attributed to: the social-economic factors impinging on the realisation of education as a right, including factors hindering the realisation of disability rights in the country; limited enforcement of the disability legislation generally in the country, and in particular in higher education; and limited awareness about disability discrimination and in turn limited disability mainstreaming in higher education. As a result, institutions of higher education are generally challenged in providing equal opportunities for disabled people. Thus, there is limited inclusion of disabled people in higher education in Uganda.

In light of that finding, this research recommends higher education sector to undertake strategic interventions that seek to effectively implement the disability legal framework and as well as enhancing non-legal mechanisms to bringing about equal opportunities for disabled people in higher education. These interventions include increasing disability awareness and disability mainstreaming in the institutions of higher education, government organs with statutory mandate over higher education and development partners directly supporting higher education. The study also recommends that another way to build the internal capacity of higher education institutions on disability inclusion is through undertaking emancipatory disability research with them as that has an empowering effect on the participants.

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CCPR General Comment No. 18: Non-discrimination, 10 November 1989

Convention on the Elimination of All forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UK Doc A134146 (CEDAW)

Convention on the Rights of a Child (adopted 20 November 1989, entered 2 September 1990) UN Doc A/44/49 (1989) (CRC)

Convention on the Rights of Persons with Disabilities (adopted 13th December 2006, entered into force May 3, 2008) U.N. A/RES/61/106 (CRPD)

Disability Discrimination Act 1995 (repealed by the Equality Act 2010)

Equality Act 2010

General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10

General Comment No. 16: on the equal right of men and women on the enjoyment of all economic, social and cultural rights (Art. 3 of the Covenant on Economic, Social and Cultural Rights), 11/8/2005, E/C.12/2005/4

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on the Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

Paris Principles A/RES/48/134, 85th Plenary Meeting 20th December 1993

The Charter of the United Nations was signed on 26th June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation, and came into force on 24th October 1945

The Constitution of the Republic of Uganda 1995

The Equal Opportunities Commission Act 2007

The National Council for disability Act 2003

The Persons with Disabilities Act 2006

The Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) (UDHR)

The university and other Tertiary Institution Act 2001

Vienna Declaration and Programme of Actions, World Conference on Human Rights, Vienna, 14-25 June, 1993, UN Doc a/conf. 157124 (Part 1) at 20 (1993)

List of Abbreviations

CEDAW	Convention on Elimination of all forms Discrimination Against Women
CRC	Community Relations Commission (CRC)
CRPD	Convention on the Rights of People with Disabilities
DDA	Disability Discrimination Act
DFID	UK Department for International Development
EAT	Employment Appeal Tribunal
ECJ	European Court of Justice
EFA	Education For All
EHRC	Equality and Human Rights Commission
EOC	Equal Opportunities Commission
EU	European Union
HEFCE	Higher Education Funding Council For England
HESA	Higher Education Statistics Agency
ICESCR	International Convention on Social, Economic and Cultural Rights
JAB	Joins Admissions Board
LAPD	Legal Action for Persons with Disabilities
MGLSD	Ministry of Gender Labour and Social Development
MP	Member of Parliament
NCD	National Council for Disability
NCHE	National Council for Higher Education
NCST	National Council for Science and Technology
NUDIPU	National Union of Disabled Persons of Uganda People
PIL	Public Interest Litigation
PSED	Public Sector Equality Duty
PwDA	Persons with Disabilities Act
SLSA	Socio-Legal Studies Association,
UBOS	National Bureau of Statistics
UHRC	Uganda Human Rights Commission
CRC	Convention on Rights of a Child

UNAB	Uganda National Association of the Blind
UNAD	National Association of the Deaf
UDHR	Universal Declaration of Human Rights
UNEB	Uganda National Examinations Board
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UTIA	Universities and other Tertiary Institutions Act

Chapter One

Scope of the Research

1. Introduction

The purpose of this chapter is to introduce the research, explain its scope and state the overall methodology. Section two commences the discussion by stating the motivation to the study. Section three states the research question. Section four follows by exploring the scope of the study and the methodology. Section five examines the context and justification of the research. Section six sets out the structure of the thesis.

At the outset, it is important to explain the terminology that will be used in this thesis. In Uganda a disabled person is referred to as a 'person with a disability' by both the relevant legislation¹ and disabled people's organisations. For the purpose of uniformity of language, this thesis adopts the use of 'disabled person', for reasons of consistency with the social model, unless directly making a quotation.

2. Research Question

The broad research question for this study is: 'to what extent is Uganda realising a right to education for disabled people in higher education in-line with international human rights law obligations.' These obligations provide benchmarks for achieving human rights and are codified in the UN human rights law instruments and declarations. For disabled people, the adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD)² has entrenched their rights in the UN human

¹ See for example the Constitution of the Republic of Uganda 1995, Objective XVI.

² The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. It entered into force on 3 May 2008. See UN Enable

rights framework and translates these benchmarks to suit the needs of disabled people. Given the centuries long enduring discriminatory practices and attitudes disabled people experienced prior to the CRPD, the CRPD therefore has made disabled people visible human rights claimants³ and arguably, the CRPD marks a dawn of new era for disabled people.⁴ An era in which a major shift in the way the rights of disabled people across the globe will be expected to be realised.

On education, the CRPD in article 24 requires States to recognise a right to education for disabled people without discrimination and on the basis of equal opportunities. Given that, the CRPD through its mandates also translates the obligations of the other UN human rights treaties to suit the needs of disabled people, it therefore requires making education ‘available, acceptable, accessible and adaptable’ (4As) to disabled people as at all levels. The 4As are the essential and interrelated features that an educational service should exhibit according to the interpretation of article 13 of International Covenant on Economic, Social and Cultural Rights (ICESCR) by the UN Committee on Economic Social and Cultural Rights.⁵ To that effect, governments are therefore under an international human rights law obligation to ensure that the policies and practices of institutions of higher education under their jurisdiction are not discriminatory and are not

<http://www.un.org/disabilities/default.asp?navid=14&pid=150> accessed on 8th January 2014. Uganda is also State Party to the CRPD, ratified it in September 2008.

³ R Kayess and P French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities,’ (2008) HRLR Vol 8(1) 1-34.

⁴ This is observation by the former UN Secretary-General Kofi Annan, in a message delivered by Deputy Secretary-General Mark Malloch Brown on adoption of CRPD. See, the UN Press Release ‘General Assembly Adopts Groundbreaking Convention, Optional Protocol On Rights Of Persons With Disabilities: Delegations, Civil Society Hail First Human Rights Treaty Of Twenty-First Century,’ UN GA 10554 at <http://www.un.org/News/Press/docs/2006/ga10554.doc.htm> accessed on 20th January 2014.

⁵ See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.3: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para 6.

excluding disabled people from their services. This urgently calls for the analysis of the extent to which States are making higher education inclusive of disabled people in-line with the international human rights law obligations, including the CRPD's provisions on education.

Therefore, the overall objective of this PhD study is to critically analyse how rights for disabled people are being realised in higher education in Uganda using the CRPD provisions relating to access to education as an overarching framework. It also, draws on the social model of disability to provide a conceptual understanding on the realisation of rights of disabled people; and the conceptions of equality and non-discrimination as a theoretical framework informing the non-discrimination law.

In particular, the specific objectives of the study are to analyse the extent to which the Uganda disability law and policy on higher education has brought about policy changes in higher education towards equalising opportunities for disabled people. The other objective is to examine the effect of those policies on the practices of institutions of higher education and on the lives of disabled people across a range of impairments. That is to say how the provisions of the disability legislation regarding higher education have been interpreted and reflected in the policies and actions of the universities in relation to entry to higher education, provisions for disability support services, meeting the accessibility requirements, sports and recreation, and learning, teaching and assessment.

The objective of study also is to explore the extent to which the Uganda disability law and policy implements the CRPD provisions directly relating to access to higher education. According to this research, these provisions are mainly article 24 on education, the central focus of this research. The provisions on article 24 need to be interpreted along other CRPD provisions in order to realise an inclusive higher education. Other CRPD provisions that deserve to be explored are article 5 on equality and non-discrimination. This article clarifies on the meaning of equality and non-discrimination. Article 8 on awareness-raising is also important to be examined in this research. Awareness-raising is critical in bringing about disability

mainstreaming. Lack of disability awareness and what constitutes disability discrimination makes disabled people largely excluded in society. This therefore requires creating awareness about disability. Article 9 on accessibility is the other. Accessibility is one of the major critical barriers disabled people face in their lives. Article 31 on statistics and data collection is also relevant as one of the commonly stated challenges in the planning for disabled people is lack of data on disability. Therefore, it is important to examine how such a challenge is expected to be addressed. Article 33 on international cooperation is another provision of the CRPD to be examined in relation to higher education as higher education in Uganda depends on aid arising from Uganda's international cooperation. However, the aid received through this cooperation is not disability sensitive, one of the reasons why disability mainstreaming is hard to be realised in higher education.

3. Motivation to Undertake this Study

This study arises out of my personal experience as a disabled person going through all levels of education in Uganda and as a disability rights campaigner focused on issues of access and equity for disabled people in education. These experiences, together with what is seen to be the increasing awareness about disability rights globally⁶ and in Uganda⁷ in particular and the far ranging reforms that have been

⁶ International agencies like World Bank, EU and Bi-lateral Agencies like USAID and UKAID have programmes supporting disability inclusion. Also, the adoption of the Convention on the Rights of Persons with Disabilities (CRPD) is an example.

⁷ In Uganda, many examples can be given to demonstrate that there is increasing awareness about disability in the country. Among others, these are admission of disabled people into public universities through affirmative action, representation of disabled people in the legislative arms of government e.g. the 5 Members of Parliament (MPs) representing disabled people, 2 Councilors representing disabled people in Local Council Five, 2 at Local Council Three and 1 at Village Council. Disabled people are also represented at the top management boards of the statutory organs as per the statutory requirements of the respective Acts of Parliament. Also, disabled people in Uganda have developed strong and articulate organisations (DPOs) from national to grassroots (village) level. These DPOs are structured alongside the local government structures (see illustration in chapter 4, section 4). The DPOs in general play roles of creating disability awareness, mobilizing disabled people for action, advocacy and lobbying for disability inclusion.

taking place in the Ugandan higher education since the since liberalization and privatization of the economy in the 1990s, motivated me to question the extent to which the inclusion of disabled people in education, especially in higher education has been achieved.

3.1 Overview of the Reforms in Higher Education

Reforms in higher education are largely seen in reduced government commitment in higher education in terms of direct financing in favour of primary education, and policies aimed at increasing access and equity. These policies include admission to public universities through affirmative action for women, disabled people, sports talented students and admission based district quota; allowing public (state owned) institutions of higher education to admit fee paying students and allowing individuals or bodies wishing to establish and manage an institution of higher education to do so. Indeed, these reforms, according to renowned academics in Uganda such as Kasozi, Musisi & Muwanga and Mandani have brought significant changes to higher education.⁸ Among these changes include curriculum reforms, expanding access to higher education including for disabled people and mode of higher education service delivery.⁹ However, it appears that, these reforms were not followed by careful planning as increasing access and equity is feared to compromise on the quality.¹⁰ Evidence exists to the fact that, these apparent gains notably in terms of access to higher education have been offset by shortened school practices, congested lecture rooms, reduced allowances, paying lecturers low

⁸ M Mandani, *Scholars in the Marketplace: The Dilemmas of Neo-Liberal Reform at Makerere University* (Fountain Publishers, Kampala 2007); N B Musisi and NK Muwanga, *Makerere University in Transition 1993 -2000* (James Currey Ltd, Oxford 2003; ABK Kasozi, *University Education in Uganda: Challenges and Opportunities for Reform* (Fountain Publishers, Kampala 2003).

⁹ ‘Mode of service delivery’- As part of a solution to lack of teaching space due to increasing enrolments, universities have developed parallel programmes such as evening, weekend and distance learning.

¹⁰ R K Muriisa, ‘The Quantity – Quality Balance: Reforms in University Education in Uganda,’ in P Chanie and P B Muhiyo (eds) *Thirty Years of Public Sector Reforms in Africa: Selected Countries Experiences* (Fountain Publishers, Kampala 2013) 190.

salaries, hiring inadequate staff resulting into excessive teaching loads, failure to expand on facilities resulting problems of over-crowding and ignoring staff development plans, large classes and falling standards.¹¹

For disabled people, in addition to entry through affirmative action scheme, user-friendly physical facilities and individualised support services are also required to ensure their equalisation of opportunities in the institution. But, for more than fifteen years from the commencements of the reforms, little from the institutions was showing higher education was equalizing opportunities for disabled people to access learning and to participate like every other student. It appears therefore, that the overall higher education environment was not changing in response to access requirements for disabled people once admitted. Kwesiga and Ahikire, particularly point out that, many lecture halls and other facilities remained the same, predicated on the 'able,' with more disadvantaging effects to some disabled students in some programmes.

*There was also a case of a lame student who had to drop out of medicine at the third year because the instructors demanded so. According to one deputy registrar the student progressed well until she reached the stage for clinicals, and the lectures were of the view that clinicals and crutches could not go together.*¹²

This shows that, the general interventions to bring about equality in any community do not necessarily bring equal opportunities for disabled people unless such

¹¹ See C Businge, 'Uganda Higher Education Chocking,' The New Vision Janaury 2013, See also JC Kwesiga and J. Ahikire, 'On Student Access and Equity in Reforming University: Makerere in the 1990s and Beyond' [2006] 4 JHEA /RESA <http://www.codesria.org/Links/Publications/jhea2_06/Kwesiga-Ahikireb.pdf> accessed on 10th August 2008 .

¹² J C Kwesiga and J. Ahikire, 'On Student Access and Equity in Reforming University: Makerere in the 1990s and Beyond' [2006] 4 JHEA /RESA <http://www.codesria.org/Links/Publications/jhea2_06/Kwesiga-Ahikireb.pdf> accessed on 10th August 2008 .

interventions are accompanied by specific disability related support; this is what the reforms are short of.

While the above developments were occurring to higher education, for primary and secondary level of education, favourable education policies and the development of an educational infrastructure for inclusive education for disabled people was taking place. As a result, more disabled students are projected to join higher education than before, estimated at above 1000 annually by 2010.¹³ However, similar infrastructure does not exist for higher education. Institutions of higher education do not therefore appear to be ready for disabled people as the reforms for higher education were devoid of disability inclusion. This is compelling case for analysing disabled students' access to higher education in light of the requirements of the CRPD that disabled people attain a right to education without discrimination and on the basis of equal opportunities.¹⁴ Uganda ratified this treaty in September 2008 and is therefore under international obligation to fulfil that requirement in higher education.

3.2 An Overview of My (the Researcher's) Experiences of Education in Uganda

People in my community in Uganda regard my doctoral studies, as luck for me. To a large extent I do agree with their point of view, in light of my experience going through all levels of education in Uganda as a disabled person.

Around the time I started primary education in the mid-1970s, the concepts of a right to education and equal opportunities for disabled people were remote in the experiences of my community as such, education for disabled children as well as

¹³ See Uganda Bureau of Statistics (UBOS), '2012 Statistical Abstract,' table 2.2.8: Secondary School Students with Special Needs 2007-2010 (Uganda Government, Kampala, June 2012) p. 14. www.ubos.org accessed on 17th September 2013.

¹⁴ CRPD art 24

their future was bleak. They were chains of barriers a disabled child had to break through in order to attain education; they included empathy, prejudices, negative attitudes and beliefs about disability both at the community and school. Long distance commutes from and to school were additional challenges I reckoned with throughout my entire primary level of education. Besides those challenges, movement for me on crutches on muddy village footpaths during the rainy seasons was nearly impossible. However, the most interesting experience in all these seemingly debilitating conditions was the passion of fellow pupils to assist me during those difficult times; notwithstanding sometimes teasing from some of them. The 'big' pupils, especially the girls would carry me on their backs across muddy places on the paths. Obviously, under those conditions, disabled people would attain education through sympathy not as a right. For me, it was both sympathy as described and inspiration from my parents that has seen me reaching this level of education. At the time I was giving up education at primary level due to the long distance commute. My father passionately encouraged me to brave through difficulties I encountered during school. My zeal to study was powered by his words of encouragement: 'I give you a pencil; you will eat out of it. It will get you out of poverty, prejudice and the debilitating issue surrounding your disability. If you abide by its rule, you yourself will be a witness of this gift.' He has remained with me forever through these words and they were a constant source of strength during my research.

When I joined secondary school (1985-1992), I got relieved off the long distance commute as I was in a boarding school. Regular schools those days had no idea of handling a disabled student, except showing empathy on them. Prejudices, negative attitudes and beliefs about disability were there but varied from teacher to teacher. Like in the case of primary, also throughout my entire secondary education fellow students provided me all the personal assistance I needed as a disabled student.. Rarely did they consider me a burden. Even during the time of water crisis, they made it their duty to ensure I had bathed and washed. They would also collect meals from the dining hall for me. Even during the time of insurgency that hit Teso 1986-1992, I was not abandoned by the students.

My undergraduate university education (1992- 1995) was no different in the way I received support from fellow students. Unlike my primary and secondary education where physical accessibility wasn't a challenge as there were no stairs to mount. This became my immediate challenge in the university to reckon with. In addition to mounting stairs daily, were also reasonably long distances from my hall of residence to the lecture rooms and library. Moreover, a change in one lecture to another meant a change in the lecture rooms. Most often, it was moving from one faculty / department to another. Some faculties are quite considerable distances apart. Because of these distances, during my second year, I 'opted' to skip attending some lectures. When I realised missing lectures would disadvantage me in the end, I approached one lecturer whose lectures I found difficult to attend regularly to explain my challenge. Whereas this lecturer acknowledged my challenge, he only counselled me that my situation could not be addressed as the option of changing either lecture room or time for the lecture would affect all lectures in the university as the timetable is centrally made taking account of the lecture rooms. I did proceed any further with the complaint as I thought, his explanation was logically correct. It is now, that I am realising that I was ignorant of my rights to keep demanding for a possible solution that would suit me. I should have proceeded with a complaint to the Dean of the Faculty or to the Academic Registrar or even to the Deputy Vice-chancellor Academics. At that time, I thought it was just enough to explain my position to the relevant authority. If my concerns could be solved, well and good; if not, I continue braving through those challenges. After all, the university had no known formal support for disabled students. If a disabled student received support from the university it would be at the discretion of the Dean of Students. What is now guaranteed by CRPD as a reasonable accommodation was generally lacking at that time. If such related practice was done then it was informal and was between the concerned lecturer and disabled students and would arise out of sympathy of the lecturer.

I joined the world of work of disability rights campaigning (1997- 2007). On access to education, the focus of the disability campaigns nationwide was centred on making primary education inclusive for disabled pupils. This was in response to the growing numbers of disabled pupils in primary schools due to the introduction of

the universal primary education policy 1998. Much emphasis was then placed on creating awareness to communities about the rights of disabled pupils to education and the policy makers to make primary education accessible for disabled pupils. On the side of government much of its funding allocated to education was allocated for primary education. On disability inclusion, more teachers were trained in special educational needs. A programme to facilitate disabled pupils access education called Educational Assessment Resource Services (EARS) was established in every district. EARS provided in-service training of teachers in special needs education. It also carried out assessment of disabled pupils and providing advice on placement of such children to relevant schools. Therefore, it could be stated that both government attention on inclusive education and disability rights campaigns in Uganda were focused on primary level of education.

When I enrolled for postgraduate studies (MA 2000-2003; and the Postgraduate Diploma in Project Planning and Management (PGDPPM) 2002-2003) in two universities, I could see that there was no significant change in the universities in regards to equal opportunities for disabled people in higher education. What was significant in public universities was admission of disabled students through affirmative action. The support provided in public universities was mainly welfare support and was largely adhoc still based on discretion of the Dean of Students. Around that time in Uganda, there was increased human rights awareness, increasing disability rights campaigns and burgeoning disability law and policy. But all these developments rarely were making noticeable progress in improving the educational situation for disabled students in human rights terms in higher education. Especially in light of the CRPD) requiring that persons with disabilities have a right to education without discrimination and on the basis of equal opportunities.¹⁵

Those experiences led me to question the extent to which Uganda is achieving an inclusive higher education for disabled people in light of the developed disability legal framework and increasing disability awareness in the country. My thinking as

¹⁵ CRPD article 24

described above was grounded on the growing inclusive environment for disabled pupils at lower levels of education that is seen surprising higher education with large numbers of disabled students, yet higher education appears not ready for disabled people, more so given the critical challenges facing Ugandan higher education such as inadequate funding and inadequate space visa-vi increasing enrolment as described before in this section.

4. Scope of the Study and the Overall Research Methodology

The focus of this research as already stated in section 3 above covers the scope, implementation and impact of the Uganda disability legislation on higher education; and the extent to which its provisions on higher education effectively implement the CRPD. Drawing from the scope of the study, the study is largely an interdisciplinary study of the disability law in the text and various ideological and policy factors in respect of disability inclusion in higher education. To achieve the aim of the research, the study takes both a theoretical analysis of the scope and the implementation of the disability law and empirical approach to determine its impact in higher education. Because of the interdisciplinary nature of the study, a socio-legal methodology is appropriate as it brings out the impact of the law as stated in the text on policy development for disabled people in higher education in Uganda. The detail analysis of socio-legal research methodology is outside the scope of this study. However, it is sufficient to state that, a socio-legal study is the study of law in its social context.¹⁶ That is to say how law works in practice; the operation of law and impact of law and legal processes in society¹⁷ or simply ‘an inquiry whether law works the way we desire and if not how can it be made to do so.’¹⁸

¹⁶ D Harris ‘The Development of Socio-Legal Studies in the United Kingdom’ HEINONLINE 3 (3) Legal Studies 315-33 http://heinonline.org/HOL/Page?handle=hein.journals/legstd3&div=31&g_sent=1&collection=journals accessed on 27th July 2010.

¹⁷ P Selznick, ‘Law in Context Revisited’ (2003) 30 Journal of Law and Society 177, 186. See also, Socio-Legal Newsletter No. 60 Spring 2010. Page 5.

¹⁸ B Z Tamanaha, *Realistic Socio-legal Theory: Programmatic and a Social Theory of Law* (Clarendon press, Oxford 1997) 7.

Therefore, it provides both the theoretical and empirical dimension of research, which is best, suited for this research. The details of empirical methodology are covered in chapter five and the extent to which the disability legislation has been translated into wider access policies for disabled students and its effects to people with a range of impairments in higher education is in the chapter that follows- chapter six. The theoretical dimension of the research is the normative and contextual underpinnings of the research- the social model of disability and the notions of equality and non-discrimination. Its overview is provided below.

The social model of disability and the notions of equality and non-discrimination provide a theoretical framework informing the realisation of a right to education as well as the rights for disabled people because they influence in the way disability is understood and the drafting of the disability discrimination law. For this research, the social model and the notions of equality also provide the normative framework against which the CRPD is evaluated and Uganda's effort to implement it. The detail analysis of the social model of disability and notions of equality are covered in chapter two. In brief a social model of disability is theoretical understanding of the concept disablement from a socio- political perspective¹⁹ and demands for the removal of the society's economic, environmental and cultural and other barriers against disabled people for their equal participation.²⁰ While the notion of equality and non-discrimination provides a normative framework informing the non-discrimination law like the disability discrimination laws as they are the foundation of the human rights laws.²¹ Therefore, this study also explores the way in which equality formulations such as direct discrimination, indirect discrimination and reasonable accommodation have been developed in respect to disability equality in higher education and how the equality formulations influence equalisation of opportunities for disabled people in higher education. Relevant cases law and other legal provisions on equality from various jurisdictions will also be cited for

¹⁹ M Oliver, *Understanding Disability: From Theory to Practice* (Palgrave Macmillan, Basingstoke 2009) 57.

²⁰C Barnes and G Mercer, *Exploring Disability* (Polity Press, Cambridge 2010) 30.

²¹ General Comment No. 18 of the ICPR Non- Discrimination, para 1.

purposes of clarifying arguments but not for comparison purposes in order to widen the research analysis and scope.

In regards to international human rights law obligations, the study also explores the UN normative human rights law framework on education with particular reference to the CRPD's provisions on education and the way in which a right to education has been interpreted and developed through programmatic approaches, namely, Education For All (EFA) and the Salamanca Statement and Framework For Action on Special Needs Education (the Statement).

In regards to Uganda disability law, the study critically analyses the Uganda disability legal framework and its implementation in higher education. Particularly examining how the concept of non-discrimination of disabled people in education is being put into practice in higher education. The study also analyses the social model of disability and its implications to disability inclusion in higher education.

In conclusion, the purpose of the theoretical analysis is to throw light on the limits and potential of non-discrimination law to secure education rights of disabled people in higher education institutions. Based on the insights from the theoretical analysis and the findings of the empirical study, where possible, the research explores how the current Ugandan disability law and policy should be developed to achieve disability inclusion in higher education in line with international human rights law obligations.

5. Context and Justification of the Study

5.1 Context

Uganda has committed itself to uphold the UN Human Rights norms by ratifying various UN human rights treaties,²² including the recently adopted CRPD. The current constitution of Uganda reflects a similar commitment. Chapter four of the constitution guarantees protection and enjoyment of fundamental rights and freedoms to every citizen. Article 21 of the constitution, generally reaffirms the principle of chapter four that the enshrined fundamental rights and freedoms of the individuals in the constitution are inherent and not granted by the State; and that, these rights and freedoms shall be respected, upheld and promoted by all organs and agencies of government and by all persons.

Among the rights enshrined in the constitution include a right to equality and freedom from discrimination,²³ a right to education to all,²⁴ a right by marginalised groups including disabled people to affirmative action measures in guaranteeing their equality in society²⁵ and rights of disabled people to respect and human dignity, and the State and society taking appropriate measures to ensure disabled people realize their full mental and physical potentials.²⁶ Further to the realization of rights of disabled people, the constitution requires Parliament to enact laws appropriate of protection of disabled people.²⁷

²² According to the UN Treaty Body Data Base, as at November 2010, out of the 9 UN human rights treaties, Uganda has either accessed or ratified 8 and signed one. However, has not taken action on three UN human rights optional protocols, namely, Second Optional to the International Covenant on the Civil and Political Rights (CCPR- OP 2- DP) Optional Protocol to the International Covenant on the Economic, Social and Cultural Right (ICESCR-OP) and the Optional Protocol to the Convention on the Elimination of forms of Discrimination Against Women (CEDAW- OP). Information available at <<http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>> accessed on 25th November 2010.

²³The Constitution of the Republic of Uganda 1995, Article 21.

²⁴ Ibid Art 30.

²⁵ Ibid Art 32(1)

²⁶ Ibid Art 35(1).

²⁷ Ibid Art 35(2).

Of the constitutional provisions on disability rights, affirmative action is seen to be most commonly translated into practice. The aim of affirmative action is redressing the imbalances that exist between the marginalized groups and other groups in society. Since its enshrinement in the constitution, affirmative action appears to have been successful in bolstering wide-ranging legal provision on disability inclusion, including guaranteeing the election of disabled people into political positions in the country and consequently, bringing in some policy changes in favour of disabled people. In education, Uganda appears to have expanded access to education for disabled people at all levels. In particular, the Universal Primary Education (UPE) and Universal Secondary Education (USE) policies make it mandatory that disabled pupils have education (More discussion on this is reserved for chapter 3 where it suits best the aim of this chapter is only introducing the research). Also, educational structures are set up to support education of disabled pupils at primary and secondary level, such as training of teachers to diploma level on special needs education and establishment of a special needs education desk by the Uganda National Examinations Board (UNEB) to cater for the needs of disabled children in examinations. Because of such favourable education policies and an educational infrastructure for inclusive education for disabled people as noted in before, nearly 1000 annually are projected to join higher education by 2010. However, similar infrastructure and policies do not exist for higher education. Institutions of higher education do not therefore appear to be ready for disabled people. This raises the question of compatibility of Ugandan law with the obligation in international human rights law to ensure disabled students' access to higher education without discrimination and on the basis of equal opportunities. One of the aims of this study, as noted above, is to investigate the extent to which Ugandan law and policy are working to achieve inclusive higher education for disabled people in line with human rights instruments including the CRPD.

5.2 Justification for the Study, Originality and Contribution to Research

This study aims to make two contributions to general research. The first one is its theoretical contribution to existing literature on disability inclusion in higher

education, particularly in the Ugandan context. The second one is its practical contribution of proposing a framework for further development of the Ugandan disability policy and legislation.

This is the first study on Uganda which critically assesses the impact of the disability legislation on people with a range of impairments in the institutions of higher education and examines the extent to which these institutions' policies are compliant with Ugandan disability law. It is also the first study to examine the extent to which Uganda disability law and policy are working to achieve inclusive higher education for disabled people in line with human rights instruments including the CRPD. Its proposed framework of improving the legislation by drawing on the social mode of disability and conceptions of equality and non-discrimination extends its originality.

Whilst Uganda is in the international limelight for its disability inclusion with regards to political participation of its disabled people and having a strong, articulate and representative disability movement,²⁸ its literature on disability inclusion in higher education is rare. Further, while comprehensive reviews of Uganda higher education have been undertaken by funding bodies²⁹ and the National Council for Higher Education (NCHE),³⁰ disabled students are still invisible in these reports. Again, while national reviews on disability have been undertaken by the national disability organisations and by international

²⁸ AK Dube, 'Participation of Disabled People in the PRSP/PEAP in Uganda' in B Albert (ed), *In or out of Mainstream? Lessons from Research on Disability and Development Cooperation* (Leeds Disability Press, Leeds 2006) 134.

²⁹ See X Liang, 'Uganda Tertiary Education Sector' (Human Development Sector, African Region, World Bank 2004). http://siteresources.worldbank.org/AFRICAEXT/Resources/no_50.pdf accessed on 23rd September 2010.

³⁰ See National Council for Higher Education, 'State of Higher Education and Training in Uganda 2006: A report on Higher Education Delivery and Institutions' <<http://www.unche.or.ug/brief.php?id=27>> and 'State of Higher Education and Training in Uganda 2005: A report on Higher Education Delivery and Institutions' <http://www.unche.or.ug/brief.php?id=26> both websites accessed on 12th January 2011.

development partners,³¹ these reports contain scanty information on how institutions of higher education are including the disabled people. This study aims to contribute to this literature by filling these gaps.

6. Structure of the Thesis

The thesis is divided into seven chapters as follows. Chapter one has introduced the research

Chapter two is on the social model of disability and conceptions of equality and non-discrimination. The chapter critically discusses the social model of disability and the conceptions of equality and non-discrimination and their implications for non-discrimination law with specific attention to disability discrimination and inclusion in higher education. The discussions in this chapter set out a theoretical framework within which to situate the discussion of the CRPD and of Ugandan law and policy in later chapters. It also throws light on the limits and potential of non-discrimination law to secure education rights of disabled people in higher education.

Chapter three places the research in context of the UN normative human rights law framework on education with particular reference to the CRPD's provisions on education. Particularly analysing the benchmarks for achieving a right to education codified in the international human rights law instruments. The chapter will also explore the way in which a right to education has been interpreted and developed through programmatic approaches, namely, Education For All (EFA) and the Salamanca Statement and Framework For Action on Special Needs Education (the Statement). Although the focus of such approaches has been primary and secondary education, the extent to which they throw light on entitlements to higher education will be considered.

³¹ R Lang and A Murangira, 'Disability Scoping Study' (DFID Commissioned Study Report 2009).

Chapter four discusses the Uganda disability legislative framework, including its provisions on education and the context within which the law operates. It evaluates the current disability law and policy and practice using the conceptions of equality (informed by social model of disability) and presumably as enshrined in the CRPD.

Chapter five is the methodology chapter for the empirical work. It outlines, describes, analyses and appraises the research strategies and data collection procedures appropriate to the empirical research. Ethical issues in legal research relating to this study will also be considered in this chapter.

Chapter six presents, explores analyses, compares and contrasts the findings of the empirical research, showing how the rights of disabled students are being met in higher education in Uganda.

Chapter seven is the conclusion chapter: It plays a significant role in this thesis. It provides a summary of the findings of this research. Finally, it proposes strategies for bolstering the inclusion of disabled people in higher education in Uganda, in line with the current context of the Ugandan disability law and the social model of disability, concepts of equality and non-discrimination and the requirement of international human rights norms including the provisions of the CRPD.

Chapter Two

Notions of Equality and Non-Discrimination and Social Model of Disability

1. Introduction

This chapter discusses the social model of disability and conceptions of equality and non-discrimination and their implications for non-discrimination law with specific attention to disability discrimination and inclusion in higher education. The ultimate purpose of the chapter is to provide a theoretical framework within which to situate the discussion of the Convention on the Rights of Persons with Disabilities (CRPD) and of Ugandan law and policy in later chapters; and to throw light on the limits and potential of non-discrimination law to secure education rights of disabled people in higher education. Relevant case law and other legal provisions on equality from various jurisdictions have been cited in this chapter for purposes of clarifying arguments but not for comparison purposes.

The chapter is arranged as follows. Section 2 provides an overview of the substantive equality aspirations. Under this, the meaning and purpose of equality is explored, followed by examining the equality models i.e. formal equality, equality of results and equality of opportunity. Section 3 analyses the social model of disability, its relevancy and limitations in bringing access to higher education by disabled people. Section 4 discusses the implications of equality and the social model of disability on non-discrimination law for disabled people. Section 5 concludes the chapter.

2. Substantive Aspirations

2.1 Meaning and Purpose of Equality and Non-discrimination

Equality and non-discrimination are fundamental norms of human rights law,¹ based on the philosophy of inherent dignity and of the equal and inalienable rights of all human beings.² Although these concepts are central in explaining human rights, they appear to have no single and precise definitions. As such, there is a diverse spectrum of opinions on what equality is. This is arising from the different interpretations the concept equality has been subjected to³ in a quest to bring about non-discrimination of individuals or groups in a diverse human family.⁴ Arguably, these opinions converge to state that genuine equality means non-discrimination. McKean puts it succinctly that, equality means non-discrimination and non-discrimination is a corollary of equality.⁵ Therefore, equality and non-discrimination are opposite and equivalent concepts.⁶ That is to say, they are positive and negative forms of the same principle.⁷ Equality (positive aspect)

¹ UN Charter Art 1(3) and 55 (3), the Universal Declaration of Human Rights (UDHR) Art 2, the International Covenant on Civil and Political Rights (ICCPR) Art 2(1) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) Art 2(2).

² P G Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania, Philadelphia 2003) 4-36. See also the preamble of the Universal Declarations of Human Rights (UDHR) and art 1.

³ These developments are through theoretical discussion of equality, doctrinal analysis of equality provisions in national, regional, and international law, judicial interpretations and interpretations by the UN treaty monitoring bodies.

⁴ It is not easy to list how diverse a human family is. However, according to the international human rights law framework, the diversity of human family is seen on the grounds such as race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵ W McKean, *The Meaning of Discrimination in International and Municipal Law*. *The British Year Book of International Law* 1970 (Royal Institute of International Affairs, London 1971) 177-192.

⁶W McKean, *Equality and Discrimination under International Law* (Clarendon Press, Oxford1983) 288.

⁷ J Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania, Philadelphia, PA 1999) 45. Also, A F Bayefsky, 'The Principle of

connotes identical treatment of individuals unless some alternative justification is provided; while non-discrimination (the negative aspect) connotes allowing differences in treatment, unless they are based upon a number of expressly prohibited grounds to achieve equality.⁸ Under international human rights law, the negative aspect of equality has been interpreted to mean that the enjoyment of rights on an equal footing does not mean equal identical treatment in every instance;⁹ and not every differentiation in treatment constitutes discrimination so long as it is reasonable, objective and directed to a legitimate aim.¹⁰ It is such understanding of equality which provides for its development from requiring for equal treatment of individuals in every instance to providing for equal opportunities so as to bring non-discrimination of individuals in their enjoyment of human rights. In that perspective, the concept non-discrimination means:

*any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*¹¹

From the explanations above, the substantive aspirations of equality and non-discrimination is creating a fairer world, where everyone can participate and has the opportunity to fulfil their potential and to enjoy fundamental human rights irrespective of individual or group characteristics. Therefore, the non-

Equality or Non-discrimination in International Law,' Human Rights Law Journal 11/1–2 (1990), p. 1, n. 1.

⁸ M Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press, Oxford 1995) 154.

⁹ UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.unhcr.org/refworld/docid/453883fa8.html> accessed 5th August 2010, par 8

¹⁰ *Ibid* par 13.

¹¹ *Ibid* par 7.

discrimination law should take account of the substantive aspiration of equality in order to ‘use legal and non-legal methods to eliminate the meanings, practices and institutions which unjustifiably discriminate, stigmatise or disadvantage members of groups in important areas of social life.’¹² Further discussions and clarification on this is in the models of equality below.

2.2 Models of Equality- Equality of Treatment, Results or Opportunity

2.2.1 Formal Equality

Formal equality (also known as identical treatment or equality of treatment) entails identical and consistent form of treatment of individuals based on an Aristotelian precept that equals be treated equally.¹³ It is premised on human understanding that fairness requires consistent treatment.¹⁴ Commentaries on equality law view formal equality to be of three interrelated attributes:¹⁵

- Equality of individuals should always be symmetrical; applying with equal strength regardless whether it is directed against or in favour of a particular group. In this, formal equality presupposes that justice is an abstract, universal notion, and cannot vary to reflect different patterns of benefit and disadvantage in a particular society.

¹² N Bamforth, M Malik and CO’Cinneide, *Discrimination Law: Theory and Context: Text and Materials* (Thomson Sweet Maxwell, London 2008)173.

¹³ S Fredman, *Discrimination Law* (OUP, Oxford 2002) 7-11.

¹⁴ S Fredman, ‘Discrimination Law, second edition’ (OUP, Oxford 2011), p.8. See also, W Murray, ‘Equality and Social Rights: An Exploration in Light of the South African Constitution,’ (2007) Public Law, pp. 748-769 (751). Available at SSRN: <http://ssrn.com/abstract=2264014> accessed 2nd January 2014.

¹⁵ See for example, S Fredman (n 14); Shepard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada* (McGill-Queen’s University Press, 2010); Marc De Vos, ‘Beyond Formal Equality: Positive Action under Directive 2000/43/EC and 2000/78/EC.’ The Thematic Report (Office for Official Publications of European Communities, Luxemburg, 2007)

- Formal neutrality, an aspiration of individual merit,¹⁶ that, everyone should be treated according to his/her merits as an individual in his/ her own right in the distribution of societal benefits.
- Neutral decision-making in dispensing justice (equality before the law). For example, the state should be neutral as between its citizens, favouring no one above any other. It is also procedural justice in a sense that neutrality can be exercised through proving that there was a breach of consistency in one part.

A breach of any of those principles amounts to direct discrimination. Discrimination which is intentional or overtly directed to particular individuals or groups and is usually grounded on prejudices or stereotypes labelled on those group(s) of individuals (details in section 4).

2.2.2 Equality of Results

Equality of results connotes that, attaining genuine equality requires treating individuals differently based on their groups in some contexts to secure equal outcomes.¹⁷ It is primarily concerned with achieving a fairer distribution of benefits and examines discrimination with outcome analysis.¹⁸ Here, specific differences are targeted and a different approach would be used in attaining specific results in a particular area. In the context of education for example, a segregated form of education or affirmative action policies in admission to higher education provide examples of equality of results approach. From that example, the limitation of equality of results in relation to achieving the overall goal of equality (non-discrimination) in education is apparent. A segregated form of education is viewed to be perpetuating exclusion of disabled people from mainstream education and moreover, conceptualized based on the medical model

¹⁶ S Fredman (n14) p.8

¹⁷ S Fredman (n13) 7-17.

¹⁸ Ibid page 11-14.

of disability, that, an individual disabled people is the problem not society (more discussion in section 3). While affirmative action policies on the other hand are also viewed to be mainly addressing discrimination at the entry point and leave the discrimination intact beyond that point (more discussion in section 4).

Degener and Quinn generally observe that equality of results approach could perpetuate injustice, ‘because its focus is on results rather than treatment.’¹⁹ This means that, by focusing on results, equality of results approach is limited in espousing policies that would eliminate structural discrimination embedded in society hindering the development of an inclusive society for all. Despite such an argument, treatment of disabled people presents a challenging scenario because they are not a homogenous group of people whereby no single approach to equality can bring their non-discrimination in society. Therefore, in the context of disability treating individuals differently according to their impairments, including applying the equality of results approach is necessary in some instances, particularly in education. In education, it is seen that despite critical arguments for mainstreaming, special schools are still relevant. In fact, even in what is seen to be a mainstream school, special units for particular category of disability are adopted. Therefore, no one approach can be advanced in relation to diversity of disabled people in-light of different disabling environments in education.

2.2.3 Equality of Opportunity

Equal opportunity ‘steers a middle ground between formal equality and equality of results.’²⁰ It aims to deliver measures to eliminate all forms of institutional discrimination. It rejects policies that seek to correct discrimination by quotas or targets mainly aiming at outcome²¹ in the form of quantitative results. In the context of disability, it entails a comprehensive approach which aims at asserting

¹⁹ T Degener and G Quinn, ‘A Survey of International, Comparative and Regional Disability Law Reform’ in ML Breslin and S Yee (Eds), *Disability Rights Law and Policy: International and National Perspectives* (Transnational Publishers, New York 2002) 8.

²⁰ S Fredman (n 14) 15.

²¹ Ibid 15.

disabled people's rights without isolating them from mainstream society. The inclusive education approach best illustrates this in education, because inclusive education requires the dismantling of systemic barriers in the institutions of education such as accessibility related challenges, ignorance of staff about specific disability needs, and provisions, criteria or practices which are historically embedded in education generally. It requires matching the needs to the appropriate support to bring about equal participation of disabled people in teaching and learning.

From explanations equality of opportunity above, its goal is removing inherent disadvantage that particular groups experience²² and calls for an expanded model of addressing barriers beyond the approaches of the perspective of the single perpetrator and the single victim alone. Its focus in varying degrees is on group characteristics and disadvantage, group impact, actual results, material equality and desired outcomes.²³ Therefore, equality of opportunity concerns with three important aspects- outlawing non-intentional discrimination, removing practices embedded in institutional policies, norms and standards which are neutral in nature but discriminatory in effect and a multi-dimensional understanding of equality aimed at redressing disadvantage, accommodating difference and facilitating full participation.

²² Committee on Economic, Social and Council Rights (CESCR), General Comment No. 16: on the equal right of men and women on the enjoyment of all economic, social and cultural rights (Art. 3 of the Covenant on Economic, Social and Cultural Rights), 11/8/2005, E/C.12/2005/4, para. 7.

²³ Marc De Vos, 'Beyond Formal Equality: Positive Action Under Directive 2000/43/EC and 2000/78/EC.' The Thematic Report (Office for Official Publications of European Communities, Luxemburg, 2007) 10.

3. Social Model of Disability

3.1 Meaning and Development

A social model of disability is theoretical understanding of the concept disablement from a socio-political perspective. That is to say an ideology explaining the relationship between people with impairments and their participation, the exclusion and the discrimination they face in society.²⁴ It emerged from the political activism of disabled people's movements in the UK around the 1970s following definition of disability advanced by the Union of Physically Impaired People Against Impairment (UPIAS) as one of the Fundamental Principles of Disability.²⁵ UPIAS argued that, disability is something imposed on disabled people on top of their impairment by an oppressive and discriminating social and institutional structure.²⁶ Upon that direct experience and understanding of disability by disabled people themselves, the social model was developed by the scholars such as Michael Oliver influenced by the Marxist sociology; and the model is further been theorised by disability studies. In this ideology, disability should be understood as the inability to participate in mainstream activities because of society's economic, environmental and cultural barriers against people with impairment.²⁷ In that way the social model centres the problem people with impairments face on society but not on the individual who has impairment²⁸ and thus, argues for the removal of the disabling

²⁴M Oliver, *Understanding Disability: From Theory to Practice* (Palgrave Macmillan, Basingstoke 2009) 57.

²⁵ M Oliver, *The Politics of Disablement* (Palgrave Macmillan, Basingstoke 1996) 22.

²⁶ UPIAS, 'Fundamental Principles of Disability' (Union of the Physically Impaired Against Segregation, London 1976,) pp. 3-4.

²⁷ C Barnes and G Mercer, *Exploring Disability* (Polity Press, Cambridge 2010) 30.

²⁸ R Lang, 'The Development and Critique of the Social Model of Disability,' (Leonard Cheshire Disability and Inclusive Development Centre, UCL 2007) Full Working Paper Series <http://www.ucl.ac.uk/lc-ccr/centrepublishations/workingpapers> accessed on

13th November 2013

environment for equal participation of people with impairment.²⁹ The general principles underpinning the social model of disability are that impairment and disability are distinctively different³⁰ i.e. disability is a social oppression not impairment. Disability is a social construction, and to a large extent is culturally produced and culturally structured.³¹

The view of the social model of disability contrasts the long known consideration of the individual / medical understanding of disability which views social restrictions for disabled people as caused by impairment or individual deficit³² and informs the distinctions between impairment, disability and handicap provided in the International Classification of Impairment, Disability and Handicaps by the World Health Organization (WHO). In the WHO distinction,³³ impairment is defined as any loss or abnormality in the functioning of the body organ; disability as the restriction or lack of the ability to perform tasks in a manner or within the range considered normal for human being; and handicap as the social disadvantage arising from either impairment and/or disability. Therefore, the focus is on the individual solution such as correcting, removing or curing the impairment or providing personal assistance. This view centres the problems of disability within an individual with impairment. That is what social model challenges, as it defines disability as a social oppression, not a form of impairment and distinguishes between the impairment that people have, and the disability³⁴ or oppression which they experience.

²⁹ M Oliver (n25) 11.

³⁰ For historical context and the foundational development of this notion of social model of disability see UPIAS 1996, see also M Oliver, *Understanding Disability: From Theory to Practice* (Basingstoke, Palgrave 1996) 4-5.

³¹ M Oliver, *The Politics of Disablement* (Basingstoke, Macmillan 1990).22.

³² C Barnes and G Mercer, *Exploring Disability* (Polity Press, Cambridge 2010) 30- 33.

³³ see WHO, 'The International Classification of Impairments, Activities and Participation (ICIDH-2)' (World Health Organization, Geneva 1997).

³⁴ M Oliver (n24) 38.

The social model conceptualisation of disability has no doubt repositioned disabled people as rights claimants through bringing about the disability legislation,³⁵ including influencing the adoption of the UN CRPD. It has also strengthened the building of the social movement of disabled people,³⁶ by demanding barrier removal it is a liberation ideology for disabled people and it improve the self esteem for disabled through confidence building and removal of stigma.³⁷ In Uganda, this research assumes that, the social model approach emerged when the National Union of Disabled Persons of Uganda (NUDIPU) was born in 1987 as a national voice for disabled people. NUDIPU's mission is to bring about long lasting disability social policy changes in Uganda and its formation was inspired by the international developments on disability around that time.³⁸ The working of NUDIPU remains largely based on the social model of disability's concept of advocating for the removal of environmental barriers, change of negative attitudes and empowerment of disabled people. Even the Uganda disability legislation is to a large extent based on the social model of disability. This is due to the involvement of disabled people in the enactment of the disability legislation through the 5 MPs for disabled people, more discussion on in chapter four.

³⁵ R. Transtadottir, 'Disability Studies, the Social Model and Legal Developments' in OM Arnardottir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009) 3-16. See also M Priestley, 'We're all Europeans now! The Social Model of Disability and European Social Policy', in C Barnes and G Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press, University of Leeds 2005) 17. R Hurst, 'Disabled Peoples' International: Europe and the Social Model of Disability' in C Barnes and G Mercer (eds), *The Social Model of Disability: Europe and the majority World* (The Disability Press, Leeds 2005) 74.

³⁶ T Shakespeare, 'The Social Model of Disability' in Leonard J. Davis (ed), *The Disability Studies Reader* (Routledge, London 2006) 197-200.

³⁷ T Shakespeare (n36) 268-269.

³⁸ NUDIPU, 'Background to the Formation of NUDIPU' at <http://www.nudipu.org.ug/history.php> accessed on 19th January 2011.

3.2 Social Model of Disability and Inclusive Education

Critical to the realisation of a right to education is an inclusive education approach, seen to be providing equal opportunity to all to access education regardless of one's backgrounds or disability.³⁹ To equalise opportunities in education, inclusive education argues for tackling school factors⁴⁰ so as to enable every child including a disabled child access mainstream schools in his/her community. Therefore, the ideology underpinning inclusive education is similar to the one of the social model of disability. Both aim to address issues of marginalisation, oppression, exclusion and discrimination while trying to centre the problem of disability on the environment not on the individual person with a disability. On this matter, inclusive education centres exclusion of a disabled child in education to the school environment not on the impairment the child has.

This is also a clear shift away from the tenet of segregated education for disabled people. The segregated education as based on different disabilities views the barriers to learning as being within the person with impairment⁴¹ and was conceptualised based on the medical model of disability. Therefore, the shift towards inclusive education approach argues for schools to be reformed and pedagogy improved in ways that will lead them to respond positively to pupil

³⁹ See R. Reiser, *Implementing Inclusive Education: A Commonwealth Guide To Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities* (Commonwealth Secretariat, London 2012), See also M Ainscow, 'Developing Inclusive Education Systems: What Are The Levers For Change?' *Journal of Educational Change*, Springer 2005, vol (6) 109–124 DOI 10.1007/s10833-005-1298-4

⁴⁰ The 'concept school factors' is itself appears broad in meaning in regards to the meaning of inclusive education. It entails education policy reforms, attitudinal change, making schools accessible and adaptable to the needs of the all learners. See also (UNESCO, 2005) p.15.

⁴¹ E Winter and P O'Rawl, 'Literature Review of the Principles and Practices relating to Inclusive Education for Children with Special Educational Needs' (NCSE 2010).

diversity—seeing individual differences not as a problem to be fixed, but as opportunities for enriching learning.⁴²

However, unlike the social model, inclusive education to some extent acknowledges the role played by impairment in exclusion process, it is noted that ‘children and young people are not defined only by their special educational needs; other factors such as social disadvantage, family background, gender or ethnic group are critical to understanding needs and providing for the whole child.’⁴³ from that observation, the concept ‘special educational needs’ also includes needs arising from a disability. This acknowledges, role played by disability in education. Practical evidence to that in Uganda are special educational units within some mainstream schools.

3.3 The Limits of the Social Model of Disability

Despite their robust ways of dealing with the question of inclusion, it should not be assumed, however, that there is full acceptance of the wisdom of social model or inclusive education. Critical limitations on each have emerged. On inclusive education, extent to which an inclusive education is relevant to all disabilities⁴⁴ i.e. whether it is achievable or how can it be achieved is a major source of criticism. Disability activists especially the deaf and those with learning disabilities in Uganda argue that inclusive education in the long run disadvantage the deaf pupils or pupils with learning disabilities. They also hold opinion that the positive side of inclusive education is overestimated yet; there is lack of qualified teachers to teach effectively deaf pupils or pupils with learning disabilities. This shows that inclusive education is a complex issue. The question then is what

⁴² UNESCO, *Guidelines for inclusion: Ensuring access to education for all* (UNESCO, Paris 2005) p. 9.

⁴³ E Winter and P O’Rawl (n41).

⁴⁴ G Hornby, ‘Inclusive Education for Children with Special Educational Needs: A Critique.’ *International Journal of Disability, Development and Education*, (2011) 58 (3) 321–329; See also generally M Farrell, *Debating Special Education* (Routledge, London 2010)

Warnock raises, what needs to be defended- a right to learn or a right to learn in the same environment? Warnock argues that, it is the right to learn that must be defended, not the right to learn in the same environment.⁴⁵ Warnock argument is consistent with the arguments some disability activist in Uganda are advancing.

Another general observation about poor countries like Uganda regarding education is that education is more about the availability and redistribution of resources, and this is the same fact that cannot be underestimated in relation to inclusive education. As Rieser rightly points out, it takes political will, available human and material resources to provide inclusive education.⁴⁶ Unfortunately, these are the very factors that are lacking/ inadequate in Uganda that are seen to be rendering the implementation of inclusive education problematic.

While on the social model, the main criticism is on extent to which impairment and disability is separate in the exclusion process of disabled people and extent to which disablement is contingent upon social and cultural factors. These criticisms of social model point out that not all disabled people across the range of impairments get a fair deal in the model. Also, given that disabled people not as such a monolithic, homogeneous entity, it is challenging to construct ‘a grand theory’ of disablement that is valid and pertinent for all impairment groups, across all cultural settings.

Therefore, it’s arguable that, the social model provides a narrow understanding of disability, grounded on the view that impairment and disability are separate.⁴⁷ Proponents of this claim contend that for the vast majority of the world’s disabled people, ‘impairment is very clearly primarily the consequence of social and

⁴⁵ M Warnock, *Special Educational Needs: A New Look* (Philosophy of Education Society of Great Britain, London 2005) 36

⁴⁶ See R. Reiser (n39) 99.

⁴⁷ L Crow, *Renewing The Social Model of Disability*, Coalition, July 1992, 5-9. See also, L Crow, “Including all our Lives; Renewing the Social Model of Disability”, in J. Morris (ed.) *Encounters with Strangers: Feminism and Disability* (London: Women’s Press, 1996),

political factors, not an unavoidable ‘fact of nature.’⁴⁸ They further argue that, whereas there is certainly a causal relation between oppression and disability, when society plays a strong role in excluding and marginalizing impaired people to maintain that disability is squarely socially caused, the social model is over-socializing disability.⁴⁹ Therefore, by distinguishing between impairment and disability, the model focuses on social discrimination faced by disabled people not on the intrinsic limitations associated with impairment, which also contributes to exclusion.

Another criticism is that, the model’s argument that barrier removal is a solution for people with impairment’s participation is also utopia idea as it is not achievable at some points. Because there are impairments where no amount of environment change would eliminate a disadvantage associated with it.⁵⁰ For example, an individual own experience of living with impairment on a daily basis, sometimes in a state of acute physical pain, has an important and valid role in experiencing disablement.⁵¹

Another criticism relates to the models argument that disability is an oppression, which is perceived as the common denominator that unites all disabled people. Given, differences in socio-economic or cultural backgrounds, it is contended that such an understanding of oppression is problematical, as both disability and impairment are socially and culturally constructed. Lang succinctly explains this issue by explaining that, what is meant to have ‘impairment’ and experience

⁴⁸ P Abberley, ‘The Concept of Oppression and Development of Disability,’ *Disability, Handicap and Society* (1987) Vol 2(1) 5-19.

⁴⁹ See L Terzi, ‘The Social Model of Disability: A Philosophical Critique.’ *Journal of Applied Philosophy* 2004 Vol 21(2) ; citing M Bury, ‘A Comment on the ICIDH 2’, *Disability and Society* 2000 15(7), 1073 -1077; also, C Thomas, ‘Disability Theory: Key Ideas, Issues and Thinkers’ in C Barnes, M Oliver and L Barton (eds) *Disability Studies Today* (Polity Press, Cambridge 2002) 44.

⁵⁰ T Shakespeare (n 36) 271.

⁵¹ L Crow (n47)

‘disability’ is therefore, by implication, culturally defined and will vary between societies.⁵² He further illustrates it with the case of an individual who has dyslexia. He explains that, in a predominantly rural agrarian society, such as South India, the fact that an individual cannot read and write is not likely to inhibit their ability to work and participate fully in local community life, and will not be popularly considered to be disabled, and thereby encounter oppression. However, a person who is dyslexic living in a western-based society is more likely to be unemployed, for in a myriad of ways, in order to function within society, there is a prerequisite for an individual to be literate. This the same view held by Shakespeare who argues that the social model is not helpful in understanding the complex interplay of individual and environmental factors in the lives of disabled people, because its understanding of disability is ‘narrow’,⁵³ in other words not wide enough to accommodate the experiences of all impairments. In terms of policy, the same argument contends that the social model is a blunt instrument for explaining and combating the social exclusion that disabled people face and the complexity of their needs.

To remedy the problem, Crow calls for a fresh look at the model and, in order to learn to include all the complexities, a focus on impairment and disability together.⁵⁴ Shakespeare advocates developing the approach initiated by WHO. In this approach, disability is recognised as a complex phenomenon requiring different levels of analysis and intervention, ranging from medical to the socio-political.

The CRPD seems to have attempted to recognise the complexities faced by the social model in recital (e) ‘recognising that disability is an evolving

⁵² R Lang, ‘The Development and Critique of the Social Model of Disability,’ (Leonard Cheshire Disability and Inclusive Development Centre, UCL 2007) Full Working Paper Series <http://www.ucl.ac.uk/lc-ccr/centrepublishations/workingpapers> accessed on 13th November 2013

⁵³ T Shakespeare (n36) 200.

⁵⁴ L Crow (n47)

concept...’and recital (i) ‘recognising further the diversity of persons with disabilities’ and in the definition of disability.

Other than the above criticism of the social model, in Uganda, as in other poor countries, the success of the social model ideology is hindered by poverty.⁵⁵ In Uganda, while the social model ideology is applied, it is very much limited in its ability to bring equal participation for disabled people due to the economic, environmental and cultural factors. For example, within the private sector, the accommodation of disabled people through barrier removal, a key argument of the model, is a critical challenge to enforce. This is evident in the enforcement of the accessibility standards, especially with small scale private investments,⁵⁶ which actually dominate the Ugandan economy. In higher education, similar circumstances are experienced. 81% of the universities are private universities.⁵⁷ Some of those universities are profit motivated. Additionally, some of the private universities operate on rented premises. In those circumstances, such universities would find providing accessibility for disabled people not only challenging but also additional cost that could be avoided by not admitting a disabled person. Even for public universities, the limited technological development and internet infrastructure appear to be a barrier for disabled people.

In this research the key issues about the social model raised above are central as they inform the investigation of the practice of inclusion of disabled people across

⁵⁵ This issue has been explored on literature on disability and poverty. See for example: B Albert, ‘Briefing Note: The Social Model of Disability, Human Rights and Development,’ Disability KaR Research Project: Enabling Disabled People to Reduce Poverty, September 2004; Shaun, ‘Disability, Poverty and Development: Critical Reflections on the Majority World Debate,’ *Disability and Society* 24:6, 771-784; A Sheldon, ‘Locating Disability in the majority World: Geography or Poverty?’ Paper presented at the Disability and Majority World: Challenging Dominant Epistemologies’ Conference, Manchester Metropolitan University, July 2010.

⁵⁶ National Council for Higher Education ‘State of Higher Education and Training in Uganda 2006: A report on Higher Education Delivery and Institutions’ p.7.

<http://www.unche.or.ug/documents/State%20of%20HE,%202006.pdf>> accessed on 12th January 2011.

⁵⁷ Ibid

a range of impairment in higher education. It is central, too, that the treatment of disabled people is informed by the meaning a given society or a service provider attaches to a disability.⁵⁸ At times it appears to refer ‘to limitation and incapacity, or else to oppression and exclusion, or else to both dimensions’.⁵⁹ However, poverty could have also affected the realisation of rights of disabled people in higher education.

4. Implications of Concepts of Equality to Non-Discrimination Law

4.1 Prohibition of Direct Discrimination

Prohibition of direct discrimination outlaws discrimination which is intentional or overtly directed to particular individuals or groups and is usually grounded on prejudices or stereotypes labelled on those group(s) of individuals.⁶⁰ It aims at bringing equal treatment of individuals in all aspects. On disability therefore, direct discrimination underlines the social model notion that disability is not the source of the discrimination disabled people experience but societal barriers erected against them as noted in section 3 above. In that way, prohibition of direct discrimination in equality law directly deals with ‘visible’ barriers and overt form of prejudices causing arbitrary decision-making processes selectively disadvantaging disabled people on grounds of their disabilities. However, the limits of direct discrimination in bringing about genuine equality generally relates to it disregarding inherent collective dimension of people which are also sources of discrimination⁶¹ and another, relates to proving a breach of equality treatment norm, this is arguably problematic.

⁵⁸ C Barnes and G Mercer, *Exploring Disability* (Polity Press, Cambridge 2010) 14-26.

⁵⁹ T Shakespeare (n36) 272.

⁶⁰ B Paul, ‘In Defense of the Anti-discrimination Principle,’ *Harvard Law Review*, Vol. 90, 1976, p.1.

⁶¹ C Sheppard, ‘Inclusive Equality: The Relational Dimensions Of Systemic Discrimination In Canada’ (McGill-Queen’s University Press, 2010).

Inherent collective dimension of inequality: By dealing with only overt form of barriers, prejudices or stereotypes, direct discrimination leaves out other sources of discrimination among individuals other than intentional discrimination. This is the inherent collective dimension of inequality such as group membership and entrenched inequalities or societal realities. These factors appear neutral in nature but have adverse effects on individuals based on their group characteristics. This is very much true for disabled people because in addition to prejudices or stereotypes, they also encounter barriers to participation specifically relating to their disabilities.⁶² This observation does not centre the problems of disability within an individual with impairment- the individual/ medical understanding of disability, discussed in section 3, but strengthens the social model understanding of disability by the fact that, disability is a diverse concept. Therefore, every category of disabled person has unique requirements which often require specific way of intervention.

The uniqueness of disability arguably makes it difficult relating the concept equality in service provision to disability. Consequently, as compared to other groups, disabled people are greatly excluded in society. The judicial interpretation on some of the disability cases attest to this uniqueness and are calling for a different interpretation of the equality legislation regarding discrimination on grounds of disability. The Supreme Court of Canada in the case of *Eldridge v British Columbia* [1997],⁶³ the Great Britain Court of Appeal in the case of *Aylott v Stockton and Tees Borough Council*⁶⁴ and EJC interpretation of the

⁶² Some of these factors include inaccessibility issues; attitudes towards their abilities (which are erroneously equated to inability); cultural believes and lack of mobility devices or/and personal assistance support.

⁶³ *Eldridge v British Columbia* [1997] 3 SCR 624 (Canadian Supreme Court) at para 65, see also S Fredman, 'Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India;' production of European Network of Legal Experts in the non-discrimination field (European Communities, 2012) p 58.

⁶⁴ [2010] EWCA Civ 910. Mr. Russell Aylott was an employee of Tees Borough Council. He had bipolar disorder, a condition that resulted in the claimant facing an intimidating environment in work. His line manager considered his behaviour towards other staff unprofessional,

British case of *Coleman v Attridge Law*⁶⁵ succinctly attest to uniqueness of disability in the interpretation of the equality law.

In the *Eldridge*, the Court pronounced that avoidance of exclusion of or discrimination against disabled people frequently requires distinctions to be made to take into account of the actual characteristics of disabled people.

In *Aylott*, the Court starkly states that, disability is uniquely different from other grounds of discrimination in that disability is composed of diverse disabilities which are in their own ways are unique and particular to their respective impairments and thus requires a different interpretation of the equality legislation in respect of discrimination on grounds of disability.⁶⁶

intimidating and inappropriate. *Aylott* also required to be provided with reasonable adjustment in work. In addition, his condition due to bipolar disorder was rendering him absent from work frequently and often for a long time; as a result, the council terminated his employment on the grounds of capability (health). *Aylott* sued, claiming direct discrimination, disability related discrimination and failure to make reasonable adjustments. He had succeeded on all the three grounds at the Employment Tribunal (ET) and was awarded compensation of £30,686.54 against the Council (para 5). However, the Council appealed successfully to the Employment Appeal Tribunal (EAT), which sent the case back to ET for re-hearing. In the Court of Appeal, *Aylott's* appeal on direct discrimination succeeded. It succeeded on the grounds that the employer's basis of dismissing *Aylott* was on stereotypical assumption of mental illness. It failed on disability related discrimination because the ET ruling (which was prior to *Malcolm* case) applied the principles established by the *Novocold* case which was overruled by the *Malcolm* case and in effect, ET had accordingly applied the wrong test.

⁶⁵ C-303/06 *S. Coleman v Attridge Law*, Steve Law, OJ C223 of 30.08.2008, p.6. This interpretation by the ECJ arose from British case of constructive dismissal of Ms. Coleman by the *Attridge Law Firm*. Coleman was a mother and sole carer of a disabled child. Because of that role she lost her job with her employer. Coleman argued before the Employment Tribunal that the Council Directive 2000/78/EC is intended to prohibit discrimination not only against disabled persons themselves, but also against individuals who are victims of discrimination because they are associated with a disabled person. Accordingly, disability discrimination law (then the DDA), should have been interpreted to protect people like her as well. The tribunal referred the matter to the ECJ for interpretation.

⁶⁶Fn 64 par.

In *Coleman*, ECJ interpreted that, in accordance with the Council Framework Directive 2000/78, protection under direct discrimination (then in the British DDA 1995) does not cover only disabled people but also extends to cover people who are not disabled but who are discriminated against because they are perceived to be disabled (perceived disability) or because of their association with a disabled person (discrimination by association).

The judicial interpretations regarding disability discrimination cited above and similar ones elsewhere are calling out for a rethink in the drafting, interpretation or enforcement of the equality laws in relation to disability. This means equality laws or sections of equality need to be redrafted to take account of how disability can cause discrimination. For example, the *Coleman* case extended the British equality law provision on direct discrimination to cover discrimination by association and perceived discrimination⁶⁷ (detailed discussion on that matter is beyond the scope of this thesis).

Challenge in proving a breach of equal treatment norm: To prove a breach of equal treatment requires a claimant to prove that he/she has been treated less favourably than others on similar situation like the claimant. This is grounded on the understanding that discrimination is principally about equal rather than fair treatment.⁶⁸ Proving a breach of equal treatment norm requires comparisons of treatments between individuals (use of a comparator). However, getting a suitable comparator is a hurdle to most claimants seeking remedy against direct discrimination as getting a suitable comparator is not an exercise of identifying the one logical comparator but may often be a value judgement that courts have to make.⁶⁹ In determining a suitable comparator under direct discrimination, who should a disability claimant compare his/her treatment with? Should a disabled person compare his/ her treatment with a non-disabled person who is not in the

⁶⁷ See British law, Equality Act 2010 Explanatory Note. Para 59.

⁶⁸Fn14

⁶⁹ Fn 14 166-172.

same material circumstances as the disabled person? Or should a disabled person compare his /her treatment with that of the non-disabled person who is otherwise in the same circumstances?

Fredman, generally observes that, a choice of a suitable a comparator is usually based on value judgment as to which of the myriad similarities and differences among people should be treated as relevant and which irrelevant.⁷⁰ To disability, the choice a suitable comparator must be made in a way which is sensitive to social meaning and context as disability has differing meanings espoused by the models of disability-the social and medical models, discussed in section 3 above. Therefore, on disability, as Fredman observes, the choice of a suitable comparator should be guided by the question; ‘is the reason for the less favourable treatment the individual's disability or not.’⁷¹ If it's individual's disability, then disability in this context is viewed as a limitation to participate (medical model of disability's view). If not, then the social or practical consequences of a person's disability are the reasons for the less favourable treatment (social model of disability's view).

Evidence from case law shows that, such differing understanding of disability reflected in the two models is also reflected in the choice of a comparator and results to providing differing judicial interpretation of the meaning of the comparator in relation to disability. The consequence so far arising from differing meanings of a comparator is that, it makes the equality law appear to be seen to be guaranteeing disabled people equality on one hand and removing the same on the other hand. The British cases of *Clark v Novacold*⁷² and of *Lewisham London Borough Council v Malcolm*⁷³ provides such evidence (detailed discussion of these cases is outside scope of this thesis). However, it suffices to say that, the Novacold established that the comparator is not the person in a materially similar situation as the complainant; but another person to whom the reason for the

⁷⁰ Fn14

⁷¹ Fn 14 172.

⁷²[1999] IRLR 318, Court of Appeal.

⁷³ UKUHL 43 (32)

treatment in question (i.e. the disability in question) would not apply; the disabled person needs to compare their treatment with a non-disabled person who is not in the same material circumstances as the disabled person.⁷⁴ The strength of this interpretation is that disabled people would be able to challenge various discriminatory treatments by linking these treatments to a disability. In this context, the *Novacold* case nearly established meaning of a comparator in respect to disability on social model of disability approach. But this understanding was outlawed by the House of Lords ruling in the *Malcolm* case. It held that the correct approach is to compare the treatment of the disabled complainant with that of the non-disabled person who is otherwise in the same circumstances.⁷⁵ This argument is largely based on the equal treatment norm and undermines the social context of disability and as such promotes the medical model understanding of disability.

The challenge above raises a need to solve the inherent weakness of a model of equality which depends so heavily on the choice of comparator by reconciling the two tensions between the understandings of disability in the two models. The British equality law is attempting to do this by regulating discrimination 'because of' disability and discrimination 'arising from' disability⁷⁶ (detailed discussion of two are outside the scope of this thesis). In this distinction, the former retains the narrow basis of comparison reflecting a medical model and the latter focuses on the social consequences of the disability rather than the disability itself.⁷⁷

In addition to a challenge related to a suitable comparator, a claimant with a disability has another hurdle to prove first in a disability claim. He/she has to prove a disability in accordance with meaning of disability provided in the given equality law. Proving a disability, according to commentators on equality law is

⁷⁴ N Bamforth and M Malik and C O’Cinneide (n12) 1057.

⁷⁵ UKUHL 43 (32)

⁷⁶ See the British Equality Act 2010 s 15.

⁷⁷ UK Equality Act 2010, Explanatory Notes para 70
<http://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/2/2/3> accessed 21st January 2014.

greatly challenging for most disability claimants⁷⁸ because the meaning of disability is largely based on the medical meaning of disability. Because of this handle, evidence exists pointing out that, at one point in the Great Britain experience, 26% of the disability cases that failed to go through the courts were due to a failure by the claimant to prove their disability⁷⁹ and similar cases even reach to the Court of Appeal to determine whether a person has a disability.⁸⁰

From the discussion above, it can be concluded that, the uniqueness of disability as presented by the judicial interpretations calls for scrutiny of direct discrimination model in order to protect disabled people from direct discrimination acts. Also, avoiding direct discrimination alone is inadequate in ensuring the broader aims of equality for disabled people as the principle formal equality is short of addressing other causes of discrimination related to disability other than prejudices. These causes include institutional practices, historical backgrounds, structural and physical or environmental inaccessibility and are deeply rooted in society. They cause disparate effects on disabled people as they appear apparently neutral but with discriminatory effects. To overcome such disadvantages, require treating disabled people more favourably in some instances applicable, dealing with neutral institutionalised practices or undertaking the principle of positive action in some prescribed circumstances.⁸¹

⁷⁸ See example A C Hendriks, 'Different Definition—Same Problems—One Way Out?' DREDF http://dredf.org/international/paper_hendriks.shtml accessed on 26th August 2013.

⁷⁹ Monitoring the Disability Discrimination Act 1995 (Phase 2), DWP In-house report 91, London, Department of Works and pensions, 2002 Page 5

⁸⁰ DRC Archives, 'Definition of Disability within Anti-discrimination Law.' Recommendation to Government July 2006, para 4.3

http://83.137.212.42/SiteArchive/drc_gb/Docs/Recommended_Definition_of_Disability.doc

accessed on 8th of September 2008.

⁸¹ UN Human Rights Committee (HRC), CESCR *General Comment No. 5: Persons with disabilities*, 12th September 1994, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d> accessed 9th August 2013, par 5.

4.2 Indirect Discrimination

Indirect discrimination concerns with prohibiting non-intentional discrimination arising from practices which are neutral in nature but discriminatory in effect. These practices as mentioned before are embedded in institutional policies, norms and standards. The origin of indirect discrimination is traced to the US case of *Griggs v Duke Power Co.*⁸² In this case; the Supreme Court determined that treatment of people which is equal in form and discriminatory in effect should be outlawed. That understanding of non-intentional discrimination but with discriminatory effect is the basis of the understanding of the concept of indirect discrimination.⁸³

In some jurisdictions, the concept indirect discrimination has since been developed to provide a broad scope of protection based on provision, criterion or practice.⁸⁴ The concepts ‘provisions, criterion, or practice’ provide wide interpretation in relation to how higher education should handle a disabled student. Arguably, it means all arrangements the institution has with a student, the way higher education offers benefits or its services to students, one-off decisions, proposals or direction to do something in a particular way should not be discriminatory to a disabled person.

From that interpretation, it can be implied that, the scope of protection under indirect discrimination is broad to bring about identification of specific institutional policies, norms, standards and practices with discriminatory adverse effect (barriers) to disabled people; unless such barriers are justifiable. If they are

⁸² 401 US 424 (1971). This case arose from the Duke Power’s policy of employing and transferring its workers from the labour department to another department based on individual’s higher school education qualification. Whereas the Duke’s policy appeared to be neutral, it disadvantaged most black individuals as they did not have these qualifications due to their history. The Supreme Court ruled that Duke’s policy was unlawful, although there was no question of intentional discrimination and also determined that treatment of people which is equal in form and discriminatory in effect should be outlawed.

⁸³ S Fredman (n14) 106.

⁸⁴ K Monaghan, *Equality Law* (OUP, Oxford 2007) 338.

not, they should be replaced with a policy framework that does not have discriminatory adverse effects. If the institutional neutral policies are justifiable, such policies can be retained. But, the justification to retain such policy should be that, the purpose of the policy is rationally connected to the fulfilment of a legitimate aim and such a policy is reasonably necessary in achieving that legitimate aim. This means that a fairly probing analysis must be done to justify the validity of standards, rules or policies that cause adverse effects discrimination. It can be argued that such an analysis, if undertaken with a view of accommodating diversity, it leads to institutional transformation towards substantive equality through an institution developing more proactive ways of eliminating indirect discrimination. In that context, the development of protection under indirect discrimination is viewed to be the major milestone in getting an important tool for dismantling systemic discrimination and towards achieving substantive equality.⁸⁵

From the discussion above, it can be noted that, indirect discrimination acknowledges the fact that problems of inequality are both systemic and simply individual in nature and therefore provides a picture how groups are affected. However, in practice, it tackles discrimination from the perspective of the single perpetrator and the single victim alone. This approach alone, without the systematic approach of transforming society to bring about the desired goal of equality especially in relation to disability discrimination is itself limited in bringing genuine equality. Therefore in advancing equality for disabled people in higher education, protection under indirect discrimination needs to be buttressed by a duty to accommodation disability.

4.3 Reasonable Accommodation

Under international human rights law, the concept reasonable accommodation appears new, to have been introduced by the CRPD. This is not the case, prior to

⁸⁵ H Meenan, 'Introduction' in Meenan H (ed), *Equality Law in An Enlarged European Union: Understanding the Article 13 Directives* (Cambridge University Press, Cambridge 2007) 18.

the CRPD, the concept reasonable accommodation had already been recognised and applied in some equality laws, for example in the British,⁸⁶ US, Canada and South Africa⁸⁷ equality laws. Generally, reasonable accommodation means an essential practice to alleviate the disadvantage that arises for disabled people in the application of conventional requirements or systems.⁸⁸ Therefore, a duty to provide reasonable accommodation is triggered where application of such a conventional requirements or systems put a disabled person at a substantial disadvantage in comparison with persons who are not disabled.⁸⁹ In this case, the duty bearer is to take necessary and appropriate steps to ensure specific needs of a disabled person are taken care of, with aim of enabling that person equally participate like others. However, the reasonable steps should not impose a disproportionate or undue burden to the duty bearer.⁹⁰

Commentaries on reasonable accommodation seem to have categorised it into two, i.e. reactive reasonable accommodation and proactive (anticipatory)

⁸⁶ Equality Act 2010 of the UK s.20-21

⁸⁷ For the US, Canada and South Africa see S Fredman, 'Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India,' (Office for Official Publications of the European Communities, Luxembourg 2012). 55-60.

⁸⁸ L Waddington, 'Reasonable Accommodation' in D Schiek and M Bell (Eds), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Hart Publishing, Oxford 2007) 631. Also the opinions of ICESCR under General Comment No.5 implies that (paras 15 and 16). The same can be deduced from the opinion of the European Court of Human Rights in *Price v UK* (Application No. 33394/96, 10th July 2001), in the separate opinion raised by Greve. It points out that Price, because of her disability, needed to have been treated differently from other prisoners and such different treatment, referred to as 'compensatory measure', comes to form part of the disabled person's physical integrity. This case arose when Ms Adele Ursula Price, who is quadriplegic, alleged that her treatment within prison and the failure to provide appropriate provisions amounted to degrading treatment under Article 3 of Convention for the Protection of Human Rights and Fundamental Freedoms (Freedom from degrading treatment).

⁸⁹ CRPD art 5(3).

⁹⁰ CRPD art. 1 par 4.

reasonable accommodation.⁹¹ The difference between the two lies on how each is triggered and the effects each has in removing disabling barriers in an institution. Reactive approach means responding to the immediate barriers facing the particular disabled person— providing that doing so would be reasonable.

In the field of education, in light of the different ways different impairments require different approaches in accommodating disabled people in the institution, reactive reasonable accommodation is very much needed in order to provide effective individualised support measures to any disabled person for whom a need is found. For case of higher education for example, if the lecture room is inaccessible for a wheelchair user, then the lecture where such a person attends should be reallocated to an accessible room. Reactive reasonable accommodation is very much recognised by the CRPD. The CRPD requires States parties to ensure that, reasonable accommodation of the individual's requirements is provided.⁹²

The proactive approach requires institutions to plan in advance for disabled people even if they have not yet received them. An institution is to anticipate barriers which will create difficulties for broad groups of disabled students relating to the institution's practices, provision, or criterion or the physical features of the premises and take steps to remove or reduce those barriers, whether or not they have disabled people. Therefore, proactive reasonable accommodation is fundamental in removing discrimination that arises from the systemic, structural, architectural or physical barriers. The proactive reasonable accommodation underlines the social model of disability as its focus is removing barriers rather than addressing an individual situation. Also, as noted in the discussion of indirect discrimination, these barriers often are source of discrimination against disabled people but they are often not easily detected and take time to remove. But it should be noted that proactive reasonable accommodation alone are not sufficient

⁹¹ A Lawson, *Disability and Equality Law in Britain. The Role of Reasonable Adjustment* (Hart Publishing, 2008) 64.

⁹² CRPD art. 24(2)(e).

in effectively accommodating disabled people in the institutions. There is always room to take steps to undertake reactive accommodation as well. Therefore, the medical model understanding of disability is also useful in meeting a duty to provide reasonable accommodation.

Drawing from the GB equality law,⁹³ for purposes explaining this concept better in relation to higher education, reasonable accommodation is triggered where a higher education provider's practices, provisions or criteria, physical feature or absence of auxiliary aid or service put a disabled person at a substantial disadvantage⁹⁴ in comparison with persons who are not disabled. In that case, it is required that, the higher education (provider) is to take such steps as it is reasonable to have to take to avoid the disadvantage. For practices, criterion or provision, the institution is expected to change them, waive the criterion or adopt flexibility in the individual approach while maintaining a competence standard. A reasonable step might include removing the physical feature, altering it, or providing a reasonable means of avoiding it. It might be a reasonable step is to provide an auxiliary aid or service. Where the duty relates to the provision of information, the reasonable step might be to provide the information in an accessible format. For the costs of providing the adjustments, a duty bearer is not to pass the costs of complying with the duty to the disabled person.

Therefore, it can be seen that, an obligation to undertake reasonable accommodation provides a wide ranging of scope of removing barriers to disability inclusion in higher education. As the obligation entails eliminating disadvantage arising from practices, provisions or criteria, physical features and absence of auxiliary aids or services and to provide disabled students access to

⁹³ Equality Act 2010 s 20.

⁹⁴**Substantial disadvantage means** 'not minor or trivial. It relates to the extent a provision, criterion or practice causes detriment to a disabled student. For example, a lecturer prefers writing notes on the blackboard as a teaching method to providing notes in accessible format, when he/she knows that there is a visually impaired student in the class. Such a practice is likely to substantially disadvantage the visually impaired student.

higher education as close as reasonably possible to the standard normally offered to students at large.

In conclusion, to an institution of higher education a duty to provide reasonable accommodation entails an institution ensuring that learning, teaching and assessment of disabled students measure the true academic achievement of disabled students regardless of impairment. It also aims at developing higher education institutions which include every category of disability- an inclusive education approach. However, fulfilling the duty to reasonable accommodation can pose a challenge to institutions especially in the developing countries as meeting these duties are costly, for example meeting accessibility requirements. Even knowledge about disability requirements can also be another challenge as this can also be lacking in some institutions.

4.4 Proactive Approach to Equality

Fredman identifies two approaches that an equality law should enforce in order to effectively develop an inclusive society or bring about genuine equality -non-discrimination. These approaches are individual remedies approach and proactive model of eliminating discrimination.⁹⁵ The individual remedies approach is dealing with discrimination through litigation or conciliation, triggered by a breach by an institution of any of the equality formulations such as direct discrimination, indirect discrimination and failure to provide reactive reasonable accommodation.

The proactive approach means that the equality law should mandate the strategic approaches to address the institutionalized and structural dynamics of exclusion, and inequality. Thus, the proactive model of eliminating discrimination recognises the fact that societal discrimination extends well beyond individual acts and therefore, requires scrutiny of public and private decision making and institutional

⁹⁵ S Fredman, Equality: A New Generation' (2001) 30 ILJ 145.

processes that create and reproduce exclusion.⁹⁶ In this way, the proactive model mandates the involvement of both the institutions (source of discrimination) and the marginalised (victim of discrimination) in the process of removing inequality. This approach, in essence brings about consultation, empowerment and recognition of the individual or group facing marginalization in society in the process of addressing their discrimination.

Compared to proactive model of discrimination, it can therefore be stated that, while individual remedies approach is an essential tool to protect the rights of individuals or groups of disabled people, it is not an effective means of developing a culture of human rights for disabled people in society. In relation to disability, individual remedies approach has serious shortfalls of bringing genuine equality, grounded on the difficulty related to most disabled people getting justice through courts and its limitations of addressing critical barriers to disability discrimination. Litigation is both a technical and an expensive matter that most individuals would otherwise shy to take. Yet, the enforcement of the legislation relies on the willingness and the capacity of the individuals to raise complaints to the courts. Even if they there are bodies willing to assist facing discrimination in litigation, these bodies also do not support all possible cases of discrimination. Literature suggests that these bodies are mainly interested in supporting litigation of strategic cases. Those cases for which they feel its judicial interpretation can bring broad social and policy changes, extend or strengthen human rights and protection from discrimination, clarify an important point of law or have significant impact on a particular sector.⁹⁷ The reason for prioritising strategic litigation is possibly as a way of maximising resources.⁹⁸

⁹⁶ C Sheppard (n61).

⁹⁷ P Reading 'Importance of Strategic Litigation: the experience in Britain' July 2010 www.equineteurope.org/the_importance_of_strategic_litigation_010710final_1.ppt accessed on 10th September 2010.

⁹⁸ A Felcher and N O'Brien, 'Disability Rights Commission: From Critical Rights to Social Rights' (2008) 35(4) Journal of Law and Society 520-50.

Most often the remedy an individual claimant receives if he/she succeeds in court is either compensation, or sometimes the alleged discriminator is forced to stop the act or restrain that person from committing the offence.⁹⁹ Arguably, both remedies may not necessarily lead to an institution removing systemic discrimination. Moreover, the claimant needs to prove that they faced discrimination in order to be compensated. For disabled people, this is even more problematic on grounds of proving a disability and getting a suitable comparator as discussed before. Such hurdles make it rather unpredictable whether a disabled person is protected by an equality law or not.

4.5 Affirmative Action

One of the sources of discrimination faced by the marginalised groups relates to the imbalances that exist between them and other groups in society, created by history, tradition and customs. Affirmative action is designed as a redress measure to those imbalances by governments mandating preferential treatment be accorded to the marginalised groups in form of targeted programmes, reservations or quotas in the distribution of services or resources. By so doing, affirmative action is aimed at remedying past intentional discrimination facing the marginalised, increasing their participation, and enhancing diversity in society.¹⁰⁰ Its origin dates back to the US Executive Order 10925 issued by President, John F. Kennedy in the 1960s; mandating public policies intended to overcome the effects of past racial discrimination¹⁰¹ because the civil rights laws alone were not enough to remedy then the racial discrimination.

Whereas, how affirmative action is implemented and the aims appear obvious, how in actual sense it addresses the question of equality in society calls for critical

⁹⁹ Ibid.

¹⁰⁰ S Fredman (n14)

¹⁰¹ See: [Affirmative Action Timeline](http://www.infoplease.com/spot/affirmativetimeline1.html#ixzz2bvIMaE2M) | [Infoplease.com](http://www.infoplease.com/spot/affirmativetimeline1.html#ixzz2bvIMaE2M)
<http://www.infoplease.com/spot/affirmativetimeline1.html#ixzz2bvIMaE2M>

scrutiny. Because, how an affirmative action policy or programme are framed and how the beneficiary groups are demarcated differs from jurisdiction to jurisdiction and as such providing different ways how affirmative action is tackling inequalities¹⁰² and as well its effect in a particular jurisdiction. Detailed analysis how affirmative has been framed is beyond the scope of this research. How it suffices to say that, affirmative action has been framed in three ways: Affirmative action as means of achieving substantive equality rather than a breach of equality guarantee; affirmative action as a breach of the right to equality (the formal equality); and affirmative action as an exception to the prohibition against discrimination (the 'derogation' approach).

Where affirmative action is framed as means of achieving substantive equality rather than a breach of equality, it is viewed as a facet to ameliorate the conditions of disadvantaged individuals or groups.¹⁰³ In this arrangement, the equality law is directs government to counter discrimination by developing programmes aimed at preventing discriminatory distinctions that impact adversely on the disadvantaged groups and these programmes are viewed as complimentary to the constitutional goal of achieving equality for all. Uganda for example, adopts this approach. In Uganda, affirmative action is a constitutional provision and the constitution further mandates parliament to enact laws to operate it. Consequently, largely Uganda's policy and legal framework on disability is based on affirmative action (more discussion on this in chapter four). Although, this framing of the affirmative action appears inconsistent with the expected merit based criterion, it is seen to be widening opportunities for the disadvantaged groups to participate in society and in particular for case of disabled people in Uganda access higher education.

¹⁰² See S Fredman, 'Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India,' Luxembourg: Office for Official Publications of the European Communities 2012, pgs 63-75. Also S Fredman, 'Discrimination Law, second edition' (Oxford: Oxford University Press, 2011) 237.

¹⁰³The clarification made by the Supreme Court of India in the case of *State of Kerala v NM Thomas* AIR 1976 SC 490.

Where affirmative action is seen as a breach of formal equality norm, like in Great Britain, where the equality law is firmly on the basis of equality of opportunity approach, the preferential treatment measures are therefore introduced by way of statutory exceptions.¹⁰⁴ Such as a requirement to treat disabled people more favourably than non-disabled people in the direct discrimination provision,¹⁰⁵ and on the Public Sector Equality Duty (PSED) provision.¹⁰⁶ Even in such exceptions, for higher education, it is arguable that, rarely are higher education admission policies seen to be explicit on the affirmative action. So are commissioned reviews by government on admissions into higher education recommending affirmative action. In fact, these reviews, for example, the Schwartz report¹⁰⁷ circumvents affirmative action issue by advising higher education to ensure 'equality of opportunity within the equality laws' during admissions and to minimise barriers to admission particularly related to disability. In employment, affirmative action is only limited to those who qualify for a job or promotion¹⁰⁸ and is only applicable when there is a tie in the applicants competing and when one is disabled, the chance is given to the disabled person in question.

Generally, affirmative action attracts public criticism and legal challenge on ground that it is not merit based. In particular reference to higher education, public criticisms surfaced in relation to the admission of women to public universities in Uganda¹⁰⁹ and legal challenge in the US in relation to race¹¹⁰- the cases of

¹⁰⁴ See UK Equality Act 2010, section 158.

¹⁰⁵ See UK Equality Act 2010, section 13(3)

¹⁰⁶ See UK Equality Act 2010, section 149(4)

¹⁰⁷ S Schwartz , 'Fair Admissions to Higher Education: Recommendations for Good Practice,' the Schwarz Report 2004. <[Fair admissions to Higher Education: Recommendations for good practice](#)> accessed on 10th March 2010.

¹⁰⁸ See the Great Britain Equality Act 2010, section 159.

¹⁰⁹ S Tamale, "Gender and Affirmative Action in Post-1995 Uganda: A new Dispensation, or Business as Usual" in J. Oloka Onyango *Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (1st Published 2001 Fountain Publishers, Kampala) 223.

¹¹⁰ William C Kidder 'Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions and Diversity Research' A report for the Society of American Law Teachers (SALT) October 2001.

Regents of the University of California v Bakke,¹¹¹ *Grutter v Bollinger*¹¹² and *Fisher V. University of Texas*¹¹³ are classic examples. In the *Bakke* case, the High Court held that a preferential system of affirmative action that uses quotas constitutes reverse discrimination and is therefore invalid, but universities were still permitted to consider race as a factor in admissions. In *Grutter*, the Supreme Court upheld the right of a university to take race into account when deciding whether or not to allocate a student a place, but held that awarding applicants from ethnic minority extra points was unconstitutional. While in *Fisher*, the Supreme Court held that universities need more proof of the need for diversity before they can undertake an affirmative action. These judgments mean that although higher education institutions in the US are permitted to pursue affirmative action to achieve diversity on campus, the affirmative action policies should be narrow in their impact and must be justified in each instance as needed for diversity. This interpretation potentially limits the application of affirmative action in higher education.

The limits of affirmative action is that, it does not clarify what public authorities ought to do to attain genuine equality i.e. non-discrimination. Affirmative action only mandates preferential treatment to be taken and actions to be followed thereafter in regards to removing further barriers after entry are not explicit within affirmative action scope. Therefore, affirmative action policy should be enhanced with other equality laws that promote equality of opportunity.

¹¹¹ 438 U.S. 265 (1978). This case was brought by a white student, Allen Bukke, who argued that, the University of Michigan's affirmative action strategy was challenged on the grounds that its preference for Afro-Americans breached the Fourteenth Amendment equality guarantee.

¹¹² 539 U.S. 306 (2003). The case was brought by three white students who argued that their applications for places at University were turned down.

¹¹³ 570 U. S. (2013)

5. Conclusion

The discussion in this chapter has shown that through everyday social relations amongst members of the human family and in a bid to achieve non-discrimination amidst their diverse differences, the concept equality is evolving diverse meanings arising from different interpretations. So far, as Sheppard¹¹⁴ usefully explains, both legal and non-legal meanings of equality are shifting from:

- Viewing discrimination as predominantly an individual problem linked to exceptional and discrete incidents; to understanding discrimination as systemic, embedded in a complex interplay of institutional relations, practices and policies.
- A focus on the discriminatory attitudes of individual perpetrators; to a focus on the experiential effects of inequality and exclusion.
- Viewing discrimination as differential treatment; to acknowledging adverse effects discrimination resulting from the differential effects of apparently neutral policies and similar treatment.
- Individual remedies and accommodation; to systemic remedies and institutional transformation.
- Understanding problems of discrimination in terms of distinct, homogeneous social groups, to recognition of overlapping inequalities linked to complex, intersecting, and multiple identities.

Therefore the meaning of equality is beyond the traditional understanding grounded on intentional discrimination arising from open stereotyping and prejudices; and non-intentional discrimination arising from apparently neutral rules, standards, practices, or policies to how pervasive cultural or institutional contexts discriminates. Therefore, legal remedies alone cannot deliver non-discrimination in its fullest sense, but rather, proactive approaches aimed at

¹¹⁴ C Sheppard (n61) 18.

preventing discrimination and social exclusion. To disabled people, how impairment also interacts with the environment to cause their exclusion is critical in designing reasonable accommodation measures.

Chapter Three

Disability Rights in Higher Education in the International Human Rights Law Context: Scope and Measures of Realisation

1. Introduction

This chapter analyses the benchmarks for achieving a right to education codified in the international human rights law instruments and the programmatic approaches in education. These benchmarks provide a basis for the discussions of the remaining chapters. Of particular relevance to disabled people seeking to access higher education is the recent Convention on the Rights of Persons with Disabilities (the CRPD). Accordingly, this chapter will analyse the detailed provisions in that convention both for education specifically and for other related issues. The chapter will also explore the way in which a right to education has been interpreted and developed by the two international programmatic developments of Education For All (EFA) and the Salamanca Statement and Framework For Action on Special Needs Education (the Salamanca Statement). Although the focus of such approaches has been primary and secondary education, the extent to which they throw light on entitlements to higher education will be considered.

The chapter is organised into 5 sections. Section 2 describes the normative UN human rights framework on education and the international programmatic approaches on education. It also explores the impact of the human rights framework on disabled people, prior to the adoption of the CRPD. Section 3 follows with an analysis of the CRPD and its provisions on education. Section 4 section attempts to analyse the general provisions on the implementation of the CRPD and lastly, section 5 concludes the chapter.

2. The Normative UN Human Rights Law Framework: Its Implication to Disabled People Prior to the CRPD

2.1 An Overview of the Scope and Mandate of the UN Human Rights Law Framework

The adoption of UN Charter¹ and subsequent establishment of the UN marked the era of international human rights law framework. In brief, this framework is constituted mainly by: the UN Charter and the bodies established by the Charter² including organs which have been authorized by these bodies to deal with specific issues in human rights,³ and this is termed as the Charter based mechanism of human rights protection and promotion; the UN treaties or conventions (at the time of writing there are 9 UN Conventions),⁴ their optional

¹ The UN Charter was reached after the holocaust period for a purpose of securing peace and security, advancing development and protecting human rights for all. See for example PG Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania, Philadelphia 2003) 166-167 and 187-188. See also the preamble of the UN Charter.

² The UN Charter based bodies are the General Assembly, Security Council, International Court of Justice, Economic and Social Council, Trusteeship Council and the Secretariat.

³ H J Steiner and P Alston and R Goodman, *International Human Rights in Context: Politics, Morals* (OUP, Oxford 2008) 740-741.

⁴ The UN treaties are: International Convention on the Elimination of All Forms of racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) (ICERD); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 march 1976) 999 UNTS 171 (ICCPR); International Covenant on the Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); Convention on the Elimination of All forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UK Doc A134146 (CEDAW); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984) (CAT); Convention on the Rights of a Child (adopted 20 November 1989, entered 2 September 1990) UN Doc A/44/49 (1989) (CRC); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (18 December 1990) (ICRMW); Convention on the Rights of Persons with Disabilities (13 December 2006) (CRPD); International convention for Protection of all Persons from Enforced Disappearance (20 December 2006, not yet in force at time of this research).

protocols and treaty committees⁵ and this is termed as the treaty based mechanisms; and the programmatic (soft law) approaches - non-binding declarations, agreements, and documents. Each programmatic approach provides a broad spectrum how the human rights guaranteed in treaty norms can be translated to the benefit of all. The human rights framework lays a primary obligation on ratifying States to respect, protect, guarantee, promote or fulfil the realisation of human rights within their jurisdiction.

While the Charter proclaims the recognition of the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, it does not provide a catalogue of human rights.⁶ This is provided for in the Universal Declaration of Human Rights (UDHR), authoritatively interpreting the meaning of human rights as prescribed within the UN Charter.⁷ The UDHR was adopted by the UN General Assembly in 1948. It establishes a vision that guarantees people all human rights. These rights are broadly categorised as civil and political rights (CPRs) and as economic, social and cultural rights (ESCRs). The UDHR also sets out principles which recognize the interdependence and indivisibility of all human rights. The CPRs were embodied in international treaty law through the International Covenant on Civil and Political Rights (ICCPR) and (ESCR) through the International Covenant on Economic, Social and Cultural Rights (ICESCR). Because, the UDHR is not legally binding, the content of norms codified for in it are further explained and made legally binding to the State parties by the two covenants. Also, the two covenants, together with UNDRH constitute UN Bill of Human Rights.

Therefore, at the stage of the Bill of Rights, the UN made proclamations and agreements that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind. Whereas so, the interpretation of the Bill

⁵ H J Steiner and P Alston and R Goodman (n3) 737.

⁶ RKM Smith, *Textbook on International Human Rights* (OUP, Oxford 2007) 27-28.

⁷ RKM Smith, *Textbook on International Human Rights* (OUP, Oxford 2007) 27-28.

of rights in its general implementation took mainly the principle of formal equality approach, as such, due to individual differences, some groups were denied equality as is envisioned in the Bill of Rights. To address those concerns, specific conventions on particular group needs have been enacted.⁸ The spirit of each of these conventions is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of all. Therefore, the thematic conventions spell out the meaning of equality and how it can be achieved in each respective specific group they protect and also, they establish an agenda for action by countries to guarantee the enjoyment of those rights for all.

All in all, the UN human rights conventions provide explanations of the content of human rights codified in the UDHR. To authoritatively interpret the rights set out in the convention and to monitor compliance with the convention by the States Parties, each convention provides for a specialist committee, charged with this duty.⁹ More discussion on the role of these organs is reserved for Section 4 below.

Through this framework, it can be noted that, the UN promotes the realisation of human rights and fundamental freedoms for all, in three ways. One is setting international human rights standards or benchmarks. This is through its Charter, legally binding treaties, non-binding declarations, agreements, and documents. Two is mandating work in various manners for promotion and protection of human rights. This is through Special Rapporteurs and experts, and groups, such

⁸ Examples of these thematic conventions are Convention on the Elimination of All forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UK Doc A134146 (CEDAW); Convention on the Rights of a Child (adopted 20 November 1989, entered 2 September 1990) UN Doc A/44/49 (1989) (CRC); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (18 December 1990) (ICRMW); Convention on the Rights of Persons with Disabilities (13 December 2006) (CRPD).

⁹ RKM Smith, *Textbook on International Human Rights* (OUP, Oxford 2007) 27-28.

as working groups, committees and treaty bodies. The third is offering technical assistance in the field of human rights.

Through this framework, it is evident that much development has been achieved in the arena of human rights, such as establishing comprehensive networks of institutions which oversee the realisation of human rights at the international level. Coupled to that is defining the meaning of human rights including a general mandate to address any human rights matter or violation. Further evidence is the affirmation that human rights are 'universal, indivisible, and interdependent and interrelated'¹⁰ and the creation of the United Nations Human Rights Council¹¹ (UNHRC) to ensure compliance with human rights norms. Significant to these developments is making individuals subjects of international human rights law, and enabling them to challenge the violation of their rights in the UNHRC in accordance with the provisions the UN human rights instrument.¹² Disabled people can now also challenge violations of rights set out in the CRPD by bringing complaints about such violations to the Committee on the Rights of Persons with Disabilities (the Disability Committee).¹³ Thus, States can no longer justify the violation of human rights on the grounds of the State's sovereignty; and that it is also gives equal opportunities for marginalised groups agitating for their rights.¹⁴

¹⁰ Vienna Declaration and Programme of Actions. World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc a/conf. 157124 (Part 1) at 20 (1993) par 5. Also PR Baehr, *Human Rights: Universality in Practice* (Palgrave, London 2001) 9-19.

¹¹ UNGA Resolution 60/251, establishing the Human Rights Council.

¹² Optional Protocol to the International Covenant on Civil and Political Rights (entered into force 23rd March 1976) UNTS 2200A(XXI), (ICCPR) Art 2. See also See Human Right Council Procedure <http://www2.ohchr.org/english/bodies/chr/complaints.htm> accessed on 9th July 2010. Also see summaries of the discussions held in the Working Group on the Complaint Procedure summaries in documents A/HRC/3/CRP.3, A/HRC/4/CRP.6 and A/HRC/5/CRP.6.

¹³ Optional Protocol to the CRPD arts 1 and 2.

¹⁴ J Rehman, *International Human Rights Law: A Practical Approach* (Pearson Education Limited, Essex 2010) 3-5.

However, despite such enormous achievements listed above, tension still exists firstly, in defining and achieving human rights as universal value, and secondly, over two sets of rights - civil and political rights (CPRs) and economic, social cultural rights (ESCRs). Where the former is argued to form the critical basis of protecting human rights and as such deserve immediate attention in their realisation.¹⁵ However, due to the affirmation that human rights are 'universal, indivisible, and interdependent and interrelated,'¹⁶ this hierarchy of human rights is largely rejected with argument that, no human right is inherently inferior to any other, all human rights are equally important.¹⁷

Amidst those the two tensions exists the practicalities in implementation of human rights norms. On universality of human rights for example, differences in religion and cultural practices question the universality of human rights,¹⁸ with arguments advanced that, the emphasis on realisation of human rights should be placed on specific country situations as opposed to more generic phenomena.¹⁹ These tensions are a real hindrance in enjoyment of human rights as universal value. While these tensions are a real hindrance in enjoyment of human rights, for disabled people, prejudices, accessibility barriers, practices which are neutral in form and discriminatory effect and the question whether disability is a human rights issue or medical problem²⁰ adds to that general hindrance. Therefore, disabled people counter a double edged sword in their struggle for the realisation

¹⁵J Rehman, *International Human Rights Law: A Practical Approach* (Pearson Education Limited, Essex 2010)141-143.

¹⁶ Vienna Declaration and Programme of Actions. World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc a/conf. 157124 (Part 1) at 20 (1993) par 5. Also PR Baehr, *Human Rights: Universality in Practice* (Palgrave, London 2001) 9-19.

¹⁷ E Klein, 'Establishing A Hierarchy Of Human Rights: Ideal Solution Or Fallacy?', *Israel Law Review*, Vol. 41, pp. 477-488, 2008, Hebrew University International Law Research Paper no. 02-09 Electronic copy available at: <http://ssrn.com/abstract=1333295>

¹⁸J Rehman, *International Human Rights Law: A Practical Approach* (Pearson Education Limited, Essex 2010)8-9.

¹⁹ HJ Steiner and P Alston and R Goodman, *International Human Rights in Context: Politics, Morals* (OUP, Oxford 2008) 741.

²⁰ See discussion in chapter two.

of human rights and fundamental freedoms, including a right to education. What appears to be a ray of hope is the CRPD.

2.2 Human Rights Provisions on Education Prior to the CRPD and their Implications on Access to education for Disabled People

Education is a universal right, a right on its own merits and is an enabling right to the attainment of other rights. The human rights law framework recognises a right to education as a fundamental right and in general terms requires States to make educational services available and outlaws discrimination in education at all levels.²¹ The framework directs that, education should be for the development of the human personality, strengthening the respect for human rights and fundamental freedoms,²² including promotion of gender equality and respect for the environment.²³ Therefore, denying an individual a right to education is condemning such an individual to a denial or limitation in the enjoyment of fundamental rights. In a broader picture, a denial of an individual a right to education, leads to denial of such an individual to contribute to the attainment of the UN goals of securing peace and security, development and human rights freedoms,²⁴ including promotion of gender equality and respect for the environment²⁵ in his locality.

Article 13 of the ICESCR, comprehensively places an obligation on the State to make education available to all; to ensure non-discrimination in all educational systems, to set minimum standards and to improve quality. With a view to achieving that, the ICESCR provides a broad obligation on States to:

- i. Make primary education compulsory and available free to all;²⁶

²¹UDHR Art 26(1).

²² ICESCR art 13(1).

²³ Ibid

²⁴ ICESCR art 13(1).

²⁵ Ibid

²⁶ICESCR Art 13(2)(a).

- ii. Make secondary education in its different forms, including technical and vocational secondary education, generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;²⁷
- iii. Make higher education equally accessible to all, on the basis of capacity, by every appropriate means and in particular by the progressive introduction of free education. It also requires that education given in such institutions shall conform to such minimum standards as may be laid down by the state.²⁸
- iv. Encourage or intensify fundamental education as far as possible for those persons who have not received or completed the whole period of their primary education.²⁹
- v. The ICESCR also guarantees liberty to parents, individuals, bodies and local, national and international communities to promote a right to education in-line with the State's educational policy framework.³⁰ Parents or legal guardians can choose for their children schools in line with the parent's /legal guardian's moral or religious convictions. Also, Individuals or bodies can establish educational establishments, or to direct educational institutions provided is in conformity to the minimum educational standards set out by the State concerned.

Clearly, this mandate is wide enough to require States to ensure availability of educational services to all. Further to that, to ensure that a right to education is realised as a universal norm, in respect to individual or group differences that cause inequalities in the realisation of human rights for all, the thematic

²⁷Ibid Art 13(2)(b).

²⁸Ibid Art 13(2)(c).

²⁹Ibid Art 13(2)(d).

³⁰Ibid Art 13(3-4) and UNDHR Art 26(3).

conventions as earlier noted tailors the education provision on ICESR to suit the educational needs of different groups. For women, CEDAW under article 10 takes care of that by requiring States to ensure equal rights of men and women in education, including in matters relating to academic attainment at all levels. CEDAW places an obligation States to take appropriate measures to eliminate stereotyped concept of the roles of women and men in all levels and forms of education. For the disabled people, CRPD, under article 24 tailors the education norms prescribed by ICESR to suit them. This is discussed further in sections that follow as that forms the gist of this chapter.

A right to receive an education is interpreted to imply that education in all forms and at all levels should be available, acceptable, accessible and adaptable.³¹ This interpretation therefore means that, States parties and educational bodies should when realising this right take account of factors causing inequalities and discrimination in achieving human rights.³² Here, availability implies existence of functioning educational establishments and programmes within a given jurisdiction. Accessibility entails non-discrimination, physical accessibility and economic access or affordability of education to all. Acceptability means the educational services conform to the State's minimum established educational standards and/or religious or moral convictions. Adaptability means education should be able to accommodate the needs of all learners. However, the meanings of these concepts should be interpreted within the context in which the right to education is being realised, as what each of them entails differs according to the conditions prevailing in a particular State or jurisdiction. For example, in Uganda, where in some communities, pupils study under trees because of limited classroom facilities,³³ education is seen to be available, because the educational programme is functional in that area. In the UK, a similar situation may not be so interpreted.

³¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para. 6.

³² See discussion in chapter two of this thesis.

³³ Researcher's experience of Uganda's situation.

For disabled people, provided the educational service is available and acceptable, making education accessible and adaptable to their needs is vital in enabling them to access it without discrimination and on the basis of equal opportunities. This requires States to recognise the principle of equal educational opportunities for disabled people. This is the principle the international programmatic approaches in education stand for. These approaches include Education For All (EFA) framework³⁴ and the Salamanca Statement on Special Needs Education³⁵ and then UN Standard Rules on Equalisation of Opportunities for Disabled People (UNSRs).

These approaches aspire for equal educational opportunities in an integrated setting, and that should thread through entire national educational planning, curriculum development and school organisation.³⁶ This is what an inclusive education system entails as is being championed as a means to remove barriers, improve outcomes and remove discrimination in education.³⁷ Therefore, the programmatic approaches in education in their specific intents collectively provide broad spectrum how the right to receive an education guaranteed in treaty norms can be translated to the benefit of disabled people as below.

EFA sets out measures for ensuring everyone attains education, in particular through benefiting from educational opportunities designed to meet everyone's

34 See Education for All framework, Art 3 para 5. EFA framework was adopted by the World Conference on Education for All, held at Jomtien, Thailand 5-9 March 1990. UNESCO documents,

http://www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml, accessed on 10th June 2008.

35 The Salamanca Statement was adopted by the World Conference on Special Education: Access and Equality in Salamanca, Spain in June 1994.

36 See for example, guidance by the UN Standard Rules for Equalisation of Opportunities for Disabled People (UNSR) under Rule 6 provided.

37 G Lindsay 'Inclusive Education: A critical Perspective' (2003) 30(1) British Journal of Special Education, < <http://onlinelibrary.wiley.com/doi/10.1111/1467-8527.00275/pdf> > accessed on 23rd February 2011.

basic learning needs.³⁸ It calls for universalising access and promoting equality in education, broadening the means and scope of basic education, enhancing the environment of learning and strengthening partnership in education;³⁹ including strategic measures such as developing a supportive policy environment⁴⁰ to realise those goals.

Enhancing learning environment, arguably as expounded by the Salamanca Statement means reforming ordinary schools or education as a whole to bring about inclusive education as a norm. It restates the call by EFA to develop an overall educational strategy and policies to work towards 'schools for all' to serve every child within the community. To achieve schools for all, the Salamanca Statement points out the need to recognise the uniqueness of every child in regards to the abilities and learning needs and that the educational system should be designed to take account of the diversity of these characteristics and needs.⁴¹ The Salamanca Statement therefore aspires for the developments in education 'which include everybody, celebrate difference, support learning, and respond to individual needs.'⁴² Therefore, it directs efforts in education to development of national educational policies and actions that ensure that factors within the school, recruitment and training of educational personal, external support services, community perspective and resource requirements all recognise the needs of disabled people.⁴³ This is in-line with the equality of opportunity model discussed in chapter two.

Although these approaches are not technically legally binding, they bridge a gap between the treaties' normative benchmarks on education and reality through the international political and leadership power they wield. They provide grounds for setting education goals, planning, laying down strategies for education resource

³⁸World Declaration on Education for All, Art 1(1).

³⁹ Ibid Art II-Shaping the vision.

⁴⁰Ibid Art VIII-Meeting Basic Learning Needs

⁴¹The intent of the Salamanca Statement, para 2.

⁴² Preface to the Salamanca Statement.

⁴³Introduction to the Salamanca Statement, Para 5.

mobilisation. For disabled people, these approaches help in clarifying the process of bringing about equalisation opportunities in access to education. There is no doubt that they have to some extent led to the development of appropriate educational policies to achieve a right to education on equal opportunities basis. Particularly, they lead to translating the meaning of international human rights norms into action in education. In that way, programmatic approaches complement law to ensure that education as a universal right is attained by everyone. By so doing, they play a significant role in enabling States to make education available, acceptable, accessible and adaptable through creating an environment in the education sector where it is possible to combine treaty based norms and principles with programme practices as explored from the Education for All and Salamanca Statement proclamations above.

However, these are non-binding measures; their implementation is largely dependent on good will of the implementing authority. Also, as seen in chapter one, particularly for Uganda's situation, it is arguable that, the guidance in the Salamanca Statement, are not generally put into practice in higher education due to limited attention paid to the development of inclusive education infrastructure at that level.

2.3 An Overview of the UN Human Rights Law Framework's Impact on Disability Inclusion Prior to the CRPD

During the adoption of the CRPD, much enthusiasm and optimism was expressed about the CRPD, that:⁴⁴ the CRPD is recognises and entrenches disability rights in the UN Human Rights framework, and in this way is a huge victory to disabled people; the CRPD will effect a major shift in the way disabled people across the globe are treated and serves to promote, protect and ensure their full enjoyment of all human rights. And CRPD marks the dawn of the new era in

⁴⁴ See A Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' *Syracuse J. Int'l L, and Com* (2007) Vol 34(2) 563-619 (563-4).

which disabled people will no longer have to endure the discriminatory practices and attitudes that have been permitted to prevail for all too long.

This optimism about disability associated with the CRPD, according to commentaries on disability,⁴⁵ arguably means that, prior to the CRPD, disability was not visibly considered an equality issue / human rights issue in the UN human rights framework. Whereas there are all reasons to support that view, this research however, drawing from the chronology of the UN interventions on disability⁴⁶ argues that, to some extent disability was considered an equality issue by the UN human rights framework. First, the equality and non-discrimination clauses in the human rights instruments generally also apply to disabled people by virtue of the generality of the human rights norms. The challenge however is the difficulty of translating what the equality and non-discrimination clauses mean to disability in light of the different perspective about disability overtime. These perspectives are evident in the intervention approaches the UN adopted on disability inclusion and these approaches indicate a progressive realisation that, disability is equality or a human rights issue. These interventions included initially, viewing disability in a welfare perspectives. This progressed to viewing disability as a social welfare perspective, and progressed to making some reference to human rights on disability, and to equalisation of opportunities approach and finally to adoption of the CRPD in 2006.

⁴⁵ See generally, Gerard Quinn and Theresia Degener, 'Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability,' (13, U.N. Doc. HR/PUB/02/1 (2002); Charles D. Siegal, '*Fifty Years of Disability Law: The Relevance of the Universal Declaration*,' 5 ILSA J. INT'L & COMP. L. (1999) 5(267) 269-280.

⁴⁶ The UN interventions on disability is seen to have begun when it establish the temporal social welfare committee in 1946, a year after the adoption of the UN Charter. See Background Paper prepared by the Division for Social Policy and Development of the United Nations Secretariat for the "Informal Consultative Meetings on International Norms and Standards for Persons with Disabilities." (9 February 2001) <http://www.un.org/esa/socdev/enable/rights/humanrights.htm> (accessed 14th October 2013).

As stated earlier, the commentaries on disability rights, largely disagree with that observation. Their disagreements are premised on the invisibility of disabled people as rights claimants from the UN human rights treaties prior to the CRPD, more importantly from the International Bill of Rights because disability is not expressly referred as a suspect ground for discrimination in the International Bill of Rights.⁴⁷ This can only be interpreted to be in the catch phrase ‘other status.’ Similarly, other than the Convention on the Rights of Child (CRC) in article 23 dealing with rights of disabled children, there is very little specific reference to disability in UN treaties. Therefore, by virtue of that omission, disabled people were not seen as legitimately entitled to protection by UN treaties. Consequently, it is attributable that, the development programmes paid inadequate attention to the situation and needs of disabled people. Evidently, there was a collective failure both at international and domestic levels to tailor the human rights obligations to meet the specific disability needs as indicated by the social statistics on poverty levels, education, and employment and rehabilitation services and they indicate as follows:⁴⁸ 20% of the world’s poorest people have some form of disability and tend to be the most disadvantaged in their communities; 90% of disabled children in developing countries do not attend school; in higher education, among the OECD countries, disabled students remain under-represented despite their increasing numbers in the institutions; and only 2% of disabled people in developing countries have access to rehabilitation services.⁴⁹

The observation above suggests that the UN system generally neglected disability. Confusingly, however, it is the way in which disability was viewed

⁴⁷UDHR Art 2, ICCPR Art 2(1), and ICESCR Art 2(2) of the ICESCR, Art 3 of the Convention Relating to the Status of Refugees (189 UNTS.150, entered into force April 22, 1954) .

⁴⁸ UN Enable, ‘Factsheet on Persons with Disabilities’-

<<http://www.un.org/disabilities/default.asp?id=18> accessed on 20th January 2011.

⁴⁹DFID, Disability, Poverty and Development, February 2000. Also, Despouy L, ‘*Human Rights and Disabled Persons*’ (Study Series 1-6), Centre for Human Rights Geneva and UN New York <http://www.un.org/esa/socdev/enable/dispaperdes0.htm> accessed march 2008.

and approached by the UN system especially its early interventions (from 1945 through the 1970s to 1980s) which might itself have resulted in that invisibility of disabled people as rights claimants and lack of specificity on how to tailor rights conferred by the treaties to the context of disability. The early interventions mainly focused on the medical model approach to disability such as welfare, social welfare, rehabilitation and prevention of disabilities; emphasizing on adapting the individuals with disability to the environment so as to enable them to function in society around them, rather than adapting the environment to accommodate the disabled people. In that way, the UN was largely dealing with disability not necessarily as an equality issue or human rights issue, but as a medical problem located within the particular individual who has an impairment or condition that can be corrected (see chapter two for more details). Whereas this approach is of benefit to those whose impairments or conditions can be adapted to the environment, it does not benefit those whose impairments cannot be adapted to an environment; who actually constitute a large majority of disabled people. That category, through the medical approach remain largely excluded, segregated, dependent on others, and discriminated against i.e. condemned to perpetual denial of their enjoyment of the fundamental human rights.

Whereas, undeniably, disabled people were invisible rights claimants and as a result suffered denial of their fundamental rights in all aspects of life, there were progressive developments of disability rights by the UN and each development, arguably relates to the understanding of disability and human rights prevalent at that time. These developments were shading light on disability rights towards the present understanding of disability rights as codified in the CRPD. A detailed discussion of those developments is beyond the scope of this thesis but a brief overview will be provided.

A shift in approach by the UN from framing disability as a social welfare issue to a human rights issue emerged in the 1970s, when two declarations on disability

were adopted.⁵⁰ The declarations recognised that disabled people were equally entitled to the same rights as everybody else (the formal equality approach) and sought to integrate disabled people in society (some extent, the recognition of the substantive equality aspects). Through those declarations, the concept of human rights for disabled people began to be accepted internationally.⁵¹ However, the declarations lacked guidance on promoting rights of disabled people. The drafting of the declarations lacked addressing disability discrimination based on the social context of disabled people- i.e. requiring removal of environmental disabling barriers such as attitudes, accessibility barriers, policy, criterion and practices. As such, the declarations were weak to bring about the realization of the concept of equal opportunities as discussed in chapter two, in relation to disability.

In light of that gap, the UN in the 1980s proclaimed a number of measures aimed at addressing disability discrimination in the perspective of social barriers. This began by declaring 1981 an International Year of the Disabled (IYD)⁵² with the theme "full participation and equality." It defined as the right of disabled people to take part fully in the life and development of their societies, enjoy living conditions equal to those of other citizens, and have an equal share in improved conditions resulting from socio-economic development. It was also aimed at: increasing public awareness; understanding and acceptance of persons who are disabled; and encouraging persons with disabilities to form organizations through which they can express their views and promote action to improve their situation. To actualize the purpose of IYD, IYD was followed by a declaration on the World Programme of Action for Disabled People (WPA),⁵³ from which emerged

⁵⁰The UN Declaration on the Rights of Mentally Retarded Persons of 20 December 1971, and the UN Declaration on the Rights of Disabled Persons, adopted by the General Assembly on 9 December 1975.

⁵¹UN Enable, the United Nations and Disabled Persons -The First Fifty Years
<http://www.un.org/esa/socdev/enable/dis50y40.htm> accessed on 16th November 2010.

⁵² UNGA Res 31/123 of 1976, <http://www.un.org/esa/socdev/enable/disidydp.htm> (accessed on 2nd October 2013)

⁵³ UNGA Res 37/52 of 3rd December 1982

the equalisation of opportunities model on disability. It placed emphasis on making general society accessible to all. This called for a plan of action at national, regional and international levels with the emphasis on equalisation of opportunities, rehabilitation and prevention of disability.⁵⁴ To implement the WPA, the UN proclaimed the United Nations Decade of disabled persons 1993-2002.⁵⁵

Throughout the developments mentioned above, the UN inspired national development programmes and research, legislation, policy and decision making from people's disabilities i.e. focusing on rehabilitation and prevention of disability, and social welfare perspectives to their abilities i.e. focus on equalization of opportunities. In particular, the concept of equalization of opportunities marked the beginning of an understanding of disability as an equality issue. It created and increased awareness on disability and its human consequences. It also, exposed the causal connection between human rights violations, violations of fundamental freedoms, and disability.⁵⁶ Despite so, the review of WPA indicated that little was achieved through the programmatic approaches and recommended the enactment of the UN Convention on disability. However, the suitability of such a convention was not perceived as the general opinion was that the human rights conventions that were existing guaranteed disabled people the same rights as other persons. Instead, the General Assembly adopted the United Nations Standard Rules of Equalisation of Opportunities (UNSR) 1993 as a customary law for realising the rights of disabled people.

The Rules are built on and promotes the principle of equal rights.⁵⁷ This principle implies that, the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies

⁵⁴ UN Enable <http://www.un.org/esa/socdev/enable/disiydp.htm><accessed on 8th October 2009>

⁵⁵ Proclaimed by UN GA in its resolution 37/53

⁵⁶ Leandro Despouy, Human Rights and Disabled Persons, No. 3 in Human Rights Studies No. 6, UN Sales No. E.92 XIV.4 (1992)

⁵⁷ A Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' (2007) 34(2) Syracuse J Int'l L & Com. 564, (581-582)

and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation. The 22 rules are in three broad groups. The first group concerns with preconditions for equal participation (awareness-raising, medical care, rehabilitation and support services). The second group focuses on target areas for equal participation (accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports and religion). The third group is about the implementation measures (information and research, policy-making and planning, legislation, economic policies, coordination of work, organizations of persons with disabilities, personnel training, national monitoring and evaluation of disability programmes in the implementation of the rules, technical and economic cooperation and international cooperation). In regards to creating awareness about the Rules and monitoring of their implementation, the Rules were supported by a Special Rapporteur and panel of experts. As noted, the rules required States to strengthen the equalisation of opportunities for disabled people and they tried to clarify on how rights conferred in the treaties can be made relevant for disabled people. However, the impact of the Rules was muted by the fact that they were persuasive not legally binding. The classic example of that scenario is in the UN Millennium Development Goals (MDGs) 2000 -2015. Disability is not mentioned in any of the 8 Goals or the attendant 21 Targets or 60 Indicators, nor in the Millennium Declaration.⁵⁸ Given the purpose of MDGs of representing a concerted effort to address global poverty, the exclusion of disability in the MDGs means that over one billion of the world population (the disabled people)⁵⁹ would rarely realize their economic, social and cultural rights and as well as the civil and political rights as human rights are interdependent and interrelated in nature.

⁵⁸United Nations, 'Disability and the Millennium Development Goals: A Review of the MDG Process and Strategies for Inclusion of Disability Issues in Millennium Development Goal Efforts,' United Nations Publication, Sales No. E.11.IV.10 (2011).

⁵⁹See the World Disability Report 2011, Chapter One. It provides that, 15% of the world population has a disability.

These weaknesses of the UN declarations on disability led to the adoption of the international legally binding treaty on disability- the CRPD. Now, the CRPD legally mandates disability issues to be addressed within broad spectrum of citizens' rights, where all policy frameworks on participation and access to goods, services and facilities are to be disability inclusive. To achieve that, the disability discrimination laws should be drafted to take account of the uniqueness disability presents to the equality law some of which discussed in chapter two. Short of that, the enthusiasms expressed about the CRPD such as one noted in the beginning of this sub-section would be hard to realise.

In conclusion, it is arguable that 'prior to the adoption of the CRPD, human rights of disabled people were in theory covered by human rights treaty obligations and addressed in non-binding resolutions and declarations, but in practice were protected by neither.⁶⁰ Despite such scenario, the normative human rights framework on disabled people prior to the adoption of the CRPD created significant impact on the realization of disability rights. This impact can be viewed in two perspectives. One, disabled people appeared to be largely invisible legal rights claimants⁶¹ although they were theoretically covered by it. Two, although they were invisible rights claimants, the framework was a basis for the advancement of disability equality for them. Some countries enacted specific disability legal instruments⁶² and generally disability rights became recognised in some domestic laws,⁶³ including in the UN. Thus, for countries that enacted disability discrimination laws, disabled people were at least

⁶⁰ MA Stein and JE Lord, 'Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities' in OM Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Volume 100 Martinus Nijhoff Publishers, Leiden 2009) 22.

⁶¹ A Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' (2007) 34(2) *Syracuse J Int'l L & Com.* 564, (583)

⁶² T Degener and G Quinn, 'A Survey of International, Comparative and Regional Disability Law Reform' in M L Breslin and S Yee (eds), *Disability Rights Law and Policy: International and National Perspectives* (Transnational Publishers, New York 2002) 10.

⁶³Disability Rights Monitor (DRM) 2007.

recognised as legal rights claimants although with differing degrees of protection and realisation of their rights, depending on judicial interpretation, political and social commitment to enforcement and how the law has been framed.⁶⁴ Another effect is that it strengthened the disability rights groups (DRGs) both at national and international levels to demand enforceable disability laws at those levels. The outcome at UN level is the adoption of the CRPD in 2006. Arnardóttir, usefully explains this argument by stating that, the CRPD and its approach to equality is the logical result of the previous developments in international law and that it reflects a substantive and multidimensional disadvantage approach to equality, which is informed by an understanding of disability as a social construct.⁶⁵

It can therefore be stated that the CRPD has been enacted at the time when there is great disability awareness and disability activism globally, and the concept of equalisation of opportunities for disabled people has taken root. The equalisation of opportunities approach is seen to be shifting laws in relation to disability from social security and welfare law, health law and guardianship law to civil rights law. As Degener and Quinn rightly observe, a key element of equalisation of opportunity approach is recognition that exclusion and segregation of people with disabilities do not logically follow the fact of impairment, but rather result from political choices based on false assumptions about disability.⁶⁶ Thus, the focus is seen to be shifting from viewing disability as an individual problem to how society as whole fails to consider human difference.⁶⁷ Now that the ground that appears to have already been ‘softened,’ there is expectation of the translation of the ideals in the CRPD to make the available and accepted education accessible and adaptable to disabled people, in particular higher education.

⁶⁴ T Degener and G Quinn, (n62) 48-49.

⁶⁵OM Arnardóttir ‘A Future of Multidimensional Disadvantage Equality?’ in OM Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Volume 100 Martinus Nijhoff Publishers, Leiden 2009) 42.

⁶⁶T Degener and G Quinn, (n62) 5.

⁶⁷Ibid 5-6.

3. The Convention on the Rights of Persons with Disabilities

From the previous discussions, it is arguable that, prior to the adoption of the CRPD, in practice, disabled people were neither protected by human rights treaty obligations nor non-binding resolutions and declarations. Therefore, the adoption of the CRPD marks the first time the rights of disabled people have been set out comprehensively in a binding international instrument, placing disability rights too in the human rights framework as suspect discrimination ground. The purpose of the Convention is to protect, promote and ensure the full and equal enjoyment of human rights by all disabled people and respect for their fundamental freedom and inherent dignity.⁶⁸

In light of that observation, this section examines the extent to which the CRPD is capable of making education available, accessible, adaptable and acceptable in light of disability; in particular, making the available and acceptable education accessible and adaptable for all categories of disabled people. That is to say capability of the CRPD to remove prejudice and attitudinal barriers, wider accessibility barriers, and non-intentional policies, criterion and practices disadvantaging disabled people in higher education.

3.1 An overview of the CRPD

From the principles upon which the CRPD is anchored to, it appears the CRPD is capable of addressing the exclusion and discrimination of disabled people. These principles are: non-discrimination; full and effective participation and inclusion in society; respect for human differences, acceptance of disabled people as part of human diversity and humanity; equality of opportunity and accessibility.⁶⁹ Gauging these principles based on the respective meanings of equality and non-discrimination discussed in chapter two, it can be stated that, they provide a broad spectrum of interpretations to remove any kind of exclusion and discrimination on grounds of disability. For example, non-discrimination has

⁶⁸CRPD Art 1.

⁶⁹CRPD Art 3.

been interpreted to entail removing both direct and indirect discrimination. Full and effective participation and inclusion entails removing all kinds of institutional and systemic discrimination. Respect of human difference means all needs of every category of impairment should be taken care in the inclusion process. Equality of opportunity entails measures that can deliver both equality of results and formal equality approaches to non-discrimination.⁷⁰ Accessibility calls upon duty bearers to look at those factors that inhibit participation and general access by disabled people in society. Therefore, the CRPD requires as a matter of principle, taking appropriate measures to equalise opportunities for disabled people to effectively participate in society.

The appropriate measures inferred by the CRPD principles is no way is the CRPD advocating for new rights for disabled people that never existed in the earlier conventions.⁷¹ Through these measures CRPD instead tailors the relevant norms from existing Conventions so as to be relevant to disability.⁷² In that way, the CRPD is viewed as a hybrid convention containing all the relevant substantive rights contained in the UN Bill of Rights, and animated by the non-discrimination/equal opportunity philosophy.⁷³ The hybrid nature of the CRPD is explicit in the listing of the fundamental rights prescribed by the International Bill of Rights, alongside the rights in the CRPD. These rights are: a right to equality and non-discrimination,⁷⁴ right to life,⁷⁵ equal recognition before the

⁷⁰ See discussion in chapter two.

⁷¹ UN Documents, 'From Exclusion to Equality. Realising Rights for Persons with Disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol' <http://www.un.org/disabilities/documents/toolaction/ipuhb.pdf>.⁵ accessed on 22nd November 2008.

⁷² Ibid.

⁷³ G Quinn, 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities' in G Quinn and L Waddington (eds), *European YearBook of Disability Law* (Volume 1 Intersentia 2009) 99.

⁷⁴ CRPD Art 5, UDHR Arts 2 and 7, ICCPR Art 26.

⁷⁵ CRPD Art 10, UDHR Art 3, ICCPR Art 6.

law and legal capacity,⁷⁶ liberty and security,⁷⁷ freedom from torture,⁷⁸ freedom from exploitation, violence and abuse,⁷⁹ right to respect physical and mental integrity,⁸⁰ freedom of movement and nationality,⁸¹ right to live in the community,⁸² freedom of expression and opinion,⁸³ respect for privacy,⁸⁴ respect for home and family,⁸⁵ right to education,⁸⁶ right to work,⁸⁷ right to health,⁸⁸ right to adequate standard of living,⁸⁹ right to participate in political and public life,⁹⁰ and right to participate in cultural life.⁹¹

Therefore, how the CRPD has prescribed the realisation of rights of disabled people is very likely to clarify the interrelatedness of the two sets of rights: economic, social and cultural rights and the civil and political rights in relation in bringing the equalisation of opportunities for disabled people. In context of disability, the realisation of both sets of rights needs immediate attention.⁹² According to the principles, the CRPD is constructed to realise that. In fact, the

⁷⁶ CRPD Art 12, UDHR Art 6, ICCPR Art 16.

⁷⁷ CRPD Art 14, UDHR Art 3, ICCPR Art 9.

⁷⁸ CRPD Art 15, UDHR Art 5, ICCPR Art 7.

⁷⁹ CRPD Art 16, UDHR Art 5.

⁸⁰ CRPD Art 17, UDHR Art, ICCPR Art, ICESCR Art 12.

⁸¹ CRPD Art 18, UDHR Art 15, ICCPR Art 12.

⁸² CRPD Art 19, UDHR Art, ICCPR Art 12.

⁸³ CRPD Art 21, UDHR Art 19, ICCPR Art 18.

⁸⁴ CRPD Art 22, UDHR Art 12, ICCPR Art 17.

⁸⁵ CRPD Art 23, UDHR Art 16, ICCPR Art 23.

⁸⁶ CRPD Art 24, UDHR Art 26, ICESCR Art 13 & 14.

⁸⁷ CRPD Art 27, UDHR Art 23, ICESCR Art 6&7.

⁸⁸ CRPD Art 26, UDHR Art 25(1), ICESCR Art 12.

⁸⁹ CRPD Art 28, UDHR Art 25, ICCPR Art 1.

⁹⁰ CRPD Art 29, UDHR Art 21, ICCPR Art 25.

⁹¹ CRPD Art 30, UDHR Art 27, ICESCR Art 15.

⁹² For example, the active participation of the deaf people in politics may require services of a sign language interpreter; while those with mobility problems may require provision of wheelchairs or crutches and removal of physical barriers. That requires States to urgently develop relevant programmes in order to meet those requirements. Such programmes are viewed to be falling within the remits of the economic, social and cultural rights.

CRPD is constructed to be both a development and human rights instrument; a policy instrument which is cross-disability and cross-sector.⁹³ From that perspective it is hoped that the CRPD will entrench disability rights in both international and domestic laws and thereby remove exclusion and discrimination of disabled people in higher education.

3.2 The CRPD's Provisions on Education

A right to education is laid down in article 24. Its purpose echoes the purpose provided for by Article 13(1) of the ICESCR. That, the education and lifelong learning be directed to the development of a disabled person's personality, talents and creativity, as well as his/her mental and physical abilities, to his/her fullest potential⁹⁴ and to enable a disabled person to participate effectively in a free society.⁹⁵ The purpose also echoes the intent of the principles of the CRPD as discussed above.

Substantively, article 24 targets achieve disabled people realising right to education without discrimination on the basis of equal opportunities. In so doing, it espouses an inclusive education system at all levels of education and lifelong learning. In that, it requires States to ensure that educational institutions take into account the relationship between the learning environment and the impairment needs of a disabled person. To realise those targets, the CRPD sets out the obligations on the State that require:

- Providing reasonable accommodation of the individual's requirements.⁹⁶

⁹³ <<http://www.un.org/disabilities/documents/ppt/crpdbasics.ppt> >

⁹⁴CRPD Art 24(1) (b).

⁹⁵CRPD Art 24(1) (c).

⁹⁶ CRPD Art 24(2)(c).

- Providing effective individualised support measures to disabled people in an environment that maximises academic and social development, consistent with the goal of inclusion.⁹⁷
- Taking account of the educational needs of the most marginalised such as the visually or hearing impaired or the deaf-blind. On this, the article requires States to undertake appropriate measures including:
 - a) *Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;*
 - b) *Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;*
 - c) *Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.*

In current practice in education, the visually impaired, the hearing impaired and the deaf-blind people are largely excluded from the mainstream education system. Therefore, such measures would facilitate their full and equal participation in education.

In paragraph 4, the article goes further to require States to:

- Employ teachers, including teachers with disabilities qualified in sign language and/ or Braille.

⁹⁷CRPD Art 24(2)(d).

- Train professionals and staff who work at all levels of education, such training to include disability awareness and use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

With particular reference to general access to tertiary education (which includes higher education, vocational training, adult education and lifelong learning) reasonable accommodation is required to be provided to disabled persons.⁹⁸

In conclusion and drawing from the principle that a right to receive education means making education available, accessible, adaptable and acceptable, the substantive obligations of Article 24 is making the available educational institutions accessible and adaptable to disabled people. However, the focus of these obligations is on actions that would mostly generate individualised support in addressing discrimination rather than the proactive means of elimination of discrimination. This means, article 24 is not stand alone on making educational institutions accessible and adaptable to disability. Its obligations, therefore, need to be understood alongside other CRPD articles directly relevant in supporting article 24 achieve effective inclusion in higher education. Specific to the purposes of clarifying the meaning of disability discrimination, creating awareness about disability and its needs, addressing wider accessibility requirements, the provisions more relevant to that purpose are equality and non-discrimination, awareness-raising, accessibility and international cooperation. The discussions now turn to those provisions.

⁹⁸CRPD Art 24(5).

3.4 Meaning of Disability Discrimination

Article 2 of the CRPD defines discrimination on the basis of disability 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 includes all forms of discrimination, including denial of reasonable accommodation.

Reasonable accommodation means *necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and freedoms.*⁹⁹

As discussed in chapter two, the phrase ‘any distinction, exclusion or restriction’ ... ‘with purpose or effect’ provides an expansive meaning of discrimination, entailing prohibition of both intentional and non-intentional forms of discrimination. With the meaning of discrimination extending to denial of reasonable accommodation, the meaning of disability discrimination is therefore wider than the meaning of discrimination in other treaties. Therefore, in accordance with the CRPD, to eliminate disability discrimination encompasses taking account of all practices that disproportionately disadvantage disabled people and altering of structures to proactively exclude disabled people in higher education.

The meaning of non-discrimination is further clarified by the provision on equality and non-discrimination in article 5, that: disabled people are citizens with equal rights like others, before and under the law, entitled without any discrimination to the equal protection and equal benefit of the law.¹⁰⁰ Disabled

⁹⁹ Ibid.

¹⁰⁰ CRPD Art 5(1).

people should be guaranteed equal and effective legal protection against discrimination on the basis of disability.¹⁰¹

In addition to prohibition of discrimination, all appropriate measures must be taken to ensure reasonable accommodation is provided.¹⁰² All specific measures which are necessary and appropriate to accelerate or achieve de facto equality of disabled people should not be considered discrimination under CRPD.¹⁰³

To bring about practical understanding of disability discrimination in the institutions of higher education, awareness about it and needs of disabled people be created across higher education. This is helpful in enhancing discussions and innovations towards the development of an inclusive education environment. A requirement of awareness-raising is also provided in the CRPD. The discussion now turns to that.

3.5 Awareness-raising

The provision for awareness-raising is one of the ways the CRPD further articulates a means of securing the rights of disabled people. Article 8 provides for awareness-raising and requires that States adopt immediate, effective and appropriate measures to raise awareness of disability throughout society to foster respect for the rights and dignity of disabled people.¹⁰⁴ It is also aimed at combating all forms of stereotypes, prejudices and harmful practices relating to disabled people.¹⁰⁵ It is also intended to promote awareness of the capabilities and contributions of disabled people.¹⁰⁶ Awareness can be realised by:

- i. Conducting effective public awareness campaigns designed to: nurture receptiveness to the rights of persons with disabilities;¹⁰⁷ promote

¹⁰¹CRPD Art 5(2).

¹⁰²CRPD Art 9.

¹⁰³CRPD Art 5(4).

¹⁰⁴ CRPD Art 8(1)(a).

¹⁰⁵CRPD Art 8(1)(b).

¹⁰⁶CRPD Art 8(1)(c).

¹⁰⁷CRPD Art 8(2)(a)(i).

positive perceptions and greater social awareness towards disabled persons;¹⁰⁸ promote recognition of the capacities and abilities of disabled people.¹⁰⁹

- ii. Fostering respect for the rights of disabled people at all levels of education.¹¹⁰
- iii. Encouraging all organs of the media to portray disabled people as rights claimants.¹¹¹
- iv. Promoting awareness-raising programmes regarding the rights of persons with disabilities.¹¹²

Awareness-raising can bring about the tailoring by institutions of their policies, practices or criterion to suit the needs of disabled people, a step towards making education adaptable and accessible. It can also bring collaboration between institutions and disabled people's organisations as institutions seek to increase their expertise in disability inclusion. In developing countries, like Uganda, where there is limited enforcement of the disability laws, awareness-raising can to some extent help in making institutions comply with the requirements of the disability law.

3.6 Accessibility Requirements

In the daily experiences of disabled people either in education or elsewhere, an inaccessible environment is clearly a form of exclusionary barrier, which may amount to a form of discrimination. Therefore, identification and removal of accessibility barriers is central in enabling disabled people to live independently,

¹⁰⁸CRPD Art 8(2)(a)(ii).

¹⁰⁹CRPD Art 8(2)(a)(iii).

¹¹⁰ CRPD Art 8(2)(b).

¹¹¹CRPD Art 8(2)(c).

¹¹²CRPD Art 8(2) (d).

participate fully in all aspects of life and promote their social integration. The CRPD in Article 9 provides a wide scope for addressing accessibility barriers including the physical (i.e. environment and infrastructure) information, communication, technological and social accessibility. It requires that social services and facilities open or provided to the public be accessible.¹¹³ Therefore, accessibility is inextricably linked to all the rights in the convention. This is recognised in the CRPD so, as accessibility is one of the eight general principles of the CRPD;¹¹⁴ it guides its meaning.

Accessibility requirements relate to reasonable accommodation, as non-compliance with accessibility leads to a detriment to a disabled person which may well trigger a reasonable accommodation duty. Where there is no access barrier, reasonable accommodation will often not be necessary.

The concept of accessibility has been examined in UN human rights law prior to the CRPD, for example by the ESCR Committee in General Comment 5 on disability, General Comment 13 on a right to education and General Comment 14 on the right to the highest attainable standard of health.¹¹⁵ It can be taken to mean that the general emphasis placed on States by these comments is a right to access to facilities, goods and services to everyone including disabled people without discrimination. In General Comment 14, accessibility is viewed in four overlapping dimensions of non-discrimination, physical accessibility, economic or affordability and information accessibility.¹¹⁶ The CRPD therefore articulates in detail and tailors those obligations to the reality of disabled people. This is to bring about adherence to accessibility standards in facilities and services open or provided to the public, in order to ensure non-discrimination of disabled people.

¹¹³CRPD Art 8(2) (d).

¹¹⁴ CRPD Art 3 (f), also the recital v.

¹¹⁵General Comment No. 14 (2000), the Right to the Highest Attainable Standard of Health (art 12 of the International Covenant on Economic, Social and Cultural Right. E/C. 12/2000/4.

¹¹⁶ Ibid par 12 (b).

To achieve that, the CRPD provides specific and detailed measures to be undertaken to meet the access needs of disabled people. These include ensuring:

- i. minimum standards and guidelines for accessibility are adhered to;¹¹⁷
- ii. private entities adhere to accessibility standards;¹¹⁸
- iii. stakeholders are trained on accessibility issues;¹¹⁹
- iv. signage in Braille and in easy to read and understand format are provided;¹²⁰
- v. provision of disabled people forms of live assistance and intermediary support such as guides, readers and professional sign language interpreters;¹²¹
- vi. promotion of other appropriate forms of assistance and support to disabled people in ensuring they access information.¹²²

Other measures include promoting access by disabled people to new information and communication technologies and systems, including the internet.¹²³

Clearly, meeting accessibility requirements is a challenge, even to the developed countries. Accessibility legislation is seen to be bringing limited impact in the way accessibility is being realised. For example, within the European Community, a policy of ensuring that all public websites be accessible by the end

¹¹⁷CRPD Art 9(2)(a).

¹¹⁸CRPD Art 9(2)(b) .

¹¹⁹CRPD Art 9(2)(c).

¹²⁰CRPD Art 9(2)(d).

¹²¹CRPD Art 9(2)(e).

¹²²CRPD Art 9(2)(f).

¹²³CRPD Art 9(2)(g).

of 2010 was instituted. By 2008, only 5.3% of public websites had reached the minimum level of accessibility recommended.¹²⁴ The importance of the CRPD is ensuring that countries develop and implement the domestic legislation on accessibility. Deducing from reports on the Status of the CRPD,¹²⁵ there are indications that some States are developing laws towards complying with accessibility requirements. However, actual implementation of the accessibility plans is a different matter, as that depends on the States' accessibility policies and resources. China in particular indicates increasing access to disabled people to legal aid and an ambitious plan to establish 100 barrier-free model cities throughout the country.

3.7 International Cooperation

Another mechanism for realising ideals in Article 24 is international cooperation. This aims to foster effective international cooperation between States and in partnership with international and regional organisations and civil society, in particular organisations of disabled people, to realise the rights contained in the CRPD.¹²⁶

The critical importance of international cooperation is bringing about sharing and development of a global capacity, knowledge and expertise in including disabled people not only across international development agenda but also within the State. For example, in the light of the differing challenges of realising a right to education existing between developed and developing countries, effective

¹²⁴'Web accessibility in the European Context' Submission to the Committee on the Rights of Persons with Disabilities Day of General Discussion on 'The Right to Accessibility' 7 October 2010. <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGD7102010.aspx> accessed on 11th November 2010.

¹²⁵ Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto Report of the Secretary - General. A/64/128. See also See Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto Report of the Secretary - General. A/63/264.

¹²⁶General provision of CRPD Art 32(1).

international cooperation is a vital means of addressing such gaps. As the Convention stipulates, international cooperation measures should facilitate and support capacity building, including through the exchange and sharing of information, experience, training programmes and best practices.¹²⁷ It should facilitate cooperation in research and access to scientific and technical knowledge.¹²⁸ As appropriate, international cooperation measures should provide technical and economic assistance, including facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.¹²⁹

In summary, the constraints relating to disability inclusion in higher education are related to limited capacities to address it squarely. The capacity issue is seen in the form of underdeveloped research in disability inclusion and disability studies, technology, limited information and accessibility issues among others. This to some degree can be addressed through effective international cooperation if issues on disability inclusion in higher education are recognised in practice. For example, if disability inclusion is taken into consideration in the international cooperation agenda then it may lead to international aid agencies factoring into their programmes disability inclusion in higher education. Such a practice may reduce the constraints on achieving disability inclusion arising from limited resources. Evidence exists of some bilateral and multilateral institutions incorporating disability into their international development cooperation agenda.¹³⁰ Where this is so, evidence also exists that disability is often positioned as a specific sector rather than mainstreamed throughout donor

¹²⁷ CRPD Art 32(1)(b).

¹²⁸ CRPD Art 32(1)(c).

¹²⁹ CRPD Art 32(1)(d).

¹³⁰United Nations Economic and Social Council Report of the Secretary-General 'Mainstreaming Disability in the Development Agenda' E/CN.5/2010/6. See also Inclusion International Report 'Disability, Development and Inclusion in International Development Cooperation: An Analysis of Disability Related Policies and Research at selected Multilateral and Bilateral Institutions.' Also, Janet Lord and others, 'Disability and International Cooperation and Development: A review of Policies and Practices' Volume 1 June 2010, World Bank Resources, Page 30.

agencies policies and programmes on international development.¹³¹ It is also noted that the amount of international aid allocated for disability by the international development partners is small compared to the needs of disabled people in the recipient country,¹³² and, moreover, the recipient countries have not identified disability as a development priority.¹³³ Such factors make disabled people invisible in the international development aid agenda in the recipient countries. Therefore, effective mainstreaming of disability into the agenda of international development cooperation is critical in reaching disabled people at all levels and making them visible to the development aid agencies.

4. Monitoring, Implementation and Enforcement of the CRPD

4.1 An Overview of the UN Human Rights Monitoring and Enforcement Framework.

This discussion is not intended to have detailed analysis of role of those bodies in human rights protection as that is outside the scope of this research. It is sufficient to state the UN human rights monitoring system can be viewed to be robust, as virtually every UN organ is involved to some extent in protection of human rights.¹³⁴ To narrow it down, those particularly focused on human rights enforcement consists of a two-track approach of the Charter based bodies,¹³⁵ including organs which have been authorised by the charter-based bodies to deal with specific issues in human rights and the treaty-based

¹³¹Note to the Secretary General on ‘Monitoring of the Implementation of the Standard Rules of Equalisation of Opportunities for Persons with Disabilities’ E/CN.5/2011/9 para 41

¹³²H Katsui, ‘Human Rights of Disabled People.’ This is the English version of the published article in a Finnish book, Disability Research: Katsui, H ‘Vammaisten Ihmisoikeuksista Etelässä’ In A Teittinen (ed), Vammaisuuden Tutkimus. Yliopistopaino(Helsinki, (2006)86-119.

¹³³Fn 132

¹³⁴ RKM Smith, (n9) 49-50.

¹³⁵ The UN Charter based bodies are the General Assembly, Security Council, International Court of Justice, Economic and Social Council, Trusteeship Council and the Secretariat.

committees.¹³⁶ The UN-based bodies, being the political organs of the UN, derive their legitimacy and their mandate broadly from the human rights provisions of the Charter and therefore have a much broader mandate than the treaty-based committees in promoting awareness, fostering respect, and responding to violations of human rights standards.¹³⁷ Among others, these bodies monitor human rights through Country and thematic rapporteurs and various working groups reporting them. Recently, human rights enforcement and monitoring has been strengthened by the creation of the Human Rights Council (UNHRC) as a subsidiary of the UN General Assembly in 2006.¹³⁸ The UNHRC replaces the Commission on Human Rights which has been dealing with human rights issues since 1946 when it was established. The discussion on the political events that led to demise of the Commission and shaped the Council is outside the scope of this thesis. However, it can be stated that the UNHRC has been provided with a broader mandate than the Commission. The UNHRC's status will be reviewed at the end of 2011 with a view to it becoming a full organ of the UN. Therefore, as Steiner *et al* observe, 'each treaty regime will be to some extent 'monitored' or 'developed'' by the Human Rights Council.¹³⁹

The UN treaty-based monitoring organs are independent committees of experts mandated to monitor the implementation of a specific treaty. Each treaty establishes such a committee to monitor, by various means, the implementation of its provisions. All states parties to each treaty are obliged to submit regular reports to the committee on how rights are being implemented, in accordance with the provisions of that treaty. The committee receives and examines these reports and addresses each State Party's concern in the form of concluding observations or comments. The committees also issue guidelines to States on the preparation of their reports. More importantly, the committees issue authoritative interpretation of the treaty thematic issues through General Comments. As of

¹³⁶ H J Steiner and P Alston and R Goodman (n3) 737.

¹³⁷ *Ibid* 740-741.

¹³⁸ GA Res 60/251 establishing the Human Rights Council.

¹³⁹ H J Steiner and P Alston and R Goodman (n3) 844.

2009, 135 such comments have been issued since the establishment of the first such committee.¹⁴⁰ Although these are authoritative opinions they are not legally binding, which means the committees lack teeth. For those States that are signatories to the optional protocol to the treaty, the committee also examines individual complaints of alleged violation of the treaty rights by the state.

The CRPD establishes a committee - a Disability Committee - with similar mandates in regards to enforcement and monitoring of rights of disabled people.¹⁴¹ Additionally, the CRPD provides for mechanisms of enforcement of its obligations at the national level, by providing for the development of the monitoring, coordination and enforcement mechanism at every level of government. It also requires the establishment of an independent monitoring framework to promote, protect and monitor the implementation of the CRPD. In this framework, it demands the involvement of disabled people. In that way the CRPD tries to address the implementation issues related to enhancing capacities and further creation of awareness about disability rights.

For the report from State Parties, the CRPD requires each State Party to submit to the Committee its first report within two years after ratifying the CRPD.¹⁴² Thereafter, subsequent reports must be submitted at least every four years or whenever the Committee so request.¹⁴³ The subsequent report should not repeat

¹⁴⁰These Committees have issued these number of General Comments since the time of their establishment:

CCPR	issued	33	by	2008
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<http://www2.ohchr.org/english/bodies/hrc/comments.htm>,

CESCR 29 by 2009, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> ,

CEDAW issued 26 by 2008, <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>,

CERD 33by 2009, <http://www2.ohchr.org/english/bodies/cerd/comments.htm>,

CRC issued 12 by 2009, <http://www2.ohchr.org/english/bodies/crc/comments.htm>,

CRPD has not yet issued by 2010,

CAT issued 2 by 2009, <http://www2.ohchr.org/english/bodies/cat/comments.htm>,

CMW has not yet issued by 2010.

¹⁴¹CRPD Arts, 34, 35, 36, 37, 38 and 39.

¹⁴²CRPD Art 35(1).

¹⁴³CRPD Art 35(2).

information previously submitted.¹⁴⁴ The reporting guideline applicable to the content of a report is decided by the Committee.¹⁴⁵ States in their report may indicate factors and difficulties affecting the degree of fulfilment of the CRPD's obligations.¹⁴⁶ In the process of reporting, States are expected to involve disabled people.¹⁴⁷ The report system is the most common means of supervising implementation of the convention employed by the UN and reports are used as supportive dialogues between the Committee and the State rather than as submissions to an adversarial proceeding.¹⁴⁸ Reporting brings publicity of the rights at all levels, provided the rights claimants are involved in the process. It should be that the report provides an honest appraisal of the States in achieving the rights. If this is the case then reporting can lead to identifying technical and vocational assistance the State needs to enhance its capacities to fulfil its obligations in achieving the rights. This research argues that the gathering of the information also gives an opportunity to the State to examine the extent to which its laws, policies and practices are compliant with the CRPD through analysing the extent to which disabled people have been involved. At the UN Disability Committee level, States Parties' reports will be the basis of highlighting the extent to which the CRPD obligations are tailoring the existing human rights norms to suit the disabled people. Also, the examination of the reports by the Committee and the concluding observations thereon clarify the scope of this human rights instrument in the way that would not be possible otherwise. Despite those benefits, reports are dependent on the will of the State to comply with the CRPD. In some instances, the State can opt to report only on those obligations where it has done well or can tend to be biased towards raising a positive image of the State. To counter this, Disability rights groups can also submit their own independent reports. The Convention provides for a convening of regular

¹⁴⁴CRPD Art 35(4).

¹⁴⁵ CRPD Art 35(3) .

¹⁴⁶ CRPD Art 35(5) .

¹⁴⁷CRPD Art 35(4).

¹⁴⁸R K M Smith (n9) 139.

meetings of States Parties to consider any matter relating to the implementation of the Convention.¹⁴⁹

4.2 Implementation at the National Level

At the national level, the CRPD provides for two interrelated phases of making the domestic legislation comply with the ideals of the CRPD. The first phase is domesticating the CRPD and the second phase is developing the implementation and monitoring frameworks. Each phase is examined here.

Domestication of the CRPD is achieved through three stages. The first stage is the State's consent to be bound by the Convention's obligations through ratifying it or both it and its Optional Protocol. The second stage is making the domestic laws compliant with the Convention and the third stage is the actual implementation of the Convention obligations through policies and programmes. The actual implementation is a continuous process - it draws from the second stage. The second and third stage are part of the phase of developing an implementation and monitoring framework to be discussed shortly.

The CRPD has gained tremendous worldwide acceptance within five years of its adoption. By February 2011, there were 147 signatories to and 98 ratifications of the CRPD, and 90 signatories to and 60 ratifications of the CRPD Optional Protocol. The CRPD has been ratified by the European Union. The ratifications of the CRPD demonstrate a great political will to domesticate its ideals. This research argues that it points to two things. First, it is an indicator of increasing awareness about the rights of disabled people. Second, it shows the strength of the disability rights groups in their demand for rights, as is evident from the participation in the process of enacting the CRPD. It is claimed that 70% of the text of the CRPD was the contribution of the NGOs of persons with disabilities.¹⁵⁰

¹⁴⁹CRPD Art 40.

¹⁵⁰ According to D Mackay, the Chair of the Ad hoc Committee that negotiated the Convention, see S Tromel, 'A Personal Perspective on the Drafting of the United Nations Convention on the

However, this political will may not necessarily lead to non-discrimination and equal opportunities desired by disabled people - each country has its own unique constraints and capabilities of realising human rights which in one way or another at a particular point of time have the potential of bolstering or stagnating implementation of the convention's obligations.

Article 4 of the CRPD lays down general obligations on government to achieve domestication and implementation of its ideals. These obligations entail utilising both legislative measures and pragmatic approaches in realising disability rights.

States are required to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention¹⁵¹ either enacting new legislation compliant with the CRPD or modifying or abolishing existing laws, including all those practices that constitute discrimination against disabled people.¹⁵² This research observes that those obligations call for the critical analysis of laws governing higher education, together with its operating policies, to identify gaps between them and the CRPD in order to develop a framework that make higher education policies compliant with the norms in the CRPD.

Among the programmatic approaches, States are required to engage in research and development of:

- i. Universally designed goods, services, equipments and facilities, requiring minimal possible adaption and the least costs in meeting the needs of disabled people as well as promoting universal design in the development

Rights of Persons with Disabilities' in G Quinn and L Waddington (eds), *European YearBook of Disability Law* (Volume 1 Intersentia 2009) 117.

¹⁵¹CRPD Art 4(1)(a).

¹⁵² CRPD Art 4(1)(b).

of standards and guidelines.¹⁵³ This provision is particularly vital in developing an inclusive education environment because the interpretation of universal design encompasses making the learning environment accessible for all learners. Also, the requirement of the development of standards and guidelines can lead to developing a disability code of practice in higher education.

- ii. New technologies, mobility aids, devices, and assistive technologies, suitable for disabled people, giving priority to technologies at affordable costs.¹⁵⁴ It also involves providing accessible information to disabled people about such development.¹⁵⁵

Article 4 requires States:

- i. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.¹⁵⁶
- ii. To refrain from engaging in any act or practice that is inconsistent with the present convention and to ensure that public authorities and institutions act in conformity with the present convention.¹⁵⁷
- iii. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private sector'.¹⁵⁸ To this researcher this provision sums up the general obligation of the State Party in fulfilling the convention's requirements.

¹⁵³ CRPD Art 4(1)(f).

¹⁵⁴ CRPD Art 4(1)(g).

¹⁵⁵ CRPD Art 4(1)(h).

¹⁵⁶ CRPD Art 4(1)(c).

¹⁵⁷ CRPD Art 4(1)(d).

¹⁵⁸ CRPD Art 4(1) (2)

In undertaking those obligations, States are to involve and consult organisations of disabled people¹⁵⁹ and promote training of workers on disability in the rights recognised in the convention, to enhance their capacity to provide the assistance and services guaranteed in the convention.¹⁶⁰

For national monitoring and implementation frameworks, the CRPD requires the establishment of focal points within government to ensure policy coordination,¹⁶¹ establishing or strengthening of independent monitoring¹⁶² and the full involvement of disabled people and civil society.¹⁶³ The CRPD distinguishes tasks relating to implementation from those relating to protecting, promoting and monitoring its implementation. The two functions of implementation and monitoring should not be designated to one single entity. It can be seen that, while implementation is the role of government, protection, promotion and monitoring requires the leadership of national entities.¹⁶⁴

The focal points are particularly aimed at tasks relating to implementation and are required to be established at various levels of government. They are particularly aimed at developing and coordinating coherent national policy, informing and advising government on related matters, liaising with independent monitoring framework and acting as a channel for disability rights groups and civil society to communicate with government on disability matters.

On developing an independent monitoring system, States are required to take into account the principles relating to status and functioning of national institutions for the protection and promotion of human rights, and the framework should include at least one independent human rights body. This is under international

¹⁵⁹CRPD Art 4(3).

¹⁶⁰CRPD Art 4(1)(i).

¹⁶¹CRPD Art 33(1).

¹⁶²CRPD Art 33(2).

¹⁶³CRPD Art 33 (3).

¹⁶⁴A/HRC/13/29.

law as required by the Paris Principles.¹⁶⁵ These were adopted by the UN general assembly in Paris to provide minimum benchmarks for the establishment of national independent monitoring institutions.¹⁶⁶ The specific role of these national monitoring institutions differs from country to country but includes providing guidance on human rights policies to government, receiving individual complaints, issuing policy papers, launching investigations and intervening in human rights cases.

Prior to the CRPD, Rule 17 and 20 of the UNSR provided for similar structures. In fact rule 17 required States to accord focal points sufficient autonomy and resources related to their decision-making capacities and they were to report to the highest government level.¹⁶⁷ Rule 20 requires monitoring of disability programmes to be built into the planning stage of government programmes.¹⁶⁸ Therefore, implementation of Article 33 may require reconsideration of existing structures rather than establishing new ones, by way of strengthening their capacities.

In concluding this section, it is argued that, because the CRPD requires development of focal points and independent monitoring, it has placed a strong duty of realising the rights of disabled people on all levels of government and as well on civil society. Significant to this is not only the involvement of the disabled people as ultimate bearers of the impact of the CRPD, but the involvement of the national human rights institutions in the disability rights discourse, which has not been the case before. Despite this, it is further argued that, for such a structure to bring equalisation of opportunities for disabled people in higher education, it should accord higher education a unique treatment.

¹⁶⁵HJ Steiner and P Alston and R Goodman (n3) 1123.

¹⁶⁶ UN General Assembly Resolution 48/134 of 20th December 1993, contained in the Documents from the Office of the United Nations Higher Commissioner for Human Rights, titled “Principles relating to the status of National Institutions (the Paris Principles)” <http://www2.ohchr.org/english/law/parisprinciples.htm> accessed 20th July 2010.

¹⁶⁷UNSR Rule 17(4).

¹⁶⁸UNSR Rule 20(5).

This would focus on attaining assessing progress towards having accessible institutions for all because meeting accessibility needs is what will make disabled people independent.

5. Conclusion

Disability rights advocates strongly believe that the CRPD has placed disability rights in the realm of human rights law. While that is evident from the recognition the CRPD has attained through ratification, the enjoyment of these rights is another question. It is argued that ‘the reality of human rights comes out of their enjoyment’.¹⁶⁹ Enjoyment of human rights is dependent on the interplay of a UN human rights instrument like the CRPD and the social-economic and cultural factors, including the society’s understanding of what constitutes disability discrimination.

The CRPD has tried to provide for the recognition of those factors in a way that will minimise the negative impact of those factors in the process of realisation of rights for disabled people. It has articulated the interrelatedness of human rights, and to disabled people it is explicit in the CRPD that both sets of rights need urgent realisation. The CRPD also has tried to clarify the nature of disability. This is hoped will reconcile the arguments between the social and medical models of disability in the development and implementation of education programmes.

To realise the rights it stipulates, the CRPD provides for a robust implementation and monitoring mechanism and, it stresses the need for consultation of disabled people. More importantly for a right to education, the CRPD provides minimum benchmarks for attaining it. The CRPD’s provisions such as non-discrimination and equality for disabled people, conducting awareness-raising, data collection, accessibility requirements, international cooperation and partnership augment the requirements on provision on education. Therefore compliance with the CRPD

¹⁶⁹EVO Dankawa stated this in his foreword to the book authored by F Viljoen, *International Human Rights Law in Africa* (OUP,Oxford 2007).

can enable higher education to realise a right to education for disabled people without discrimination on the basis of equal opportunities.

Chapter Four

Uganda Disability Legislation in Higher Education; Its Scope, Context and Enforcement

1. Introduction

The aims of this chapter are twofold. Firstly, it analyses the extent to which the Uganda disability legislation protects disabled people from discrimination and guarantees them equal opportunities in higher education. Secondly, it explores the extent to which the legislation's provisions relating to higher education implements similar articles of the Convention on the Rights of Persons with Disabilities (the CRPD). As a law in action, it should be understood in the context of the environment within which it operates. The chapter indicates this by exploring the on-going developments in education policy and reforms, in particular those in higher education.

The chapter is organised into five sections. Section 2 serves two purposes. It provides an overview of the extent to which disabled people are generally included in education and an overview of the key developments in higher education in order to give context within which inclusion of disabled people in higher education as required by law is taking place. Section 3 introduces the scope of the Uganda disability legislation and discusses its provisions on education. Section 4 provides an explanation of the mechanisms that exist in Uganda to promote, protect and monitor (as well as implement) the CRPD in response to Article 33. Lastly, section 5 concludes the chapter.

2. An Overview of Disability Inclusion in Education and the Higher Education Environment

2.1 Glimpses of Disability Statistics in Education and their Meaning to Disability Inclusion

Uganda's population is estimated to be 34.1 million.¹ 7.2% of it, according to Uganda National Household Survey (UNHS) 2005/2006, is disabled people.² The UNHS statistics show a significant percentage increase of disabled people from the National Population Census Report 2002 which stated that disabled people were 3.45% of the population.³ The increasing proportion of disabled people appears to be a global development. The World Report on Disability 2011 indicates that 15% of world population is disabled people. This is more than the long known estimates that 10% of the world population is disabled people.⁴

Arguably, with specific reference to Uganda, given that the major disabling diseases such as polio have almost been eradicated and majority of the population been young people, the percentage margin between the Survey and Census statistics does not necessarily mean an increase in the population of disabled people, but rather an indicator of positive developments regarding disability inclusion in the country. For example, it implies a growing awareness of what disability is and also people are willing declaring that they have a disability, a sign of possible reduction of stigma on disability. It also shows that, some human attributes that were not thought to be a disability are now being

¹ Uganda Bureau of Statistics (UBOS), '2012 Statistical Abstract,' Midyear Population Projections. Page 7.

² UBOS, 'Uganda National Household Survey 2005/6'.

³ The percentage was computed by the author using the data provided.

⁴ See UN Enable, 'Factsheet on Persons with Disabilities.'

<<http://www.un.org/disabilities/default.asp?id=18>> accessed on 20th November 2010; R Metts, 'Disability and Development,' Background Paper Prepared for the Disability and Development Research Agenda Meeting, November 2004, the World Bank, pg 7.

considered a disability in Uganda. The albinos and little people⁵ are classic examples. These groups gained recognition as disabled people around mid 2000s when National Union of Disabled Persons of Uganda (NUDIPU) accepted them to be disabled people. The albinos and little people demonstrated that they are facing stigma and social exclusion a similar way like any other category of disability. The recognition of albinos and little people as disabled people is example that disability as a diverse and as well as an evolving concept.⁶ Another significant development that can be associated to this statistics is that the data collection tools by the National Bureau of Statistics (UBOS) are now updated to capture disability as diverse concept.⁷ This may further imply that overall; there is growing disability awareness in the Ugandan public sector, a significant sign that, the country is moving forward to recognising disability as a social, a human rights and a development issue.

However, in Uganda, it appears that the increasing awareness about disability is not reflected in education. If it is reflected, then, what disability discrimination means in education is lacking. To support that observation, I draw statistics on two indicators in education, namely literacy levels and school dropout rate. On literacy levels, evidence from statistics suggests that, the illiteracy levels among disabled people are higher than those who are not disabled. Because, the overall literacy rate in Uganda among children aged 10 years and above were 73% in 2009/10,⁸ yet 50% of disabled people in Uganda have not attended primary and

⁵These are people that were formally referred as dwarfs.

⁶This is also acknowledged by the Convention on the Rights of Persons with Disabilities (CRPD) in paragraphs **e and i** of the preamble.

⁷The National Housing and Population Census 2002 appeared to have been limited by the question ‘who is a disabled person?’ That is because there was no statutory definition of disability. The statutory definition appeared in 2006 in PwDA 2006. The consequence was the unbelievable number of disabled people reported in the census. This prompted the National Union of Disabled Persons of Uganda (NUDIPU) to take up the issue of the meaning of disability with UBOS. It is likely that this contributed to the streamlining of the meaning of disability by UBOS.

⁸UBOS (n1) 16

secondary school at all.⁹ Implying that, more than 50% of disabled people are illiterate.

The second observation is that, the dropout rate of disabled pupils at every level of education is higher than those pupils without disabilities. This is illustrated by comparing the percentages of disabled pupils who progressed from primary seven (P.7) to secondary level of education with the overall percentage of pupils who also progressed from P.7 to join secondary, using education statistics presented by the UBOS Statistical Abstract 2006 to 2010. The percentages are my own computations.

- In 2006, there were 468,436 pupils in their last year of primary education (primary seven –P.7),¹⁰ in 2007, those who joined secondary one (S.1) were 277,950¹¹ i.e. 59% progressed to S.1. Implying that, 41% of the pupils who were in P.7 did not join S.1. For disabled pupils, in 2006, there were 12,855 disabled pupils recorded in P.7;¹² in 2007, those who joined S.1 were 2,990¹³ i.e. 23% progressed to S.1.¹⁴ This implies that, nearly 77% of disabled pupils did not progress to the secondary level of education.¹⁵
- In 2007, there were 470,272 pupils in P.7; in 2008, those who joined S.1 were 291,797 i.e. 62% progressed to S.1.¹⁶ Meaning that, 38% of pupils did not make it to S.1. For disabled pupils, in 2007 there were 11,632 in

⁹ UBOS, 'Uganda National Household Survey 2005/6'.

¹⁰ UBOS, 'Statistical Abstract 2010' page 101

¹¹ UBOS, 'Statistical Abstract 2010' page 107'

¹² UBOS, 'Statistical Abstract 2008' page 10

¹³ UBOS, 'Statistical Abstract 2008' page 12

¹⁴ Computation done by the researcher.

¹⁵ Ibid

¹⁶ UBOS, 'Statistical Abstract 2010' page 101

P.7;¹⁷ in 2008, those who joined S.1 were 2,830¹⁸ i.e. 24% progressed to S.1. Meaning that, 76% of disabled pupils did not join S.1.

- In 2008, there were 515,729 in P.7¹⁹ and those who joined S.1 in 2009 were 296,400²⁰ i.e. 57% progressed to S.1. Meaning that 43% of the pupils did not make it to S.1. For the case of disabled pupils, in 2008, there were 12,000 in P.7;²¹ in 2009, those who joined S.1 were 3,275²² i.e. 27 progressed to S.1%. Meaning that, 73% of the disabled pupils failed to join S.1.
- In 2009, there 546,505 pupils in P.7²³ and in 2010 those who joined S.1 were 324,487²⁴ i.e. 59% progressed to S.1. Meaning that, 41% of the pupils did not make up to S.1. For the case of disabled pupils, in 2009, there were 13,302 in P.7; in 2010, those who joined S.1 were 3,208²⁵ i.e. 24% progressed to S.1. Meaning that, 76% of disabled pupils did not join S.1.

From the comparisons above, it can be concluded that less than 25% of disabled pupils in P.7 will join S.1. And, overall, about 60% of pupils in P.7 will join S.1. This means that, there is high school dropout rate among disabled pupils as compared to rest of the pupils and reflects the extent to which Uganda fails to ensure non-discrimination of disabled pupils in education.

¹⁷ UBOS, 'Statistical Abstract 2008' page 10

¹⁸ UBOS, 'Statistical Abstract 2012' page 15

¹⁹ UBOS, 'Statistical Abstract 2010' page 101.

²⁰ UBOS, 'Statistical Abstract 2010' page 107.

²¹ UBOS, 'Statistical Abstract 2010' page 9

²² UBOS, 'Statistical Abstract 2010' page 10

²³ UBOS, 'Statistical Abstract 2012' page 108.

²⁴ UBOS, 'Statistical Abstract 2010' page 115.

²⁵ UBOS, 'Statistical Abstract 2012' page 15

To put the exclusion of disabled pupils in education in context, it is important to view it within the larger contextual factors surrounding the realisation of education as a right in Uganda as that helps to examine the extent to which the educational facilities can be made accessible and adaptable for every category of disabled people. In Uganda, it can be stated that about 70% of pupils that start primary education do not complete it (do not reach P.7). For the case of disabled pupils, it is about 75% of those who enrol in P.1 do not complete primary level o education. The tables below illustrate it.

Table 1: Showing the overall number of pupils recorded in primary one from 2001 to 2006 compared to those who completed primary education.

Year registered in P.1	Number of pupils	Expected Year of Completion of P.7	Number of Pupils who sat P.7	Percentage drop out of rate
2001	1,704,766	2007	470,272	72
2002	1,847,160	2008	515,729	72
2003	1,914,893	2009	509,640	73
2004	1,837,277	2010	544,531	70
2005	1,712,420	2011	535,933	69
2006	1,763,284	2012	564,804	68

Table 2: Showing the number of disabled pupils recorded in primary one from 2002 to 2004 compared to those who reached primary seven.

P1	No. of Children with Disability	P7	No of Pupils with Disability	% Dropout rate
2002	48,063	2008	12,000	75
2003	51,965	2009	13,302	74
2004	44,866	2010	12,871	71

There is no authoritative empirical evidence from government why there is high school dropout rate at primary. What exist are reports by NGOs and government inquiries on the running of primary education providing some explanations on this matter. According to these reports, the causes of high school dropout rate in the country include: Inflation of enrolment figures by schools with a view of getting more government funding, this means that the number of ghost pupils is highest in P1 and lowest in P7;²⁶ pupils study on empty stomachs as no provision for food on government budget and parents also do not fill this gap and this makes some dropout of school;²⁷ early marriages, a common practice in Uganda; some are repeating some classes along the way and lack of adequate sitting space. But these also appear to be providing hypothetical reasons, thus, calling for a major government inquiry into the matter.

To disabled pupils, additional factors such as attitudes and knowledge, different opinions about disability inclusion and accessibility requirements also affect their education. This could explain the fact that, in Uganda, despite the emphasis of education policies on inclusive education and an established structure for training teachers in special needs, attaining inclusive education has remained a challenge.²⁸ Because of such tangle of factors in education, Uganda is unable to meet the educational needs for disabled people so as to provide them education without discrimination and on the basis of equal opportunities.

²⁶ See Uganda Government, 'Report on the Commission of Inquiry (Mismanagement of Funds Under Universal Primary Education (UPE) and Universal Secondary Education (USE))' August 2012

<http://www.i3c.co.ug/moes%20uploads/COMMISSION%20OF%20INQUIRY%20%28MISMANAGEMENT%20OF%20FUNDS%20UNDER%20UNIVERSAL%20PRIMARY%20EDUCATION%20%28UPE%29%20AND%20UNIVERSAL%20SECONDARY%20EDUCATION%20%28USE%29%29.pdf> accessed on 23rd January 2014.

²⁷ In Uganda, government directs that for all UPE schools, parents are not expected to pay fees neither to make contribute funding to the school unless such fund is directive from government.

²⁸See for example, K Kristensen and others, 'Opportunities for Inclusion? The Education of Learners with Special Needs and Disabilities in Special Schools in Uganda' (2006) 33(3) British Journal of Special Education 139, 139.

In broader perspective, this situation is not only limited to Uganda, but it is seen across many developing countries. Globally, despite general increasing enrolment in schools i.e. 86% of children get primary education, disabled people are still largely excluded.²⁹ It is therefore, feared that fewer than 5% of disabled children are believed to reach the Education For All (EFA) goal of primary school completion³⁰ and 40 million out of 115 million children (35%) out of school are disabled children.³¹ The most excluded are those with intellectual disabilities as they have not gained access to higher education.³²

2.2 Developments in Higher Education and its Prospects for Disabled People

In Uganda, the terms ‘higher education’ and ‘tertiary education’ are used interchangeably.³³ Therefore, ‘institutions of higher education’ refers to either universities or other tertiary institutions of learning. The difference between the two, according to the Universities and other Tertiary Institutions Act 2003 (UTIA), is in the levels of their academic awards. While a university awards both diplomas and degrees, the highest awards other tertiary institutions offer are diplomas.³⁴ UTIA also divides institutions of higher education into two

²⁹See for example, Human Rights Council, ‘Right to Education of Persons with Disabilities-Report of the Special Rapporteur on the Right to Education’ (19th February 2007) A/HRC/4/29. Para 48.

³⁰ S Peters, ‘Education Notes on Education for All: Including Children with Disabilities,’ World Bank Publications, August 2003. At <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172610312075/EFAIncluding.pdf> Accessed on 12th September 2009.

³¹ Ibid

³² Inclusion International, ‘Better Education For All: When We’re Included Too’ Global Report Published 2009 by Instituto Universitario de Intergracion en la Comunidad (UNICO) Salamanca, Spain. Chapter 4 of the report.

³³ See Universities and other Tertiary Institutions Act 2001 (as Amended)

³⁴The Universities and other Tertiary Institutions Act (UTIA) 2001, s 2 the interpretation of the Act.

categories, namely, public or private institutions.³⁵ Public institutions are those institutions of higher learning maintained out of public funds, while private institutions are under private proprietorship.

Prior to the structural adjustments economic policies, the IMF and World Bank imposed on Uganda around the mid 1980s, higher education in Uganda was largely financed and managed by the state. At that time, there was only one state university, Makerere University,³⁶ and 33 other tertiary institutions of education.³⁷ The structural adjustment policies saw Uganda changing its resource allocation priorities in education. For example, government reduced its funding to higher education and increasing it for primary level of education. It opened for public to invest in higher education and allowed government owned institutions of higher education to allow fee paying students. These policies saw rapid expansion of higher education within the last two decades from less than 34 institutions to 164 institutions (32 universities and 132 tertiary institutions of education) by 2012.³⁸ This development is coupled by increasing number of students joining higher education,³⁹ including disabled students. Of the institutions of higher education, 81.3% of them are non-university⁴⁰ and that of the universities, 81% are private.⁴¹ Despite fewer universities, most parents and students prefer universities to other tertiary education, regardless of programme

³⁵ Ibid.

³⁶ National Council for Higher Education, 'Recognised Universities 2010' <<http://www.unche.or.ug/page2.php?nid=27>> accessed on 11th January 2011.

³⁷ Ibid 'Recognised Public Tertiary Institutions' <<http://www.unche.or.ug/page2.php?nid=33>> accessed 11th January 2011.

³⁸ Statistical Abstract 2012.

³⁹ D Bloom and D Canning and K Chan, 'Higher Education and Economic Development in Africa.'

<www.aau.org/wghe/.../HE&Economic_Growth_in_Africa.pdf> accessed 10th April 2010.

⁴⁰ National Council for Higher Education, 'The State of Higher Education and Training in Uganda 2006: A report on Higher Education Delivery and Institutions' 2007. Page 7. Available at <<http://www.unche.or.ug/documents/State%20of%20HE,%202006.pdf>> accessed on 11th January 2011.

⁴¹ Ibid

of study,⁴² as evidenced by 66% of tertiary education enrolment in 2007 to be for universities⁴³ and 71.3% in 2011.⁴⁴ The increasing number of higher education institutions is seen to be reducing the higher competition for higher education that existed prior to 2000 due to fewer vacancies than the number of qualified applicants - the number of applicants estimated to have been three times more than the available places.⁴⁵

Critical to the high competition for higher education was application of merit principle in admission to higher education. While the merit practice is not objectionable in itself, the process took no account of the inherent discriminatory barriers surrounding the lives of disabled people in the context of primary and secondary education, which would merit affirmative action principle in favour of disabled people in the admission to higher education, which is the case today. Indeed, in Uganda, around that time, education policies were not explicit on the education of disabled people.⁴⁶ Teachers and community attitudes towards disabled people were generally not in favour of education of disabled children (see chapter, section 3). There was limited infrastructure for the educational needs of disabled people,⁴⁷ such as few special educational needs teachers.⁴⁸

⁴² Ibid page 9

⁴³ UBOS, '2010 Statistical Abstract June 2010,' page 11. See also National Council for Higher Report (n40) page 9

⁴⁴ Statistical Abstract 2011, page 15

⁴⁵ ABK Kasozi, *University Education in Uganda: Challenges and Opportunities for Reform* (Fountain Publishers, Kampala 2003) 1-10.

⁴⁶ It was not until the introduction of the Universal Primary Education (UPE) Policy of 1997 that education of disabled children was made compulsory. Initially, this policy granted free primary education to 4 children in each family. The UPE policy stated that for a family having a disabled child, a disabled child should be among the four. This policy was amended in 2001 and now grants all children free primary education. The effect of particularly recognising disabled people in the UPE Policy has increased enrolment of disabled people in both primary and secondary level of education.

⁴⁷ For example, it was only in 2004, when the Uganda National Examination Board (UNEB) established a special educational needs desk, when national examinations began taking account of the needs of disabled people.

Educational services were inaccessible and the concept of equalization of opportunities for disabled people was generally lacking. This means, under the merit system of admission to higher education, disabled students had more limited opportunities to join higher education than the non-disabled students.

For all students the face of higher education in Uganda has changed significantly since the 1990s. This change is rooted to the long term plans for reforming higher education to be relevant to the development of the country, developed around the independence period (1960s),⁴⁹ but their successful planned implementations were tangled by the political and economic challenges Uganda went through from 1970s and 1980s⁵⁰ which not only affected higher education but generally the economy. Yet demand for higher education kept on growing.⁵¹

The liberalisation of the Ugandan economy in the 1990s also saw a need to reform higher education to fulfil the critical need to: (1) meet the growing demand for higher education and (2) reform the higher education sector to be relevant to the development needs of Uganda.⁵² In addition, there was pressure to meet the international obligations of ensuring every child's right to primary education. The government had insufficient resources to achieve both. Priority was then given to providing for primary education. For higher education, the solution was to allow for private investments (liberalise it),⁵³ also government

⁴⁸For example, not until 1989, when Uganda established the National Institute of Special Education (UNISE) to train special educational needs teachers, is when Uganda increased numbers of special educational needs teachers.

⁴⁹M Mamdani, *Scholars in the Marketplace: The Dilemmas of Neoliberal Reforms at Makerere University, 1989-2005* (Fountain Publishers, Kampala 2007) 1.

⁵⁰ C Sicherman, *Becoming an African university: Makerere 1922-2000* (Fountain Publishers, Kampala 2005) 105-122.

⁵¹ABK Kasozi(n45) 3

⁵²ABK Kasozi, 'The Development of a Strategic Plan for Higher Education in Uganda 2001-2005: The Interplay of Internal and External Forces in Higher Education Policy Formulation in a Southern Country.' Nuffic Conference, A Change Landscape, The Hague, 23-25 May 2005, <www.nuffic.nl/pdf/os/em/kasozi.pdf> accessed on 16th April 2010

⁵³ABK Kasozi (n52).

reduced its direct influence in the management of these institutions as well as reducing its funding for them⁵⁴ in favour of lower levels of education. Nakanyike points out that the argument advanced in favour of primary education was that ‘public investment in universities and colleges brings meagre returns compared to the returns from primary and secondary education and higher education magnifies inequalities’.⁵⁵ But this argument, as Kasozi points out, is flawed in two ways. It regards higher education as a luxury that benefits individuals rather than public interests,⁵⁶ and it undermines the fact that the product of higher education is a key to economic and social development.⁵⁷ But the government had to take choices that would be appropriate to the use of meagre resources, the growing demand for education in general and the pressure from to meet international obligation of education for all at primary level.

Mamdani argues that, the reforming of higher education in Uganda was ‘full of trial and error’⁵⁸ and characterised by an iron handed handling of the reform process by government. This saw violent strikes by both staff and students and strong resistance to the changes proposed by government as it was viewed negatively by the Ugandan public.⁵⁹ It was feared that the reform would lead to

⁵⁴ M Mamdani, (n49) 5-10. In here, Mamdani shows the dwindling funding to Makerere University from government. All public institutions of higher education were experiencing the same according to the observation of this researcher. See also, T OEisemon and J Salmi, ‘African Universities and the State: Prospects for Reform in Senegal and Uganda,’ (1993) 25(2) *Journal of Higher Education* 151-168.

⁵⁵B Nakanyike and NK Muwanga, *Makerere University in Transition 1993-2000* (James Currey Limited, Oxford 2003) 10.

⁵⁶ABK Kasozi (n52)

⁵⁷Ibid

⁵⁸M Mamdani(n49) 1-39.

⁵⁹D Court, ‘Financing Higher Education in Africa: Makerere, the Quiet Revolution,’ *The Rockefeller Foundation* (1999), <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.85.7985> accessed on 10th June 2010. See Also WS Kajubi, ‘Financing of Higher Education in Uganda’ (1992) 23(4) *Higher Education* 433-441

<<http://www.springerlink.com/content/qp8187547143q701/>> accessed 10th April 2010.

delivery of inferior higher education.⁶⁰ However, as Sicherman notes, the result of that struggle was the expansion of higher education in Uganda: more private institutions were established, public institutions allowed fee paying students - named 'private students', more academic programmes and evening academic programmes were introduced.⁶¹ In regards to disability, affirmative action principle in admission of disabled students to public universities was adopted. Affirmative action policy is therefore seen to be paving way for further equalization of opportunities for disabled people in higher education.

Despite the annual increasing number of institutions and enrolment, higher education still continues facing numerous challenges: congestion of classrooms; congestion of halls of residence; strikes by both lecturers and students especially in public universities; inadequate supply of teaching materials and inadequate reading materials in the libraries, working space, recreational facilities, and accommodation for students and office space for administrations.⁶² Many higher education institutions, especially the private ones, operate in rented premises which are overcrowded and have very poor facilities.⁶³ Reports of experiences of disabled people in these institutions are lacking, a reason for conducting the empirical research reported in the next chapter. But according to the experience of this researcher, these reforms were not taking account of disabled people because, around that time, awareness about disability was still low and disabled people were few in these institutions. The reform process itself appeared unplanned and forcefully implemented as such influencing it to take account of disability was not easy. It appears therefore, higher education is not prepared to receive disabled students, yet, and more disabled people are joining it. This means innovations such as reasonable accommodation for disabled students

⁶⁰ABK Kasozi (n52).

⁶¹C Sicherman (n50) 127-141.

⁶²JC Kwesiga and J Ahikire, 'On Student Access and Equity in Reforming University: Makerere in the 1990s and Beyond' [2006] 4 JHEA /RESA
 <http://www.codesria.org/Links/Publications/jhea2_06/Kwesiga-Ahikireb.pdf> accessed on 10th August 2008.

⁶³National Council for Higher Education (n40),page 27.

appear not a key issue in the institutions (see a petition by disabled students about their plight in one institute, attached as an appendix 1)

Although the higher education sector was experiencing these challenges, government was making progress in development of the infrastructure for inclusive education. Notably, an institute- Uganda National Institute for Special Education⁶⁴ (UNISE), now a faculty of Special Needs and Rehabilitation at Kyambogo University⁶⁵ was developed to train teachers on special needs education. This has no doubt contributes to widening access to education by disabled pupils especially under the universal primary education (UPE) programme. As more disabled pupils are joining secondary education, inclusive secondary education by mainstreaming of disabled pupils, especially the deaf or the blind is progressively being developed at secondary level o education and as well as at Primary Teacher Colleges.

Such developments have an effect on the future number of disabled students joining higher education. More disabled pupils are now joining secondary level of education as shown below. Soon, more will also be joining higher education. How well higher education is prepared to receive these students is handle in chapter six.

⁶⁴ UNISE was established by the National Institute of Special Education Act 1998. This Act has been repealed by the Universities and Tertiary Institutions Amendment Act 2003 which provided for the merger of UNISE, Institute of Teacher Education Kyambogo (ITEK) and Uganda Polytechnic Kyambogo (UPK) to form Kyambogo University.

⁶⁵ Ibid.

Table 3: Showing secondary school disabled students (2003-2009)

Year /Class	2003	2004	2005	2006	2007	2008	2009
S. 1	2,703	2,667	2,057	2,364	2,990	2,830	3,275
S. 2	2,597	2,555	2,028	2,283	2,555	2,689	3,052
S. 3	2,235	2,402	1,949	2,130	2,533	2,128	2,897
S. 4	1,844	2,894	1,752	1,931	2,125	1,831	2,083
S. 5	687	666	878	859	1,054	862	1,172
S. 6	633	709	813	669	846	805	939
Total	10,699	10,893	9,477	10,236	12,103	11,145	13,418

S. stands for Senior. Source: Table 2.2.7 of 2010 Statistical Abstract June 2010.

In the Ugandan educational system, students who pass their ‘A’ levels in Senior 6 are expected to join higher education. Therefore, from the table above, this researcher deduces that from the year 2011 higher education will be receiving at least 1,000 disabled students.

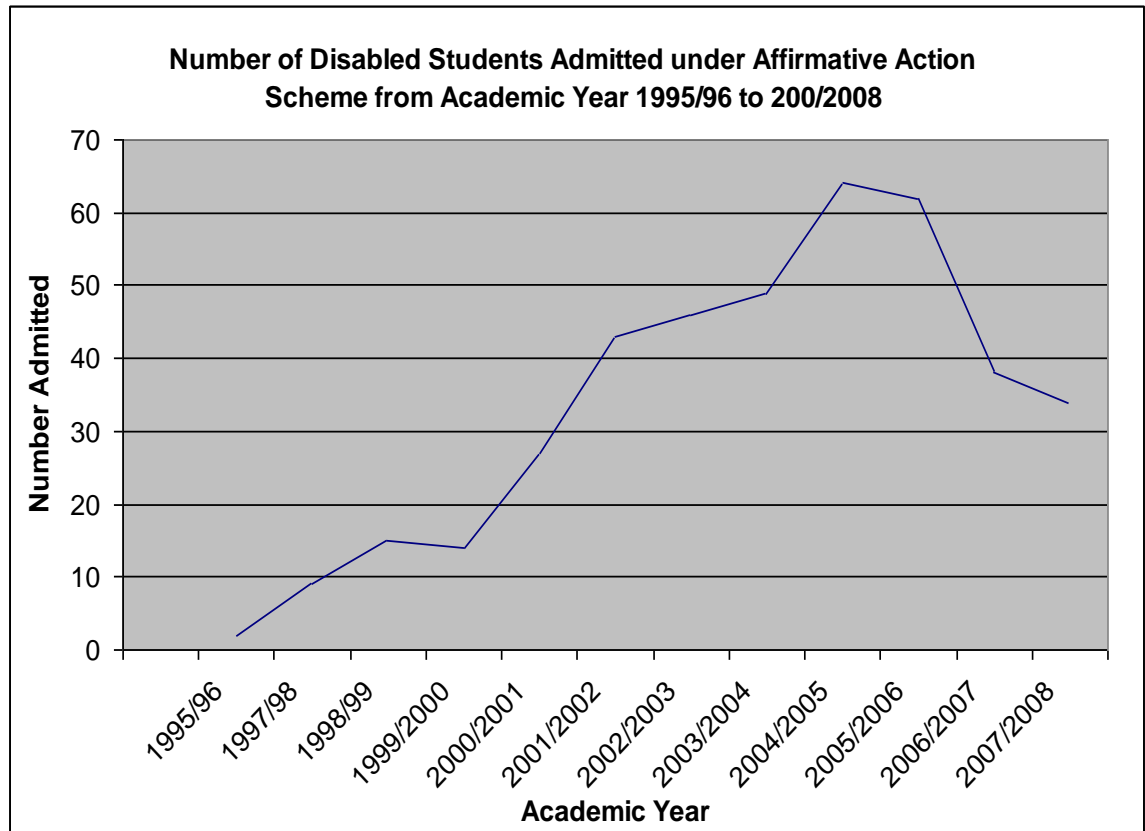
This number appears to be more than 5 times the present number joining higher education. At present the government caters for only 64 disabled students annually through an affirmative action scheme.⁶⁶ Based on the number of disabled students admitted to Makerere university⁶⁷ between 1995/6 to 2007/8 (as presented in the graph below),⁶⁸ it appears that barely 100 disabled students are joining universities per year.

⁶⁶ Information obtained through interviews with Administrators of Public Universities in Uganda.

⁶⁷ At time of this research, most disabled students joining universities join public universities. Of the 5 public universities, most disabled students are admitted into Makerere and Kyambogo universities.

⁶⁸ Makerere University Senate Admissions Board 2007/2008, ‘A Working Paper for the Review of Admission of Candidates with disabilities on Government Sponsorship’.

Graph 1: Showing number of disabled students admitted in Makerere University under affirmative action scheme from academic year 1995/96 to 2007/08



Given the level of unpreparedness in higher education to provide for reasonable accommodation discussed above, this estimated sudden increase in the number of disabled students will be overwhelming for the institutions. While higher numbers do not necessarily intensify the rights demands, this number surely adds to the calls for speedy implementation of the existing legislation in higher education if these students are to meaningfully enjoy their rights like non-disabled students in the same institutions. The discussion now turns to the scope of the disability legislation.

3. Scope of the Disability Legislation and its Provisions on Higher Education

3.1 Introduction

Uganda's principle source of law is the Constitution. The current constitution in force is the Constitution of the Republic of Uganda 1995 as amended by Act No. 13 of 2000. Like for every country, the protection of human rights in Uganda should be understood within the general context of its political history and its effects in nurturing the rule of law, constitutionalism and enjoyment of human rights. One of the key indicators of the political dynamics in Uganda is the change of constitutions,⁶⁹ as the 'coming in of the new' Constitution is associated with the change of government (country's leadership) or style of leadership. Uganda, since its independence from the British rule on 9th October 1962, has had four constitutions, including being governed on the basis of presidential decrees, during Amin's regime (1971-1979). The four constitutions are the 1962, the 1966, the 1967 and the current one in force - the 1995 Constitution. It is important to note that, change of Constitutions provides a picture of the protection, promotion, fulfilment and realisation of human rights in Uganda,⁷⁰ including the rights of disabled people.

Chapter four of the current constitution guarantees for the protection and promotion of fundamental and other human rights and freedoms for all, including disabled people. Overall, it guarantees equality and freedom from discrimination to all.⁷¹ In particular, the constitution prohibits direct discrimination against any person on grounds of disability, age, sex and economic status.⁷²

⁶⁹ Researcher's experience of Uganda. See also J C Mubangizi, 'The Protection of Human Rights in Uganda: Public Awareness and Perceptions' (2005) 1(3) Afr. J. Legal Stud. 166-185.

⁷⁰Ibid.

⁷¹The Constitution of the Republic of Uganda 1995 Art 21.

⁷²Ibid Arts 21(2) and (3).

On education, the constitution guarantees that all persons have a right to education.⁷³ The spirit of the constitution as indicated by its principle objective XVIII places an obligation on government to promote free and compulsory basic education, take appropriate measures to afford every citizen equal opportunity to attain the highest educational standards possible and allow individuals or groups freedom to found and operate educational institutions within the general educational policy.⁷⁴ This mirrors the provisions on education in the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 13 as discussed in chapter two. It also applies to disabled people by virtue of the generality of the constitutional rights. In particular, it provides a background for operationalisation of article 24 of CRPD on education as Uganda is a State party to the CRPD. However, the constitution does not provide specific ways how the realisation of this right is to be enforced.

On disability rights, the constitution provides for specific provisions on disability. Together with other constitutional provisions as those also apply to disability by virtue of the generality of the constitutional rights, the constitution therefore, provides a strong and wide ranging mandate to the state on disability inclusion. Of particular importance to bringing disability inclusion are the provisions on affirmative action,⁷⁵ representation of disabled people in parliament⁷⁶ and provision on parliament to make laws to give effect to the promotion, protection and realisation of human rights for marginalised groups such as disabled people.⁷⁷ Through those provisions, a wide ranging scope of the disability legislation has been enacted in Uganda. As such, the Uganda disability

⁷³The Constitution of the Republic of Uganda 1995, Art 30

⁷⁴Ibid, National Objective and Directive Principle of State Policy XVIII.

⁷⁵ Art 32 (2).

⁷⁶The Constitution of the Republic of Uganda 1995 Art 78(c).

⁷⁷ Ibid Art 21(4) (a) states, ‘nothing in this article shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic educational or other imbalance in society.’ Also in articles 32(5) and 35(2), it further requires parliament to enact laws for the purposes of giving full effect to affirmative action and protection of persons with disabilities respectively.

legal framework is seen in three strands i.e. the constitutional guarantees on disability; provisions on disability in other equality laws; and disability-specific Acts of Parliament. The scope of that legal framework on providing for equality, access and inclusion of disabled people in higher education is the focus of this section.

Before, analysing the legal provisions, it is also important to point out that, two important effects associated with the above constitutional provisions; as such effects also have direct impact on disability inclusion. One, disabled people are represented in Parliament by 5 MPs regionally elected. Their being in parliament makes disability equality visible in Acts of Parliament and this is significantly broadening Uganda's disability legal framework. Another effect is the development of a strong disability structure in Uganda as a voice of disabled people. This also plays an important role of creating awareness, advocacy and policy influence for inclusion of disabled people. The detailed account of the development Uganda disability structure is outside the scope of this thesis. However, it is sufficient to state that, the statutory requirements that disabled people elected to legislative organs of government saw NUDIPU⁷⁸ creating its membership groups alongside the decentralised structure of local government (see section 4 below for the illustration of the structure).

⁷⁸ NUDIPU is the National Union of Disabled Persons of Uganda. As a national voice of disabled people, government charged it with a responsibility of ensuring that disabled people are elected into the legislative organs.

3.2 Affirmative action

Through this constitutional provision, the constitution recognises the various imbalances that exist between disabled people and other people created by history, tradition or custom and provides for the redress those imbalances, it provides for affirmative action. The constitution provides:

*Notwithstanding anything in this constitution, the state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability, or any other reason created by history, tradition or custom, for purposes of redressing the imbalances which exist against them.*⁷⁹

As noted before, affirmative action provision has contributed to the bolstering disability enactments in the country. To ensure the aim of affirmative action is achieved, the constitution outlaws all laws, cultures, customs and traditions which undermine the status of any other marginalised group to which affirmative action relates.⁸⁰ In addition, the constitution mandates parliament to enact laws for the purposes of giving full effect to affirmative action and the protection of disabled people.⁸¹ To that effect, parliament translates the concept of affirmative action by incorporating it into other equality Acts concerning all spheres of human rights i.e. civil and political,⁸² economic, social and cultural rights,⁸³

⁷⁹The Constitution of the Republic of Uganda 1995, Art 32(1).

⁸⁰ Ibid Art 32(2).

⁸¹Fn77.

⁸²Under the category of civil and political rights, there are provisions affecting disability in the following Acts of Parliament: Parliamentary Elections Statute 1996 and Parliamentary election Act (Amendments); Presidential Elections Act 2000 (Amendments); Local Government 1997 (Amendment 2000), Equal Opportunities Commission Act 2007.

⁸³ Under the category of economic, social and cultural rights, there are provisions affecting disability on the following Acts of Parliament: The Uganda Communication Act, 1997; The Land Act 2009; Uganda Traffic and Road safety Act, 1998; Workers` Compensation Act 2000; The National Library Act 2001, Education Service Commission Act 2002; Education Act; Universities and Other Tertiary Institutions Act 2001 (Amendments 2003 and 2006)

including groups rights⁸⁴ in the country. The focus of this research is on the provisions concerning disability and higher education, provided for in the UTIA2001 (Amendments 2003 and 2006) and the Equal Opportunities Commission Act (EOCA) 2007. The discussion of the latter is reserved for the section concerning enforcement. This section therefore is on those provisions on disability in the UTIA.

The UTIA establishes the National Council for Higher Education (NCHE)⁸⁵ to regulate higher education and advice government on higher education in accordance with existing education policy and legal framework.⁸⁶ On disability inclusion, the UTIA provides for the promotion equality of opportunities for disabled people in higher education as below.

It provides for the representation of a disabled person on the NCHE Board.⁸⁷ Definitely, such representation is aimed at creating awareness about disability inclusion to NCHE, so that, in its regulatory role, NCHE ensures institutions of higher education mainstream disability. While this is the indisputable intent, it is submitted that awareness alone cannot be a guarantee that NHCE takes into account the needs of disabled people in its policies, as awareness does not necessarily translate into action and imposes no obligation. Given that every level of education records a high dropout rate for disabled people, this means the inclusion of disabled people in education requires more specific action than other groups (see also discussion on chapter two). In that respect, it is suggested that the UTIA should have enhanced NCHE further on matters of disability inclusion by buttressing representation with specific obligations on NCHE to bring about disability equality. This would make the Statutory Instruments issued by NCHE explicit on disability inclusion and thus render them enforceable and capable of

⁸⁴Under group rights, disability is provided for in the: the Children Statute 1996; The National Women Council Act and The National Youth Council (Amendment).

⁸⁵Object of the Act of UTIA 2001.

⁸⁶UTIA s 5.

⁸⁷Ibid 2001 s 7(j).

being monitored in a bid to assess compliance. Particular requirements would be that the institutions' facilities are accessible to disabled people and that teaching takes account of the needs of disabled people. In the light of the functions and the regulatory powers of NCHE over the institutions, specifically on disability inclusion, it would emphasise accessibility and ensure institutions comply with the minimum requirements in the PwDA 2006, so enforcing the Act. As an implementation framework, these regulations would also define how the respective obligations in the statute were to be implemented, with clear modalities. At present, an overview of the existing regulations⁸⁸ indicates that they are not explicit on disability inclusion, except for one on the library buildings.⁸⁹ This calls for the clarification of the role of NCHE in relation to disability inclusion.

On institutions of higher education, UTIA requires them to give the opportunity of acquiring higher education to all people wishing to do so, including persons with disabilities.⁹⁰ It also requires institutions to provide accessible physical facilities to the users of the public university.⁹¹ On admission to higher education, UTIA states 'the Admission Committee of a Public University shall take into consideration affirmative action in favour of marginalised groups on the basis of gender, disability and disadvantaged schools.'⁹² It also offers similar consideration to persons with special talents in sports, music and other social activities for their enhancement.⁹³

⁸⁸Since 2005, the NCHE has issued 10 regulations on effective management of tertiary institutions of education. <<http://www.unche.or.ug/page.php?1=regulations&&2=Regulations>> accessed on 17th October 2010.

⁸⁹The Universities and Other Tertiary Institutions (Institutional Standards) Regulations, 2005, par. 11(1).

⁹⁰UTIA s 24(1) (b).

⁹¹Ibid s 24(1) (c).

⁹²Ibid s 28(3).

⁹³Ibid s28(4).

While those provisions on higher education confer substantive obligations on widening access by disabled people to higher education, the language in the Act is specific to public universities. This implies that the UTIA does not confer these obligations on other categories of institutions of higher education. The good news is that, the un-clarity regarding accessibility has remedied by the accessibility provisions of the PwDA 2006, to be discussed shortly; but, the un-clarity regarding admission to higher education through affirmative action remains unresolved. Therefore, the continued existence of narrowly constructed legislation on the statute books of Uganda, with or without laws that remedy their deficiencies, not only creates confusion in the minds of the implementers but renders it very difficult to define and harmonise guidelines for the later laws (such as the PwDA).

Still on affirmative action, while, it is seen that more students belonging to disadvantaged groups are joining public universities through affirmative action, it is doubtful whether it is actually widening access for disabled people to higher education, when only 64 slots are allocated for disabled people to be shared by all the 5 public universities every academic year. To this research, it appears there are more disabled students who qualify to join higher education through than the 64 places allocated. A reason, public universities apply criteria for admitting disabled students through this scheme, explained below.

3.3 Affirmative Action Admission Criteria on Disability

It is only students who wish to join public universities through an 'A' level examination that are able to take advantage of this provision on affirmative action. The disabled applicant must indicate his/her disability in the Joint Admission Board (JAB) form, a form that each 'A' level student submits to JAB for admission into public institutions of higher education. Prospective disabled students who are considered for admission through this scheme are prioritised according to their impairments. The prioritisation is as follows: first, the blind; second, the deaf; third, those with low vision; fourth, the hard of hearing; fifth, those with a mobility appliance; sixth, those with physical disabilities but not

using mobility appliances; seventh, the Albinos; and lastly eighth, are those with chronic medical problems such as sickle cell anaemia and asthma.⁹⁴

The philosophy behind the prioritisation is that some of the impairments are more limiting than others.⁹⁵ This argument brings to light the criticisms associated with the social model of disability as raised by Crow.⁹⁶ Crow, argues that impairment and disability are not separate.⁹⁷ In Uganda, the environment in educational field confirms that and is the reason for the prioritisation seen above. At school, the learning environment affects people with impairments differently according to the type of impairment a pupil has. For example, throughout Uganda, the blind and the deaf appear to be the most disadvantaged groups as teachers skilled in teaching them are very few.⁹⁸ So it can be stated that, the prioritisation is not construed on the ideology of the medical model of disability, that, impairment is the cause of individual deficiency to participate, but on how environment affects individual impairments. While Ugandan universities hold that view, no empirical study has been done to determine how other categories (especially those with mental illness who do not currently appear in the list at all) are affected by the Ugandan educational environment. Based on issues highlighted in this subsection and on previous sections, it can be stated that the educational field is where ideologies relating to disability inclusion and the actual practice are not perfectly matching.

Overall, it seems that, while the intention of the constitutional provision on affirmative action is to redress the imbalances that exist against disabled people,

⁹⁴Makerere University Senate Admissions Board 2007/2008 (n68).

⁹⁵ This argument was provided to the researcher by one of the Academic Registrars of Public University 1; it was also echoed by one of the Heads of Department at Public University 2 and is accepted in all the 4 universities that participated in this research by both the disabled students and the staff.

⁹⁶ Chapter 1, section 4.2 of this thesis

⁹⁷ Ibid.

⁹⁸Information obtained through interview with the Head of Department, Special Needs Education of Public University 2.

the way it has been translated in the UTIA, together with the policy enforcing it, limits attaining that intent. It has already been stated that the UTIA confers affirmative action obligations only on public universities, leaving out private universities, public and private tertiary institutions. Therefore, it relies on the goodwill of those institutions to apply affirmative action. As a result affirmative action has not widened access for disabled students in all categories of higher education. To avoid this problem the UTIA needs to be amended so as to confer uniform obligations to admit disabled people on all categories of institutions. This would make institutions not only admit disabled students but also prepare for their inclusion. This is what legislators did not foresee when enacting the UTIA.

3.4 Disability-Specific Acts of Parliament

The PwDA 2006 and the National Council for Disability Act (NCDA) 2003 constitute the disability-specific Acts. The focus on this subsection is on the PwDA as the latter is dealt with in the section on enforcement. At the time of writing, the Bills to amend both Acts were being drafted by the DPOs in consultation with the responsible ministry- Ministry of Gender, Labour and Social Development. The overall reason for amending the Acts is to domesticate the CRPD. Particularly, one of the reasons for amending the PwDA is that, the language dominant in the Act i.e. ‘encouraging’ and ‘promoting,’ is not précised in a legal sense. It is observed that, despite provisions in the Act which are seen to be compliant with the CRPD, the drafting of the Act makes it difficult to interpret and implement its provisions. For the NCDA, one of reasons for its proposed amendment is to remove NUDIPU from directly being involved in the process of elections of disabled people to legislative organs of government. On this matter, the Bill to amend NCDA seeks to empower the National Council for Disability to work with the electoral commission in the election of disabled people to parliament and into local government councils. The argument is that, the involvement of NUDIPU in the process of elections makes it appear a political organisation and as such may comprise its mandate of being a national unified voice of disabled people.

To this research, notwithstanding the valid reasons for amending the Acts and drawing from findings of chapter two relating to the difficulty of interpreting disability discrimination in equality laws, the new Acts should be drafted taking into account the uniqueness of disability poses to the equality laws. The language in both Acts should bring about the understanding of disability as social issue. The PwDA proposed amendment should also protect those who are discriminated against because of their association with disabled people. This will bring the law to protect disability caretakers against disability discrimination.

3.4.1 An Overview of the PwDA 2006

The PwDA largely draws together the meanings of those provisions on disability in other Acts with a view of bringing the Uganda disability legislation from the status of only requiring preferential treatment for disabled people through affirmative action to a status of conferring an ‘equality of opportunity approach’.

In education, this is indicated by an obligation on the State to promote educational development of disabled people and duties conferred on bodies such as higher education institutions to eliminate barriers to accessibility. This appears to be capable of increasing meaningful inclusion of disabled people at higher education.

The Act’s objectives provide broad scope of protection and are indicating that the Act’s provisions can attain the goal of equality of opportunity for disabled people if those provisions are effectively implemented. The first three objectives concern fundamental aspects of human rights and how they can be achieved. The next three objectives state aspirations for the prevention of discrimination against disabled people. On fundamental aspects of human rights, the PwDA provides for the promotion of disabled people’s dignity and equal opportunities⁹⁹ as well as their participation in all aspects of life as equal citizens of Uganda.¹⁰⁰ The

⁹⁹PwDA 2006, s 3(a).

¹⁰⁰ Ibid s3(b).

PwDA aims to encourage the people, community and all sectors of government to recognise, respect and accept difference and disability as part of humanity and human diversity.¹⁰¹ The PwDA aims to eliminate all forms of discrimination of persons with disabilities on grounds of their disabilities¹⁰² by encouraging the government and community to promote and include disability issues in all economic, political and social development policies and programmes¹⁰³ and by promoting a positive attitude and an image of persons with disabilities as capable and contributing members of society, sharing the same rights and freedoms as other members of society.¹⁰⁴

To realise those objectives in education, Part II of the PwDA guarantees disabled people a right to quality education. To fulfil that, it confers an obligation on government to promote educational development of persons with disabilities¹⁰⁵ and prohibits discrimination against disabled people by educational services.¹⁰⁶ This includes private educational service providers as the PwDA provides protection against violation of rights of disabled people by both government and private sectors. Part IV of the PwDA imposes duties on bodies including institutions of higher education to eliminate barriers to accessibility. Part V prohibits discrimination in the provisions of goods, services and facilities of which higher education is a provider.¹⁰⁷

Attention will now be turned to the PwDA provisions on the meaning of disability, meaning of discrimination in educational services, States obligation to promote educational development and the duty to promote accessibility.

¹⁰¹ PwDA s 3(c).

¹⁰² Ibid s 3(d).

¹⁰³ Ibid s 3(e).

¹⁰⁴ Ibid s 3(f).

¹⁰⁵ Ibid s 5.

¹⁰⁶ Ibid s 6.

¹⁰⁷ Ibid, second Schedule parts 7 and 8.

3.4.2 Meaning of Disability and its Potential Impact to Securing Equality for Disabled People

The aim of meaning of disability in a disability discrimination law like the PwDA is of determining the scope of those who deserve to be protected against discrimination based on their disability. In that respect, such meaning should not impose a challenge to those claiming discrimination against because of their disability to prove that they have a disability.

The PwDA defines disability as ‘a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation.’¹⁰⁸ And a person with disability as ‘a person having physical, intellectual, sensory or mental impairment which substantially limits one or more of the major life activities of that person’¹⁰⁹

Judging the Act’s meaning of disability based on its main attributes, notably, ‘substantial functional limitation,’ ‘daily living activities’ and ‘limited participation,’ it can be stated that, its meaning can be restrictive and knotty for a claimant to prove a disability. Restrictive in the sense that it has the potential of locking out those facing discrimination arising from their impairments when the impairments are not considered substantially limiting. Couple to this challenge is the fact that the PwDA does not provide definition of what substantial or daily living means. The Act simply seeks the medical doctor to determine what that entails¹¹⁰ based on the disability coding provided for in schedule 1 of the Act. In this coding, disability is perceived to be largely medical rather than a social issue and is classified according to its cause: amputation,¹¹¹ general diseases,¹¹²

¹⁰⁸PwDA s 2.

¹⁰⁹PwDA s 2.

¹¹⁰Ibids 4(3).

¹¹¹Amputation; from the Disability Coding, this includes: A.One Arm, B. Both Arms, C. One Leg, D. Both Legs, E. One Arm, One Leg and other multiple,

¹¹²General Diseases; from the Disability Coding, this includes: F. Arthritis and Rheumatism, G. Diseases of the digestive system, H. Diseases of the urine-genital system, I.Diseases of the heart or circulatory system.

diseases of the respiratory system,¹¹³ skin diseases,¹¹⁴ ear and eye defects,¹¹⁵ common injuries,¹¹⁶ mental disorders,¹¹⁷ organic nervous diseases,¹¹⁸ tuberculosis¹¹⁹ and others.¹²⁰ While it can be argued that the codes provide a comprehensive and exhaustive list of impairments with wide scope to capture any impairment associated with injuries, illness and congenital conditions, one has to prove that they are substantial, long term and affect daily living activities to qualify to be protected by the Act. Also, because of it largely leaning on medical perspective of disability, in litigation, it can draw attention more to the particularities of claimants' bodily functions rather than onto the behaviour of defendants on discrimination claim. As such, it may not send out a clear message that '[n]on-discrimination is a guarantee of equality' and 'not a special service reserved for a select few'.¹²¹ Even the Disability Policy 2006, is

¹¹³Diseases of the respiratory system; from the Disability Coding, this includes: K 1A Pneumoconiosis (Ex Miners), K 1B Pneumoconiosis (Others), and K 2. Chronic bronchitis, Emphysema and others.

¹¹⁴Skin Diseases; from the Disability Coding, this includes: L. Diseases of the skin and cellular tissues.

¹¹⁵Ear and Eye Defects; from the Disability Coding, this includes: M. 1 Deaf without speech, M.2 Deaf with speech, Deaf and Blind, N. Hard of hearing, O. Total blindness, P. Eye defects and diseases other than total blindness.

¹¹⁶Common Injuries; from the Disability Coding, this includes: Q Injuries to Head, Face, Thorax, Abdomen, pelvis, Forearm and hand, R. Diseases and deformities of upper limb, Shoulders, Forearm and Hands. S Diseases and deformities of lower limb, shoulders, forearm and hand, T.1 Paraplegia, T.2 Injuries of the spine (excluding paraplegia).

¹¹⁷Mental Disorders; from the Disability Coding, this includes: U.1 Psychoneuroses (e.g. anxiety or obsessional states hysteria), U.2 Other mental illness, U.3 Mental sub-normality.

¹¹⁸Organic Nervous diseases; from the Disability Coding, this includes: V.1 Epilepsy, V.2. Other (e.g. cerebral palsy, sciatica, diseases of the brain etc.)

¹¹⁹Tuberculosis; from the Disability Coding, this includes: X. Pulmonary T.B.
Y. Non Pulmonary T.B.

¹²⁰Others from the Disability Coding, This includes: Z. Diseases and injuries not specified above.

¹²¹ RL Burgdorf, "Substantially Limited" Protection from Disability Discrimination: The Special Treatment Model and Misconstructions of the Definition of Disability' (1997) 42 *Villanova Law Review* 409, 561. See also, for the argument that legal definitions of disability may themselves perpetuate and entrench social division and ableism, F Kumari Campbell, 'Legislating Disability: Negative Ontologies and the Government of Legal Identities' in S

not helpful in remedying the restrictive challenge of meaning of disability in the Act, as also the Policy does not define these terms. The Policy simply states that its focus is on people who have: difficulty in hearing; difficulty in speaking and conveying a message; difficulty in moving around using body parts; difficulty in seeing; strange behaviour; epilepsy; difficulty in learning; leprosy; loss of feeling; multiple disabilities.¹²²

It can therefore be stated that, the meaning of disability as stated in the Act can render the overall intent of the Act ineffective to those facing disability discrimination and yet they cannot prove having a disability within the context of meaning of the Act as discussed on direct discrimination in chapter two.

In Uganda, the meaning of disability has not yet been subjected to judicial interpretation due to the limited litigation related to disability in the country. This adds to the critical challenges facing the meaning of disability in Ugandan law. This means, controversies surrounding the meaning of disability, with a potential of presenting the opportunities for improving the PWDA's meaning of disability is not yet explored.

Tremain (ed) *Foucault and the Government of Disability* (Ann Arbor, University of Michigan Press, 2005).

¹²² Uganda National Policy on Disability 2006

3.4.3 Meaning of Unlawful Discrimination in Educational Services

The PwDA prohibits discrimination against disabled people in education, employment and in relation to the provision of goods, services and facilities. However, it does not provide an overarching definition of discrimination. In each field, it describes acts or situations that constitute discrimination. In education, the acts constituting discrimination against disabled persons are as follows:

a person discriminates against a disabled person in education services if that person refuses or fails to accept an application for admission in an educational institution by a qualified person because of that person's disability;¹²³ or if the terms or conditions of admission to his or her educational institution exclude persons with disabilities;¹²⁴ or by denying or limiting access to any benefits or service provided by the educational institution to a student with a disability;¹²⁵ or expelling a student because of his or her disability;¹²⁶ or by subjecting a student with disability to any other unfair treatment, relating to his disability.¹²⁷

The conditions also include denying a disabled person educational services on grounds of his or her disability'.¹²⁸ However, discrimination shall not be deemed to have occurred to any person denied admission to an educational institution established primarily for students who have a particular disability where that person does not have that particular disability.¹²⁹

To get to the extent to which the Act's meaning of discrimination prohibits discrimination requires scrutinising the meaning of key phrases used in respect to

¹²³PwDA s 6 (2) (a).

¹²⁴Ibid s 6(2) (b).

¹²⁵Ibid s 6(2) (c).

¹²⁶Ibid s 6(2) (d).

¹²⁷Ibid s 6(2) (e).

¹²⁸PwDA s 6(1).

¹²⁹Ibid s 6(3).

the known forms of discrimination in equality law discussed in chapter two. These phrases are: on entry to educational institution- ‘refuses or fails’ and ‘terms of admission excluding disabled person.’ On participation in the institution -‘denying or limiting access,’ ‘expelling on grounds of disability’ and ‘subjecting disabled person to unfair treatment.’ Unfortunately, the Act does not define these phrases neither have they been subjected to judicial interpretation due to rare litigation on disability in the country.

This research explains the meaning of those phrases as follows.

- a) On entry or admission to educational institution: Refusing to admit a disabled person to an institution who qualifies to be admitted because of his or her disability amounts to direct discrimination on grounds of disability. Failing to admit a qualified disabled person amounts to either direct or indirect discrimination on grounds of disability. Because the reasons for failure to admit can be intentional based on prejudices about a person’s disability or can be based on known conditions, criterion or practices in the institutions that excludes disabled people. Similarly, setting terms of admissions into educational institution that exclude a qualified disabled student amounts to both direct and indirect discrimination against disabled people. If the terms are based on prejudices then they amount to direct discrimination. If the terms are grounded on the factors which appear innocent but with discriminatory effects, then those terms would amount to indirect discrimination.

- b) On participation in the institution: Denying access to disabled students to services amounts to direct discrimination against them on the services. And limiting access to disabled students to services amounts to indirect discrimination. Limiting access could be viewed in various ways including- opinions that there are courses disabled students cannot do, not enabling the blind fully accessing reading materials, the deaf attending lectures without sign language interpreter and physical accessing limiting movements by wheelchair users. Expelling a student from an institution

because of his or her disability amounts to direct discrimination on grounds of disability. Subjecting a disabled student to unfair treatment because of his or her disability amounts to not only to either direct discrimination or indirect discrimination but also to harassment of the disabled student. Unfair treatment can be taken to mean an institution not mindful of the conditions of a disabled student that if not addressed can disadvantage the disabled students as compared to non-disabled student in a similar environment. Examples of unfair treatment in regards to a disabled student include- allocating a student with physical accessibility challenges inaccessible room at accommodation place, conducting lectures in inaccessible environment, not making reading materials in accessible format for the blind, not providing a sign language interpreter for the blind when it's required. Unfair treatment of a disabled student can lead to denial or limiting access to the services by institution to disabled students.

It can then be stated that the phrases on the Act's meaning of discrimination could potentially be interpreted widely as prohibiting intentional discrimination on grounds of individual differences, that is to say direct discrimination. Also, it is prohibiting discrimination against disabled people arising from unintended direct discrimination such as innocent educational practices, provisions, criterion, policies and wider accessibility challenges seen to be disadvantaging access to education by disabled people- that is to say indirect discrimination.

However, the meaning of discrimination entailed in Act is limited on the grounds that, it does entail the concept of reasonable accommodation. Failure to provide reasonable accommodation is now a recognised form of discrimination in the context of equality law¹³⁰ as discussed in chapter two and as provided for in the CRPD in article 5, discussed in chapter three. The aim of reasonable

¹³⁰ L Waddington 'Reasonable Accommodation' in D Schiek, L Waddington and M Bell (eds), *Cases, Materials and Text on National, supranational and International Non-Discrimination Law* (Hart Publishing, Oxford 2007) 629.

accommodation is to bring about adaptation and change of the environment in order to remedy the detriment associated with the interaction between environment and impairment. The potential impact of reasonable accommodation is that it can bring about institutions adopting a proactive approach of avoiding discriminating against disabled students.

Another limitation that is seen with the Act's meaning of discrimination relates to the concept of affirmative action. In Uganda, affirmative is a benchmark in advancing equality for disabled people as earlier on discussed in this chapter. The limitation here is that, the Act does not recognise that failure to apply the affirmative action in the admission of disabled students into higher education amounts to discrimination. It is arguable here that, if Act makes such a provision, it would compel all categories of institutions of higher education to apply affirmative action as a legal requirement. At the present, its only public universities as mandated by UTIA that applies affirmative action as discussed before in this chapter.

As discussed in chapter two, examining discrimination against disabled people through a legal remedies approach solely will not bring about access to education for disabled people without discrimination on the basis of equal opportunities as required by the CRPD. It requires the dismantling of systemic barriers in the institutions of education such as accessibility related challenges, ignorance of staff about specific disability needs, and provisions, criteria or practices which are historically embedded in education. It requires matching the needs to the appropriate support to bring about equal participation of disabled people in teaching and learning. This calls for proactive approaches that address all factors impacting on access to education. This means, it requires bringing in institutions to deal with issue of exclusion in a proactive manner. In that way, institutions would be redressing disadvantage experienced by disabled people, accommodating difference and facilitating full participation of disabled people in education. Despite the limitations identified in the meaning of discrimination, the Act tries to bring the proactive approach in other provisions. These provisions are the promotional of educational services for disabled people and a duty to

meet accessibility requirements, which the discussion is turning to in the next sections.

3.5.4 Promotion of Educational Development of Disabled People

To promote of educational development of disabled people, the PwDA requires government to:-

- i. Encourage inclusive education.¹³¹ It also provides for the establishment of special schools and units, with curricula designed for different disability conditions.¹³² However, the Act itself does not provide guidance on what is possible or not possible in inclusive education practice. This appears to be left to the discretion of the relevant educational authority.
- ii. Ensure relevant personnel in inclusive education by training of special teachers and in service training for current teachers in mainstream schools. Also to enforce recruitment and retention of special education teachers in all schools and institutions.¹³³
- iii. Formulate and design educational policies and programmes that devote attention to the special needs and the requirements of persons with disabilities in educational facilities,¹³⁴ paying particular attention to girls and those in the rural areas.¹³⁵
- iv. Provide structural and other adaptations in all educational institutions appropriate for the needs of persons with disabilities and promote

¹³¹PwDA s 5(a).

¹³²PwDA s 5(d).

¹³³Ibid s 5(h).

¹³⁴Ibid s 5(b).

¹³⁵Ibid s 5(c).

specialised institutions that facilitate research and development of their educational needs.¹³⁶

- v. Commit not less than 10% of all educational expenditure to the educational needs of persons with disabilities.¹³⁷ This is a great provision as it safeguards the budgets for disabled people. However, it is not clear whether this provision applies to the government or to institutions themselves. Chapter six examines how institutions are responding to this provision.
- vi. Provide during examinations assistive devices suitable for students with special needs including giving extra time.¹³⁸ This provision mandates the institutions to comply with the reasonable accommodation provisions in the CRPD and will strengthen the meaning of discrimination as discussed in section of meaning of discrimination above.

Those provisions aim to develop an educational infrastructure that would guarantee an inclusive educational environment for all categories of disabled people. Although the language used in these provisions appears to be aiming at lower levels of education, some of them are applicable for the same purpose in higher education, e.g., iii, iv, v, and vi. As noted in section 2 of this chapter, the inclusive environment in lower education significantly impacts higher education as well, through the number of disabled students joining higher education. This therefore requires the compliance of higher education with some of these provisions.

¹³⁶Ibid s 5(i).

¹³⁷PwDA s 5 (j).

¹³⁸Ibid s 5 (k).

3.5.5 A Duty to Meet Accessibility Requirements

The PwDA provides a duty to bodies including institutions of higher education to eliminate barriers arising from physical features and those inhibiting access to information.

Access to buildings: Section 20 of the PWDA requires all public buildings to be accessible to all sections of the public who are invited to it and places a duty on the owners of public buildings to ensure this. The public buildings should have an accessible entrance, accessible pathways and accessible elevators.¹³⁹ They should also have accessible toilets for diverse disabilities,¹⁴⁰ and well-dimensioned staircases and ramps for people with mobility difficulty or in wheelchairs.¹⁴¹ The PwDA requires that adequate railing should be provided around stairs, ramps and raised platforms.¹⁴² Multi-storeyed buildings must have well-dimensioned elevators for convenient use by people with disabilities.¹⁴³ The elevators should have embossed numerals on selector buttons and arrival signals to cater for visually impaired and deaf passengers simultaneously.¹⁴⁴ The law also states that ‘where it is difficult or unfeasible to install a ramp or an elevator to an existing building the owner of building shall provide platform lifts to provide accessibility’.¹⁴⁵

Access to information: Section 21 of the PwDA lays a duty on the responsible government authority to promote the rights of persons with disabilities to access information through the development and use of sign language, tactile and sign language interpreters, in all public institutions and at public functions;¹⁴⁶ and braille of public information, such as government documents, government

¹³⁹PwDA s 20 (1)(a).

¹⁴⁰Ibid s 20 (1)(b).

¹⁴¹Ibid s 20 (1)(C-d).

¹⁴²Ibid s 20 (1)(e).

¹⁴³Ibid s 20 (1)(f).

¹⁴⁴Ibid s 20(2).

¹⁴⁵PwDA s 20(3).

¹⁴⁶Ibid s 21(1)(a)

newspapers and other publications.¹⁴⁷ However, the Act is silent on providing relevant information like government documents electronically to those who cannot read Braille. It places a duty to the proprietors of television stations to provide inset sign language or subtitles in at least one major newscast program each day and in all special programmes of national significance;¹⁴⁸ and on the telephone company to provide special telephone devices for hearing impaired users.¹⁴⁹

Removal of inaccessible physical features: Section 26 of the PwDA places a duty on the provider of a facility to make adjustments or to provide an alternative method of making the facility available to disabled people in cases where a physical feature such as one arising from the design or construction of a building or access to premises makes it impossible for persons with disabilities to use that facility.¹⁵⁰ But this does not require a provider to do anything which would fundamentally alter the nature of the service provided, the trade, profession or business.¹⁵¹

Provision of auxiliary aid or services: Section 27 of the Act specifies that it shall be the duty of the providers of services to provide auxiliary aid or service where it enables or facilitates persons with disabilities to make use of a service.

To conclude the discussion, it can be stated that the PwDA's provisions on accessibility indicate that Uganda law on accessibility is wide enough to bring about disabled people's access to premises, buildings, information, and removal of inaccessible physical features as well as requiring the provision of auxiliary aids or services and support services. Despite such robustness of the accessibility requirements, in Uganda there is a wide gap between what the accessibility law

¹⁴⁷Ibid s 21(1)(b).

¹⁴⁸Ibid s 21(2)(a).

¹⁴⁹PwDA s 21(2) (b).

¹⁵⁰Ibid s 26(1).

¹⁵¹Ibid s 26(2).

requires and the reality in complying with the accessibility requirements. This is attributed to the constraints relating to costs, attitudes and ignorance of economic benefits.¹⁵² It is noted that small-scale investors and local governments often do not meet accessibility requirements due to their narrow income base. It is further observed that the law enforcers perceive that ensuring compliance with accessibility requirements would discourage such small-scale investors.¹⁵³ Coupled with that, it is noted there is also a perception among some business communities that disabled people are few, so it is not economically beneficial to the business to increase production costs by providing adjustments.¹⁵⁴ There is also a widespread lack of knowledge and skills on how to meet the access needs of disabled people.¹⁵⁵ Given that gap, chapter six explores how universities are going about this issue

4. Promotion and Enforcement of the Disability Legislation

The focus of this section is on the promotion and enforcement of the disability legislation. It explores the promotion activities of disability rights groups and the enforcement activities of the courts / litigation, the Uganda Human Rights Commission (UHRC), the National Council for Disability, and the recently established Equal Opportunities Commission (EOC). The last part explores the mechanism Uganda has to implement and monitor the implementation of the CRPD as required by Article 33.

¹⁵²Legal Action for Persons with Disabilities Uganda (LAPD), ‘Enforcing the Right of PwDs to have Access to a Barrier-Free Physical Environment in Uganda: Is Litigation An Option?’ Research Report 2009.

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ Ibid

4.1 Disability Rights Groups

The Uganda disability rights groups (DRGs) are arguably ‘perhaps the most politically integrated disability sector in the world’.¹⁵⁶ They are organised under one national umbrella organisation - the National Union of Disabled Persons of Uganda (NUDIPU), which brings together the separate national impairment organisations of the blind,¹⁵⁷ the deaf,¹⁵⁸ people with physical disabilities¹⁵⁹ and national disabled women’s group.¹⁶⁰ NUDIPU structures itself alongside the local government structures (see the illustration on the next page).

¹⁵⁶AK Dube, ‘Participation of Disabled people in the PRSP/ PEAP process in Uganda’ in B Albert(ed),*In or Out of the Mainstream? Lessons from Research on Disability and Development Cooperation* (The Disability Press, Leeds (2006) 134.

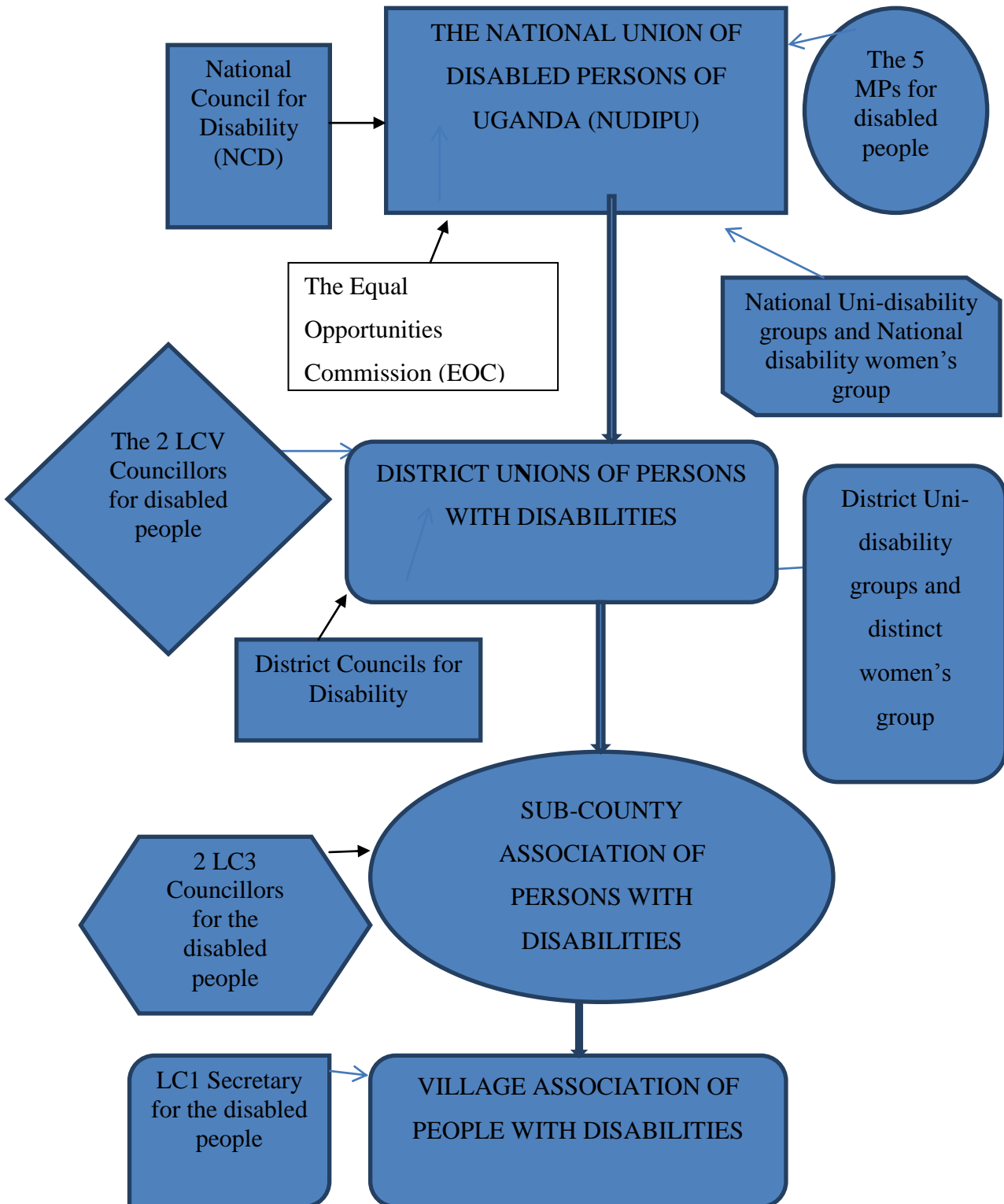
¹⁵⁷Uganda National Association of the Blind (UNAB)

¹⁵⁸Uganda National Association of the Deaf (UNAD)

¹⁵⁹Uganda National Action for People with Physical Disabilities (UNAPD)

¹⁶⁰National Union of Women with Disabilities in Uganda

Figure 1: A Simple Illustration of the Structure of the Disability Rights Group in Uganda



From the illustration above, NUDIPU has roots at every level of local government administration. That is to say at the district, municipal, sub-county and village or grass-root levels. In addition, disabled people are represented in the legislative organs of government - in Parliament with 5 MPs, at district, local government or city council level by 2 councillors (man and woman),¹⁶¹ at lower local government levels, namely, municipal council,¹⁶² municipal division council,¹⁶³ town council¹⁶⁴ and sub-county council¹⁶⁵ by 2 representatives (man and woman), and lastly, at village council level by 1 representative who assumes the position of secretary for disability affairs in the village.

Therefore, the DRG has two wings i.e. civil society represented by the disability organisations and the political wing represented by MPs and Local Government Councillors representing disabled people. In addition to the two wings, its advocacy is also done by National Council for Disability (NCD) and the Equal Opportunities Commission (EOC) as discussed in section 4.3. It can therefore be said that, the DRG provides a robust framework for promoting the ideals of the legislation through advocacy for policy change and raising public awareness of disability rights. The detailed impact of this approach is beyond the scope of this thesis, but it is sufficient to say, notwithstanding the existing exclusion of disabled people, inclusive disability policies in government programmes, private sector and civil society exist. They are part of the evidence of the extent to which the disability legislation has been complied with through the promotional approach. To complement campaigns for policy reform, the DRGs have recently started providing free legal aid clinics to disabled people, organised by Legal Action for Persons with Disabilities (LAPD), a recently formed DRG of disabled

¹⁶¹Local Government Act CAP. 243 (as amended)s. 10(1) d.

¹⁶²Ibid s 23 (3)(c).

¹⁶³Ibid s 23(4)(c).

¹⁶⁴Ibid s 23(5)(c).

¹⁶⁵Ibid s 23 (1)(d).

lawyers¹⁶⁶ and NUDIPU has also started employing lawyers to provide legal advice and represent disabled people in courts

In higher education, DRGs have not created disability awareness at the same level as they have done for primary level of education. Although, DRGs advocacy in higher education appears to be patchy awareness-raising activities, these campaigns appear to be particularly targeted actions. For example, they focus on issues of admission for disabled students, accessibility, challenges disabled students face in lectures, strengthening associations of disabled people as voices of disabled people in the universities and advocating for universities come up with disability policies.

4.2 Enforcement through the Courts/Litigation.

Generally, the Ugandan disability legislation has not been subjected to judicial interpretation and enforcement because cases exclusively on disability discrimination are not brought to court, except one case concerning accessibility at the Bank, discussed shortly. Lack of litigation on disability in Uganda, in my own experience is due to various factors among others:

Firstly, the general culture in Uganda of preferring conciliation to legal action makes people prefer informal mediation to litigation. This is also evidenced by the Human Rights Watch (HRW) study on the rights of disabled women in Northern Uganda.

*Several women with disabilities interviewed for this report said that they had tried to seek justice for sexual and gender based violence but failed. Sometimes local councillors discouraged them from reporting incidents to police and instead pressed for informal mediation, which did not result in changes in behaviour and allowed the violence to continue.*¹⁶⁷

¹⁶⁶LAPD <<http://www.lapduganda.org/category/lapd-uganda/>> accessed on 22nd April 2010

¹⁶⁷ Human Rights Watch, 'As If Weren't Humans: Discrimination and Violence Against Women with Disabilities in Northern Uganda.' August 2010.

Secondly, prior to the establishment of Legal Action for Persons with Disabilities (LAPD),¹⁶⁸ an NGO established by disabled lawyers in 2005 and government Equal Opportunities Commission in 2009, there was no organ / organisation exclusively supporting disabled person to bring their cases to courts.

Thirdly, in Uganda most people, including disabled people, are rarely made aware of their legal rights. For disabled people, this contributes to the lack of legal enforcement of the disability legislation.

Lastly, in Uganda, generally for all citizens, the professional costs involved in litigation discourage those who may wish to litigate.¹⁶⁹

As pointed out above, it appears that only one case, challenging the physical inaccessibility of a bank, has appeared in Ugandan courts, the case of *Santo Dwoka and Nyeko Okellov. Centenary Rural Development Bank - Gulu Branch*.¹⁷⁰ However, it is doubtful whether it set any precedents as might have been hoped for a test case of that nature, as it was settled out of court. Moreover, the claimants were not compensated as the Judge reasoned that there was no substantial proof that the lives of the claimants were affected when they were enduring the Bank's stairs. The key facts of the case were as follows.¹⁷¹

<<http://www.hrw.org/en/reports/2010/08/24/if-we-weren-t-human>> accessed on 12th February 2011.

¹⁶⁸ Legal Action for Persons with Disabilities <http://www.lapduganda.org/> accessed on 12th February 2011.

¹⁶⁹ This also the observation by the UHRC. See, Ugandan Human Rights Commission 12th Annual Report to Parliament, 2009. Pge xxv.

¹⁷⁰Gulu High Court, Civil Suit No. 23 of 2008. It was not possible to obtain a copy of the court ruling of this case due to the limited access to Ugandan Court materials. The information provided here is obtained from the UNAPD Bi-monthly Newsletter, September-October, 2008, Vol. 6, Issue 4, pages 5-7 <<http://www.unapd.org/consultancy.php?page=page58>>accessed on 13th October 2010.

¹⁷¹Ibid.

Both Santo and Nyeko were disabled people due to polio. Both moved with the aid of callipers, crutches and wheelchairs. Both were clients of Centenary Rural Bank - Gulu Branch as signatories to their group account - Gulu Disabled Cooperative Society. The physical accessibility of the bank excluded them from access to the banking hall on an equal basis with other clients. They had been pleading with the bank management for 2 years about this difficulty but they were ignored, so they took legal action against the bank. The Judge advised settling out of court as, while the case was in progress, the bank began putting accessibility structures on the premises.

While it appears challenging to enforce the disability law through individual litigation the constitution provides in article 50 and 137 for the bringing of a case through public interest litigation (PIL). PIL is seeking to precipitate change through court-ordered decrees.¹⁷² Article 137 provides for PIL to be brought to the Constitutional Court to challenge unconstitutionality of the provision(s) of an Act of Parliament or a customary practice. Through Article 50 PIL may be brought to a competent court to challenge the infringement of rights of individuals or groups of individuals by any practices and force the institution to comply with the existing law. In particular, article 50(2) provides that “Any person or organisation may bring an action against the violation of another person’s or group’s human rights.” Therefore, a case challenging the inaccessibility of institutions of higher education merits being brought through PIL under article 50. In Uganda PIL has been used on political rights, unconstitutionality of the death penalty, and right of access to information, the right to freedom of worship, smoking in public places¹⁷³ and challenging the paying of a dowry.

¹⁷²Y Lu ‘Public interest Litigation and Political Activism in China: Rights and Democracy.’ International Centre for Human Rights and Democratic Development 2008
<http://www.dd-rd.ca/site/publications/index.php?id=2237&page=10&subsection=catalogue>
 March 18, 2008 Accessed on 8th May 2010.

¹⁷³P Karugaba, ‘Public Interest Litigation in Uganda a Practice and Procedure, Shipwrecks and Seamarks’. A paper presented at Judicial Symposium on Environment law for Judges of the Supreme Court and Court of Appeal, 11- 13 September

In India, in the PIL case of *Javed Abidi v Union of India and Others*, the Indian government was compelled by the Supreme Court to establish institutional structures envisaged in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 of India.¹⁷⁴ In Uganda, a similar approach can also be used to litigate on the matter of public physical accessibility for disabled people. The outcome of such PIL has the potential of generating awareness about accessibility needs among the Ugandan public even if the case is lost. If the case is decided in favour of disability, the PIL could arguably bridge the gap between the legislation and enforcement, help interpret the accessibility provisions and set minimum standards of enforcement.

4.3 Enforcement by Statutory Bodies and the Human Rights Commission

The statutory bodies are the Equal Opportunities Commission and the Disability Councils.

4.3.1 National Council for Disability

The National Council for Disability (NCD or the Council), is established by the National Council for Disability Act (the NCDA) 2003. The NCDA establishes three levels of the Councils, namely, at national level, district or municipal, sub-county or division or town council.¹⁷⁵ This places the Council in a position to monitor any policy on equalisation of opportunities for disabled people. It is a body through which the needs, problems, concerns, potentials and abilities of disabled people can be communicated to government and its agencies for action.¹⁷⁶ The Council is mandated to carry out monitoring and evaluation of

2005.<www.greenwatch.or.ug/pdf/.../SHIPWRECKS_AND_SEAMARKS.pdf> accessed on 7th May 2010.

¹⁷⁴*Javed Abidi v Union of India and others* W.P. (C) NO. 3226 1997, decided on 17.12.1998 by the Supreme Court of India <<http://www.ncpedp.org/policy/judg-ac01.htm>> accessed on 7th May 2010.

¹⁷⁵The National Council for Disability Act 2003, Part IV ss 18 -24.

¹⁷⁶*Ibid* s 5.

both government and non-government policies for the inclusion of disabled people,¹⁷⁷ and to coordinate¹⁷⁸ and advocate¹⁷⁹ for this inclusion. It is also to carry out research and investigations into violations of rights of disabled people or non-compliance with laws relating to them.¹⁸⁰ With these mandates, the Council is empowered to determine the level of equal opportunities disabled students are accorded in higher education. However, the Council has not been able to execute its functions effectively, including at the institutions of higher education due to limited resources and management challenges.¹⁸¹

4.3.2 Equal Opportunities Commission

The Equal Opportunities Commission (EOC or the Commission), is established by the Equal Opportunities Commission Act (EOCA) 2007 and was launched in 2009. The Commission is established to give effect to the State's constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on grounds such as disability¹⁸² and take affirmative action in favour of those groups for the purpose of redressing imbalances that exists against them.¹⁸³ The Commission is empowered with the comprehensive and complimentary roles of monitoring and evaluation and with the enforcement of compliance with the equality laws. Stated as follows:

The functions of the Commission are to monitor, evaluate and ensure that policies, laws, plans, programmes, activities, practices, traditions, cultures and customs of—

¹⁷⁷Ibid s 6(b).

¹⁷⁸Ibid s 6(c).

¹⁷⁹Ibid s 6(e).

¹⁸⁰Ibid s 6 (f).

¹⁸¹Information obtained through a telephone interview with the Senior management for the National Council for Disability held in April 2010

¹⁸² These grounds are sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability.

¹⁸³Long title of the Equal Opportunities Commission Act 2007.

(a) *organs of state at all levels;*
 (b) *statutory bodies and agencies;*
 (c) *public bodies and authorities;*
 (d) *private businesses and enterprises;*
 (e) *nongovernmental organisations, and*
 (f) *social and cultural Communities, are compliant with equal opportunities and affirmative action in favour of groups marginalised on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.*¹⁸⁴

In executing its functions, the Commission has statutory powers similar to the powers of the Judicial Court,¹⁸⁵ therefore has powers to hear and determine complaints and may resolve them through mediation, conciliation, negotiation, settlement or other dispute resolution mechanism.¹⁸⁶ That power places it in a position to enforce the PwDA and other equality Acts.

EOC can undertake research-related activities on the inclusion of disabled people to highlight the extent to which they are accorded equal opportunities in higher education¹⁸⁷ It has powers to ensure recommendations arising out of such research are put into action as it can refer any matter to any other institution, body, tribunal or authority which, in the opinion of the Commission can best handle that matter.¹⁸⁸ This means the Commission can refer such recommendations to the Commission for Higher Education or to the National Council for Higher Education for appropriate action.

¹⁸⁴The Equal Opportunities Commission Act 2007, s 14(1).

¹⁸⁵Ibid s 15.

¹⁸⁶Ibid ss 14(3) and (4).

¹⁸⁷Ibid s 14 (2)(d).

¹⁸⁸Ibid s 15(4)(a).

Another role of the Commission that places it in a good position to bring disability equality into higher education is its function to “prepare and publish guidelines for implementation of equal opportunities and the avoidance of acts, [...] that undermine equal opportunities”.¹⁸⁹ This could lead to the development of codes of practices for disability inclusion for institutions of higher education. In Uganda, these guidelines are clearly absent. This research argues that the Commission has powers to ensure that codes of practice are developed as it is invested with powers to ‘recommend to or order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Commission will promote equal opportunities’.¹⁹⁰ In this particular case, the Commission can recommend developing the codes of practice to the NCHE whose role is to streamline the operation of higher education.

Finally, there is the Commission’s role to ‘monitor the compliance, in Uganda, with the provisions of international and regional conventions [...] that relate to or are relevant to the functions and objects of the Commission’.¹⁹¹ This has the potential to ensure Ugandan disability legislation on education complies with the Convention on the Rights of Disabled People (CRPD).

4.3.3 Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is the national human rights institution,¹⁹² established in accordance with the Constitution, to promote and protect human rights as well as monitor them in the country in line with international human rights instruments.¹⁹³ UHRC’s competence and responsibilities is in tune with the international standards, spelt out by the Paris

¹⁸⁹Ibid s 14 (2)(f).

¹⁹⁰The Equal Opportunities Commission Act 2007, s 15(4)(b).

¹⁹¹Ibid s 14 (2)(g).

¹⁹²The Constitution of the Republic of Uganda 1995, Art54.

¹⁹³Ibid Articles 51-58 See also

<http://www.uhrc.ug/index.php?option=com_content&view=article&id=162&Itemid=26>

accessed on 17th July 2010.

Principles relating to the status of national institutions for the protection and promotion of human rights.¹⁹⁴

In summary, the breadth of the mandate of UHRC includes human rights promotion and outreach, investigation and resolution of complaints, commenting on the Bills before parliament, monitoring Uganda's compliance with international treaties and the Constitution on matters of human rights and performing any other human rights matter as may be provided by law.¹⁹⁵ It also publishes periodic reports on the status of human rights in the country and submits those reports to Parliament annually.¹⁹⁶ In the performance of its functions, UHRC assumes the powers of the Judicial Court.¹⁹⁷ On the investigation of the violation of rights of disabled people, there has been a general improvement in the way disability features in UHRC reports to parliament since 2000. In particular, the 2009 annual reports highlights the situation of disabled people in the country, challenges faced by disabled people in enjoyment of their rights and recommendations for the improvements of the human rights situation for disabled people.¹⁹⁸ It appears the UHRC has done much on the issues relating to access to primary and secondary education,¹⁹⁹ but little on higher education. This is the gap in the work of UHRC that needs to be filled to ensure that UHRC ensures a right to education for disabled people in higher education.

¹⁹⁴ Annex 6, Paris Principles A/RES/48/134, 85th Plenary meeting 20th December 1993.

¹⁹⁵ The Constitution of the Republic of Uganda 1995, Article 52 (1).

¹⁹⁶ *Ibid*, Article 52 (1).

¹⁹⁷ *Ibid*, Article 53.

¹⁹⁸ Uganda Human Rights Commission, 'Uganda Human Rights Commission 12th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda' 2009, chapter 8.

¹⁹⁹ Uganda Human Rights Commission, 'Uganda Human Rights Commission 10th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda' 2007 Par 1.8.2 <http://www.uhrc.ug/index.php?option=com_docman&Itemid=137> accessed on 17th July 2010.

4.4 Mechanisms to Implement and Monitor the Implementation of the CRPD in Uganda

Article 33 of the CRPD, requires States to develop focal points in government to ensure policy coordination, establish independent monitoring frameworks and involve disabled people in the implementation and monitoring of the obligations in the Convention. This article has been complied with in Uganda. Uganda government has already established focal points on disability and as well as independent monitoring frameworks. What is therefore required is for government to ensure the full functioning of these focal points and independent monitoring mechanisms.

The key government focal point on disability is the Ministry of Gender, Labour and Social Development (MGLSD). In this ministry, a State Minister for Disability and Elderly Affairs coordinates disability affairs at government level. Below the Minister, a Technical Department for advising government on disability issues is established and is headed by the Commissioner who has now been designated as a focal person on the CRPD.²⁰⁰ Therefore, the Technical Department is the focal point for the government on the CRPD.

The coordination points (focal points) on disability for Uganda appears robust; as there exists also at district local governments level a position of Community Development Officer designated for disability affairs. There is also the Commission for Special Needs Education and Guidance, coordinating disability issues at the Ministry of Education and Sports. In education there is also an expanded disability coordination mechanism. At the Uganda National Examinations Board, a Special Educational Needs Desk is already established to coordinate issues relating to disability and national examination. However, the mandates of these structures are mainly on primary and secondary levels of

²⁰⁰ See Uganda's Communication to the UN Human Rights Council, entitled 'Human Rights Council Resolution 10/7- Human Rights of Persons with Disabilities: national Frameworks for the Promotion and Protection of the Human Rights of Persons with Disabilities.' GVA-UNTECH/48, 06October 2009.

education, which leaves a gap for coordination of disability issues in higher education.

On the independent monitoring framework, Uganda already established the Uganda Human Rights Commission (UHRC), the National Councils for Disability (NCD) and the Equal Opportunities Commission (EOC) as discussed in the previous section. These bodies have been delegated the task of monitoring the implementation of the CRPD.²⁰¹

On the involvement of civil society, in particular disabled people and their organisations, in the implementation and monitoring of the CRPD, Uganda has active civil society organised under the NGO Board, and active disability organisations²⁰² which government on many occasions engages on matters of disability through NUDIPU as already stated in this chapter. A classic example of this involvement is the national elections of disabled people where government has been involving the disability organisation through NUDIPU on organising these elections.²⁰³ Another consultation with disabled people on national matters was during the development of Vision 2040. Another was during development of the National Poverty Eradication Action Plan (PEAP).²⁰⁴

In concluding this section, it can be stated that Uganda seems to be fairly fulfilling the provisions on establishing the structures required by CRPD to ensure effective implementation and monitoring of disability rights. But each of their roles needs to be defined clearly to bring about their effectiveness through avoiding problems associated with legitimacy and credibility; problems that are

²⁰¹ Ibid paras B and C.

²⁰² Ibid Para D.

²⁰³ Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulation 2001, provides that Parliamentary representatives of Persons with Disabilities will be elected by an Electoral College comprising of four (4) persons elected from each district from the organized associations and groups under the structures of NUDIPU. This provides a legal involvement of NUDIPU on elections.

²⁰⁴ AK Dube (n156) 134-149.

associated with those kind of institutions.²⁰⁵ Additionally, these institutions need money and strength of law to further enhance their individual effectiveness for these mandates. At the time of writing this thesis, these bodies have not provided any guidance on the meaning of disability discrimination and have not also done any work on higher education related to disability such as providing codes of practice.

5. Conclusion

Uganda has a progressive disability legislative framework and is in three strands - the constitutional guarantees on disability equality, provisions on disability in other equality laws and disability-specific Acts of Parliament. In terms of bringing equal access for disabled people in higher education, the legal framework provides for substantive mechanisms how that can be achieved. However, the implementation of the law is largely on promotional basis by DRGs rather than enforcement by government. Another weakness is that, much of the efforts to realise disability rights in the country is being done through affirmative action principles. The challenge with that approach is that, affirmative action lacks definitive ways of eliminating systemic disability discrimination.

The PwDA 2006 through its provisions on discrimination of disabled people in educational services, making the educational environment accessible and promotion of educational development of disabled brings Uganda disability legal framework broadly into line with the CRPD on education. However, the challenge is that the language used in the Act makes it challenging to enforce. Also, its meaning of meaning of discrimination in education particularly in relation to the duty to provide reasonable accommodation is lacking.

It is also evident from the chapter that more disabled people will soon be joining higher education. However, the situation in higher education is worrying as the

²⁰⁵ A Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28(4) Human Rights Quarterly 904-946.

legislation appears to be not fully interpreted to bring about equality, access and inclusion of disabled people. This chapter provides the background information for chapter six, which investigates through empirical research how the legislation has been interpreted in higher education.

Chapter Five

Empirical Research Methodology

1. Introduction

The scope of this research as stated in chapter one, entails critically analysing how rights for disabled people are being realised in higher education in Uganda, using the UN Convention on the Rights of Persons with Disabilities (CRPD) as an overarching framework. Therefore, the study is about the scope of the Uganda disability law and policy in higher education and its impact on the lives of disabled people in higher education. The previous chapters, particularly chapter four have examined the scope. The next chapter, chapter six, brings out the impact.

This chapter therefore, outlines, describes, analyses and appraises the research strategies and data collection procedures selected to investigate the extent to which disabled people are included in higher education – the impact of disability law and policy. In chapter one, the impact is stated as how the provisions of the disability legislation regarding higher education have been interpreted and reflected in the policies and actions of the universities in relation to entry to higher education, provisions for disability support services, meeting the accessibility requirements, and learning, teaching and assessment. In each theme recent developments and shortfalls in the inclusion process of disabled students in higher education would be highlighted.

The discussion commences by stating and appraising the research design. This is done in section 2. Section 3 describes the study population and criteria of selecting the interviewees. This section also clarifies on the plan of action. Section 4 describes how the participants were reached. This is followed by

describing the data collection processes and analysing the tools for data collection and data analysis, in section 5. In this analysis, particularly in section 6, ethical issues in legal research relating to this study will also be considered. Section 7 highlights the challenges encountered in the empirical research and section 8 concludes the chapter.

2. Empirical Research Design

The research question under investigation properly dictates the nature of data to be collected and in that way the techniques for collecting the data.¹ But the whole process is informed by techniques of qualitative and quantitative research paradigms. However, the paradigms are presented by the literature on research methods at times as though they are mutually antagonistic ideal types of research processes. Despite so the agreement appears that the different characteristics of qualitative and quantitative approach should be based on technical issues regarding the suitability of a particular method in relation to a particular research problem.² For this research, qualitative research approach is suitable. Qualitative research is defined as a form of systematic empirical inquiry into meaning.³ This suits this research because it aims obtaining information about the social contexts of disabled people in higher education- i.e. their feelings and experiences, attitudes and opinions of staff about disabled students. These feelings and experiences attempt to make sense of, or to interpret, the impact of the disability law and policy in higher education. This is what Silverman describes as ‘attempting to document the world from the point of view of the

¹ A Bryman, ‘The Debate about Quantitative and Qualitative Research’ in A Bryman Quantity and Quality in social Research (Published, Routledge, 1998)

² A Bryman, ‘The Debate about Quantitative and Qualitative Research’ in A Bryman Quantity and Quality in social Research (Published, Routledge, 1998) 93.

³ See E M Amin, Social Science Research: Conception, Methodology and Analysis (1st edn Makerere University Kampala).

participants.’⁴ Silverman’s view is relevant in researching the impact of law on people; like in this project.

Emancipatory research is arguably one of the approaches situated to be applicable in the qualitative research design for obtaining information on policy changes, how these changes are being practiced and their effects on the lives of disabled people. Emancipatory research has its roots in feminist research and is aimed at involving and empowering the research participants⁵ and even seeks to engage them as equal partners in the research process. Similarly, scholars in disability studies are advocating that empirical research on disability embody the purpose of emancipation,⁶ on the grounds that, many traditional empirical research projects are treating disabled participants as passive subjects of research.⁷ Therefore, emancipatory research will scale up the involvement of disabled people and contribute to their empowerment and liberation from the long history of marginalisation they are facing. This ambition has much to recommend it. However, the extent to which it has been possible to incorporate principles of emancipatory research into this project has been restricted by the

4 D Silverman, ‘Qualitative/Quantitative’ in C Jenks (ed), *Core Sociological Dichotomies* (Published, Sage Publications, 1998) 85.

⁵ R Oakley, ‘Interviewing women: a contradiction in terms, in H Roberts (ed) *Doing Feminist Research* (1981, Routledge and Kegan Paul, London)

⁶ See for example: E Stone and M Priestley, ‘Parasites, pawns and partners: Disability research and the role of non-disabled researchers,’ *British Journal of Sociology*, (1996), 47(4), 699–716; M Oliver 1992. Changing the social relations of research production? *Disability & Society*, (1992), 7 (2), 101–14; M Oliver, ‘Emancipatory research: Realistic goal or impossible dream,’ in ed. C. Barnes and G. Mercer (Eds), *Doing Disability Research*, (Disability Press, Leeds 1997) 15–31; R Kitchin, ‘The researched opinions on research: Disabled people and disability research,’ *Disability & Society*, (2000), 15(1), 25–47; G Zarb, ‘On the road to Damascus: First steps towards changing the relations of disability research production,’ *Disability & Society*, (1992). 7(2), 125–38.

⁷ G Zarb, ‘On the road to Damascus: First steps towards changing the relations of disability research production,’ *Disability & Society*, (1992). 7(2), 125–38.

limited amount of time available for conducting the empirical research during a 3 month study visit to Uganda.

Regarding data collection tools, qualitative research, as Bryman argues, tends to be associated with participant observation, focus groups and unstructured or semi-structured, in-depth interviewing.⁸ These tools are useful in collecting data rich in text for in-depth analysis of a social issue in a particular context. Therefore, such techniques were much relevant and were applied in this project to collect data on policy changes, how these changes are being practiced and their effects on the lives of disabled people. Thus, focus group discussions with disabled students and in-depth interviews with both the staff and disabled students were used. Also, structured questionnaires were also used. More discussion on these methods is reserved for the section on data collection tools. It is important to point out that, this mixed mode of inquiry, as argued by Greene, allowed triangulation of the information and enhanced confidence in the validity of the results,⁹ and therefore, the data collected was appropriate in advancing a progressive viewpoint about the research question of this project.

3. Study Population and Criteria of Selecting Interviewees

Both the disabled students and staff in the universities are the study population. At the time of writing, Uganda had 27 (22 private and 5 public) recognised universities. Inevitably, the researcher could not reach all those universities due to limited time for this research, limited funding and above all a need to obtain in-depth information on the research question, makes the sample size small. In that respect, four universities, 2 public and 2 private, were purposively selected and are here referred to in this thesis as public university 1 and public university 2 and private university 1 and private university 2. As mentioned earlier, both the

⁸ A Bryman, *Quantity and Quality in Social Research* (Published, Routledge, 1988)

⁹ JC Greene and H Kreider and E Mayer, 'Combining Qualitative and Quantitative Methods in Social Inquiry' in B Somekh and C Lewin (eds), *Research Methods in the Social Sciences* (Sage publications, London 2005) 274.[40]

staff and disabled students become participants to this research as interviewees, selected across the university units –both academic and non-academic.

a) Disabled students: The expectation was that in each university, at least a person in each category of the common disabilities in Uganda(i.e. the blind, the deaf and people with physical disabilities and mental health related disabilities – see categorisation of disabilities in chapter five) is included as an interviewee.

b) The academic staff: The expectation was to reach both academic and non-academic staff. For academic staff, the Faculty Dean or a Head of Department or a Senior Lecturer was expected to be an interviewee; and for non-academic staff, at least the Head of the unit was expected to be an interviewee. The proposed categories of staff are expected to be knowledgeable of higher education (university) policies and may have also interfaced with disabled students in the institutions.

The actual number of interviewees was challenging to pre-determine, particularly for disabled students. However, the most important consideration was not necessarily the number of interviewees but to obtain information about the research question as explained in a and b above.

Criteria of selection

A mixture of stratified, purposive and simple random sampling methods was applied in selecting the universities and the respective interviewees. This is because the interviewees as noted earlier on are drawn from different strata and each stratum being distinctly different from another in a particular way.

Stratified sampling entails that the study population is sub-grouped into non overlapping strata and elements in each stratum are considered homogenous in a sense of a particular criterion. This was helpful in selection of the universities and units of study within the university. In Uganda, according to the Universities and Other Tertiary Institutions Act (UTIA) 2003, there are 2 main distinct strata of universities - either public or private universities. Given the aim of the research, both categories of universities were investigated. This is

particularly important in-light of some of the differing the obligations the UTIA confers to these institutions as discussed in chapter four. For example UTIA, confers obligations directly relating to disability inclusion on public universities only. This raises interest to investigate how private universities, as well as public universities, are dealing with disability inclusion.

Within each university also:

- Academic and non-academic programmes distinctively differ, therefore, a need to investigate how disabled people are included in both academic and non-academic programmes- opinions of staff- both academic and non-academic.
- Even within the academic programmes for example, there is a distinctive difference between humanities and science related programmes in how learning is conducted, calling for investigations how each programme includes disabled people.
- Above all, within this context of distinctiveness of the university units comes in distinctiveness of the categories of disabilities with respective unique requirements. This requires getting the opinions of staff and disabled students and in particular, opinions of the disabled students in accordance with their disabilities. In this respect, students for face to face interviews (in-depth interviews) were selected taking into account that, at least a student from each category of disability was interviewed.

The idea of stratified sampling was also helpful in the selection of disabled students for focus group discussions, as for each group, those selected belonged to a particularly category of disability.

On the other hand, purposive sampling procedures entails selecting a unit of study based on the knowledge of a population and the purpose of the study.¹⁰

In that respect, it was useful in the selection of the interviewees for face to face interviews (in-depth interviews).

3.1 Universities Selected

As mentioned earlier, four universities, 2 public and 2 private (public university 1 and public university 2 and private university 1 and private university 2.) were selected. The detail description of these universities has been avoided for ethical considerations (see discussion on anonymity and ethical considerations in section 6).

The first criterion for selection of the universities has already been explained above. Another criterion for selection was the academic disciplines offered by the university. Thus, a relevant factor in the selection of public university 1 was that it offers a wide range of academic programmes from certificate to doctoral level, such as sciences, medicine and related programmes, humanities, social sciences, management related programme, engineering and technical courses. This factor was also responsible for selection of private university 1. Private university 1 has also a range of academic programmes, although not as wide as those offered by public university 1. Another criterion for selection of the university, which is really purposive selection was based on its historical background in offering disability related disciplines, such as special educational needs and community based rehabilitation. This factor was influential in selecting Public University 2. This was purposively to show how inclusive practices are being done in a university, as role model. The age of the institutions was also a factor. Another was its location. The last two factors were influential

¹⁰ M Patton, *Qualitative evaluation and research methods* (pp. 169-186). (Beverly Hills, CA: Sage. 1990) 185. <http://legacy.oise.utoronto.ca/research/field-centres/ross/ctl1014/Patton1990.pdf> accessed on 28 /10/2013.

in the selection of private university 2. Private university 2 is located in the rural area and is relatively new as compared with the other three universities.

3.2 Interviewees Selected

The interviewees were both staff and disabled students from the four universities. As pointed out earlier, the actual number of interviewees was challenging to pre-determine, particularly for disabled students due to lack of data on disabled people in higher education. The intent, however, was to draw interviewee, particularly, the staff from both academic and non-academic programmes and disabled students drawn from all the known common disabilities in the country. Further to this for the staff, attention was also paid to ensure that the staff are selected from both sciences oriented faculties and humanities. This is to ensure views from both academic disciplines are gathered about the research question. It is noted that, some academic units relate disability to physical inability to undertake some academic courses, as such; these academic units feel that there are some courses that a particular category of disabled people cannot undertake.¹¹ The procedures of selecting the participants have also already above.

Altogether, 46 university staff participated, i.e. 35 academic and 11 administrative staff.¹² For disabled students, 50 participated in the 5 focus groups (to be discussed further below); in-depth interviews were held with 14, while 57 completed the questionnaires out of 117 questionnaires delivered to disabled students in all the four universities. The table below provides a summary of proposed participants and those who participated in the research in each university.

¹¹ See chapter one.

¹² The academics included the Faculty Deans, Heads of Departments, Academic Registrars and Librarians. The administrative staff were Deans of Students, Wardens of halls of residences and Heads of non-academic units like planning, sports and administration.

Table 4: Summary of proposed participants and those who responded in each university

Table 5.1 Public University 1

Category	Category of Participant	Participated?
Department of Gender and Women Studies	Head of Department	Yes, face to face interview was conducted with the participant.
Department of Mass Communication	Lecturer	Yes, Telephone interview
Faculty of Social Sciences	Faculty Registrar	Yes, face to face interviews
Faculty of Human Medicine	Dean	None response
Faculty of Information and Computer Technology	Deputy Dean Academic Affairs	Yes, face to face interview was conducted with the participant.
Institute of Statistics and Applied Economics	Deputy Dean Academic Affairs	Yes, filled the staff questionnaire
Faculty of veterinary medicine	Head of Department veterinary and public health. and Ag. Head of Department Wild Life Authority and Management.	Yes, face to face interview was conducted with the 2 participants.
Faculty of Education	Dean	Non-response
Faculty of Law	Deputy Dean Undergraduates Studies	Yes, face to face interview was conducted with the participant.
Faculty of Agriculture	Faculty Registrar	Yes, filled staff questionnaire
East African School of Librarianship	Faculty Registrar	Yes, filled staff questionnaire
Faculty of Forestry and nature conservation	Dean of the Faculty	Yes, filled staff questionnaire
Dean of Students office	Dean of Students	Yes, face to face interview was conducted with the participant.
Sports and recreation	Head	Non-response
Halls of Residences (4)	Four Wardens	Yes, face to face interview was conducted with one and telephone interview with the other 3.
University Planning Department	Head	Documents collected
Library	University Librarian	Yes, face to face interview was conducted with the

		participant.
Disabled students	Disabled students	<p>Yes,</p> <ul style="list-style-type: none"> • Face to face interview and focus group discussions held- see details in the section discussing data collection. • 40 Questionnaires were distributed and 17 were returned filled

Table 6.2: Public University 2

Category	Participant	Mode of data collection applied
Faculty of Arts and Social Sciences	Faculty Dean	Yes, filled staff questionnaire
Faculty of Special Needs and Rehabilitation	Head of Department Community and Disability Studies	Yes, face to face interview was conducted with the participant.
Faculty of Science	Faculty Dean	No response
Faculty of Vocational Studies	Faculty Dean	Yes, filled staff questionnaire and also face to face interview was conducted.
	Head of Department Business Studies	Yes, face to face interview was conducted and also filled the questionnaire
	Head of Department Agriculture	Yes, filled staff questionnaire
	Senior Lecturer Department of fine Art and design	Yes, face to face interview was conducted with the participant.
Faculty of Education	Head of Department Distance Education	Yes, held telephone interview with the participant
Sports and Recreation	Head	Non-response
Faculty of Engineering	Faculty Dean	Non response
Dean of Students	Dean of Students	Yes, face to face interview was conducted with participant.
Library	Deputy Librarian	Yes, face to face interview was conducted with the participant.
Planning Unit	Head	Non-response

Academic Staff Body	Chairperson	Yes, face to face interview was conducted with the participant.
Halls of Residences (3)	Three Wardens	Yes, face to face with one and 2 Filled staff Questionnaires
Disabled students	Disabled students	Yes, <ul style="list-style-type: none"> • Face to face interviews and focus group discussions were held-see details in the section on data collection. • 67 questionnaires were distributed to disabled students and 36 were returned filled.

Table 7.3 Private University 1

Category	Participant	Mode of data collection applied
Department of Development Studies	Head of Department	Yes, participant filled staff questionnaire
Faculty of Science and Technology	Faculty Dean	Yes, face to face interview was conducted and also filled questionnaire
Faculty of Arts and Social Sciences	Faculty Dean	Yes, face to face interview was conducted with the participant.
Faculty of Management and Administration	Head of Department Marketing and Entrepreneurship	Yes, face to face interview was conducted and also filled questionnaire
Faculty of Education	Faculty Dean	None response
Faculty of Theology and Divinity	Deputy Dean	Non response
Vice Chancellor's office	Public Relations Officer	Yes, participant filled staff questionnaire
Students Guild	Guild President	Yes, a telephone interview was held with the participant
Department of Linguistics	Head of department	Yes, face to face interview was conducted and also filled questionnaire
Department of Mass Communication	Head of Department	Yes, face to face interview was conducted with the participant.
Planning Unit	Head	Non-response
Department of Health Sciences	Head of Department	Yes, Face to face interviews was conducted with the

		participant
Halls of Residences (2)	The 2 Wardens	Yes, face to face interview was conducted with one; and other filled a questionnaire
Library	Deputy Librarian	Yes, face to face interview was conducted with the participant.
Sports and recreation	Head	Non-response
Disabled students	Disabled students	Yes, telephone interviews held with 3 students. 10 questionnaires distributed and 4 were returned filled

Table 8.4: Private University 2

Category	Participant	Mode of data collection applied
Faculty of Social Science and Management	Faculty Dean and Head of Department Management	Yes, face to face interview was conducted with the 2 participants.
Academic Registrar Office	Academic Registrar	Yes, face to face interview was conducted with the participant.
Finance and Administration	One staff	Face to face interviews
Sports and Recreation	Head of the Unit	Non-response
Planning Unit	Head	Non-response
Disabled Students	Disabled student	Yes, face to face interview was conducted with one disabled student. <ul style="list-style-type: none"> • Planned focus grouped could not be held due to examinations. • 7 Questionnaires were distributed, none was returned.

The unmet expectations were as follows:

- On disabled students, whereas it was proposed to reach every category of disabled student registered in the four universities, it was not easy to identify students with mental health disabilities due to lack of records about them in the universities. Universities do not require students to

declare whether they have mental disability or not. Even the associations of disabled students in the universities visited claimed they had not registered a student with mental disability. Also, in public university 1, it was not possible to interview deaf students due to lack of sign language interpreter. In both private university 1 and private university 2, there were no blind or deaf students registered at the time of this research. In private university 2, only one student with physical disability was interviewed. It was not possible to interview the rest as they were engaged in examinations.

- For the staff, it was not possible interview 12 out of the 58 who had agreed to be interviewed as showed by non-response in the 4 tables above.

4. Reaching the Participants- Interviewees

After being granted permission to conduct the research by the universities, the interviewees were obtained by approaching the relevant authorities i.e. the Faculty Deans and heads of the relevant sections. For the academic staff, the requirement would have been to go through Faculty Deans and Head of Departments. For this research, those were the targeted participants as shown in the table above. So the first meeting with each of them was to explain the purpose of the research and to make appointments for the actual interview. For non-academic staff, permission to interview them was granted by the University Dean of Students for public university 1 and 2, while for private university 1, this was not a requirement. The main permission granted by the university was sufficient to interview non-academic staff as well. This was also the case for private university 2. For disabled students, in each university, they were identified with help of the chair of the disabled students association, who mobilised them for focus group discussions, individual in-depth interviews and also later on distributed the questionnaires to them and posted filled questionnaires to the researcher. The researcher briefed them on the purpose of the research, the category of respondents and their role in the research.

5. Data Collection Process and Tools for Data Collection.

To guide the data collection process, the researcher adopted the following question- *paraphrased* what does this case look like for [...] from this [...] view point,¹³ normally used in case studies. This was important to guide the collection of information about what the situation looked like: in Uganda in general; at the institutions' level and at the faculty level in regards to policy changes, practices and experiences of disabled students. This was useful in two ways. It enhanced reflection of the literature gathered. More importantly; it enabled the researcher to explore practices by institution, in particular at the faculty level, by engaging respondents in explanations and justifications of their positions and perspectives on disability inclusion.

As mentioned before, focus group discussions, face to face interviews (in-depth interviews) and questionnaires were methods of data collection applied in this research. Each is explained as follows. In this research, focus group discussion was only intended for disabled students not with staff because the focus of the research is on the experiences of disabled students of higher education resulting from disability law and policy. Also, it was intended that, the key findings from the focus group discussions will be used as guide for the in-depth-interviews with the staff and as well as disabled students. The findings were also helpful in modifying the individual questionnaires answered by disabled students.

5.1 Focus Group Discussions

This tool of data collection is becoming increasingly popular in social science research.¹⁴ It is a technique that involves interaction between the researcher and a group of participants on opinions, ideas and reactions about the research themes. In this discussion, the researcher facilitated and moderated the

¹³ S Stark and H Torrance, 'Case Study' in B Somekh and C Lewis (eds), *Research Methods in the Social Sciences* (Sage Publications, London 2005) 33.

¹⁴ RS Barbour and J Schostak, 'Interviewing and Focus Groups' in B Somekh and C Lewin (eds), *Research Methods in the Social Sciences* (Sage publications, London 2005) 41-42,

discussion, guided by the key themes of the empirical research, as issues for discussion. See the table below.

Table 9: Focus Group Discussions Guide

Key Research Area	Main purpose
Entry and admission	To identify the admission criteria for disabled students in respect of the different disabilities.
Accessibility	To identify the accessibility barriers facing disabled students. To determine the extent and nature of accessibility barriers To determine the extent the university is addressing the accessibility barratries.
Awareness of Disability Legislation	To determine the disabled students awareness of the disability legislation, university disability policies and their enforcement. To explore the Disabled Students Association's contribution towards the enforcement of the disability policies at the university.
Teaching and Learning	To explore how the disabled students (perceive their) are being reasonably accommodated in teaching and learning environment in consideration of their different impairments.
Assessment and Examination	To find out from the disabled students whether assessment and examination process take into in consideration their impairment needs.
Disabled Student Support Services	To determine the extent and the nature of the support services provided to the disabled students.
Staff Attitudes	To explore students opinions about staff attitudes towards them in their different disabilities.

The original plan was to conduct 4 focus groups in each of the 4 universities. Each group to be constituted by 6 to 12 students of the same disability among the four then common disabilities in Uganda i.e. the physical, the blind, the deaf and mental disability. However, this did not work out as planned as it was not easy to identify students with mental disabilities. Another factor was that neither of the private universities visited had either blind or deaf students. Also, in public university 1, it was not possible to conduct focus group discussions with deaf students as there were no available sign language interpreters. It was not also

possible to conduct any focus group discussions in private university 1 as students were in semester break and for private university 2; at the time researcher was scheduled to be in that university, the students were already engaged in examinations. Consequently, 5 focus groups were conducted as follows. In public university 1, focus groups were conducted with blind students (12 attended) and students with physical disabilities (9 attended). In public university 2, focus groups were conducted with deaf students (11 attended), blind students (6 attended) and those with physical disabilities (12 attended).

Throughout the focus group discussions as guided by the research themes, participants freely expressed their experiences and feelings about disability inclusion in their respective institutions. This generated a wide range of views and reactions on the disabled students' experiences as discussed in chapter 6. Some of these views became part of the agenda for the individual in-depth interviews with both the disabled students and the staff as earlier planned.

A number of challenges associated with gathering data from the focus groups may be noted. For instance, in some instances, participants would divert the discussions by wanting to know how similar situations were being addressed by universities in the Great Britain and seeking advice from the researcher on how they should make universities address their needs. In those situations, some explanations were provided whilst attempting to retain focus on the theme of the discussions. Another challenge experienced in the focus groups was that, at times, the participants tended to concentrate on the most common forms of discrimination. I had to explain to them what the research was interested in, in non-legal language as they were not familiar with legal terminology. Further, the concept of 'reasonable accommodation' was understood to mean literally 'accommodation.' Efforts were made continuously to explain to the participants the meaning of relevant terms.

5.2 Face to Face (In-depth) Interviews

Individual in-depth interviews were aimed at generating an in-depth feelings and experiences of the participants- both the disabled students and university staff and were purposely selected as mentioned earlier. The interviews were based on the research guide formulated out of the findings from the focus group discussions.

For staff, especially the teaching staff as mentioned earlier, an effort was made to interview the heads of departments, deans of the faculties and lecturers who have taught for at least 5 years. These categories of teaching staff are thought to have wide interaction of disabled students in the university. For non-teaching staff, wardens of halls of residences, those in the university planning department, university estates managers and sports officers were targeted. This is because their roles also have direct or indirect impact to the lives of disabled students in the university. For the disabled students, an effort was made to recruit people with different types and levels of impairment. For the case of disabled students with physical disabilities, efforts were made to ensure each category of students with physical disability was interviewed. These categories were the paraplegic, those who had difficulty using their hands, those with paralysed legs and on crutches and those are on a wheelchair. For the visually impaired, the participants included those who were completely blind and those who were partially blind and similarly with the participants who were hearing impaired.

Twenty eight (28) individual face to face in-depth interviews were carried out with the staff and 19 with disabled students. Fifteen (15) filled the questionnaires. Three (3) telephone interviews were also conducted with the staff and 4 with students. Telephone interviews were conducted with participants who had agreed to be interviewed but were timing prevented a face to face interview. There 12 none responses from staff.

To facilitate meaningful discussion, efforts were made to build a good rapport with the participant and clarify issues of confidentiality before the interview

began. In addition, the key themes for interview were introduced to the participant and his or her consent sought before the interview. Permission to take notes and record the interview was also sought at that stage.

The face to face interviews made the researcher closer to the participants and enabled free discussions. This enabled participants to freely describe the experiences freely. More importantly, it provided the researcher with an opportunity to ask for explanations of and reasons for the participant's opinions on some issues and to probe further any issue that needed clarification. Another advantage was that the researcher was able to gauge the situation to ask the participant some personal, sensitive, or confidential information related to the research interest, which it was not possible to do either through a structured questionnaire or focus group discussions.

A challenge associated with interviews in this project was finding a location for the interview where interruptions would not occur. Indeed, in a number of interviews both with staff and disabled students there were interruptions.

Also, in some instances, particularly with students who were paraplegic because of the nature of their health problems, shyness sometimes threatened to prevent the disclosure of relevant experiences. These difficulties, however, were largely overcome through patience and the development of trust.

5.3 Structured Questionnaires

Structured questionnaires were also used. The purpose of the questionnaires was to collect information to supplement the data collected through focus group discussions and in-depth interviews and thereby enrich the overall results by reaching to as many disabled students participants as possible. Through, questionnaires, it was possible quantify the participants' feelings based on the research themes. For this research, this was important to assist in advancing a view which category of disabled students appear most excluded or more included at higher education. Although such a view may appear to be exploratory results

in this project, it may call for a more rigorous research on inclusion of disabled people in higher education either to test those views or getting more robust results to appeal for policy reform in higher education for disabled people. One hundred seventeen (117) questionnaires were distributed to the students and were to be completed unguided. Fifty seven (57) questionnaires were returned filled. The questionnaires were designed to include both open and closed questions (See the questionnaire attached in the appendix 3). The closed questions aim to collect the respondent's feelings about the level of discrimination they face by expressing it as a percentage. The open- questions aim to encourage the respondent provide a justification for the rating and to provide suggestions on how the situation could be improved. This was intended to prompt the participant to express salient issues around their discrimination in the institution.

5.3 Participants Observation

On participants observation, although it is was also a relevant method of data collection in this kind of research, it was not intended to be used in this project, as collecting data valid to make conclusion regarding a research question requires relatively longer involvement of the researcher with the participants. However, within the short period of interaction with the participants, it was easy to observe some factors relating to exclusion of disabled people in the universities. Notably, was the physical inaccessibility of the premises in terms of some doors being narrow, stairs, lack of elevators in many storied buildings, uncleaned toilets, and congestion in the halls of residence with few toilets. That observation would quickly imply that the blind and those using wheelchairs (crawling) are greatly affected.

5.4 Data Analysis Process

The discussion of the research methods used indicates that both open questions and closed questions were used. Therefore, both qualitative approaches to analysis of data based on open questions and closed questions were adopted.

5.4.1 Analysis of Data from Questionnaires

On the students' questionnaires, closed questions investigated the students' feelings about university services. The responses obtained from the closed questions were coded and analysed using SPSS to generate descriptive data in the form of tables. Students were invited to indicate their feelings about the university services offered to them. In this rating, a student expressed his or her feelings in form of a percentage, choosing from the percentage intervals provided as: 0-14%, 15%-29%, 30%-44%, 45%-59%, 60%-74%, and 75%+. 57 questionnaires were returned. Data was analysed using SPSS package and tables indicating the type of disability and feelings on each theme were generated. The generated data was re-grouped into three, namely, less than 45%, 45-74% and 75%+. What each means is explained in discussion of each theme in chapter six.

Open-ended questions investigated mainly two areas. One, why the students feel the university deserves that ranking he/she has suggested; and two, opinions of students how their situation can be improved at the universities. The information generated from the open-ended questions was grouped together depending of the key issue it represents. These key issues generated became aggregated opinions of the students based on the themes of the study.

5.4.2 Analysis of Data from Interviews and from Focus Group Discussions

During the focus group discussions and interviews, most of the information was captured by recording the interviews and note taking. The recorded information was transcribed into text by listening to the recorded voices and writing it down. The transcribed information, together with the notes taken during the interviews and information from the open questions from the questionnaires was arranged into sub-themes and then into major themes according to the research theme, to search for meaning and understanding in line with the purpose of the question.

It is arguable that there is no single correct way to carry out qualitative data analysis - no single methodological framework.¹⁵ Qualitative data analysis begins immediately with the design stage and continues when the interviews are done. Therefore, the analysis of qualitative data is dependent on the purpose of the research. The key issue in the analysis of qualitative data at any stage is the identification of the themes which are especially significant, whether from the perspective of the informants, the research questions, current debates, or methodology.¹⁶ In this research, the key research themes were developed in advance and discussions were centred on those themes. Any emerging issues during the focus groups, the interviews or in response to open questions on the questionnaires were appropriately grouped under those themes.

6. Ethical Considerations and Anonymity

An ethical research requirement is to keep the participants anonymous so as to protect their identity. The confidentiality of the participants was ensured by not revealing their identities in the research report (such as in quotations) in such a way as to make them easily identifiable. The staff participants are not referred to by their names or their specific positions /roles e.g. stating the position and name of the university. For the disabled students, pseudonyms were provided. In addition, detailed descriptions of the programme and the year of study and the university have been avoided. Such descriptions can, in some circumstances allow the identity of a disabled participant to emerge especially where there is only one registered for that programme in the period of this data collection.

Because of the requirement of anonymity of the respondents, in some instances a quotation is identified as say from 'one of the public universities' or 'one of the private universities.' This is because Uganda has so few universities that the

¹⁵ KF Punch, *Introduction to Social Research Quantitative and Qualitative Approaches* (Sage Publications, London 2005) 194.

¹⁶ H Arksey and P Knight, *Interviewing for Social Scientists* (Sage Publication, London 1999) 161.

criteria for selecting the universities above might make these institutions identifiable.

Participants were asked to consent to be interviewed. They were assured that they were free to participate in the research and to withdraw from it at any time (copy of the consent form attached as appendix 4). In addition, a participant's consent was also sought for the interviews to be tape recorded. Also, during the interviews the participant was free to request that some of the information he/she was providing should not be recorded.

7. Challenges Encountered

The principal challenges encountered during this research were mainly three and resulted in the delay in starting the data collection process. The first challenge was delay remittance of research funds from my funders. The second challenge relates to getting permission to do the research. In Uganda, it was a requirement to obtain permission to do empirical research. This is granted by the Uganda National Council for Science and Technology (NCST), a body responsible for granting research in the country. This required the personal presence of the researcher. Getting approval from UNSCT and the subsequent approval by the Ugandan universities took two months.

The two challenges combined meant moving the activities back and extending the research by two months. This moved the activities towards the period of the semester examinations, when participants were busy preparing for them. Despite this, the activities were squeezed into the tight schedules of the participants and data gathering took place through focus group discussions and in-depth interviews, and questionnaires. Other interviews were later carried out by phone after my return to the UK. The completed questionnaires were also posted to me.

8. Conclusion

The nature of this study has dictated applying qualitative techniques of data collection. It is evident from the chapter that, both structured and unstructured mode of data- structured questionnaire, document analysis, and in-depth interviewing and focus group discussions. From that strategy the following can be stated:

- The relationship between researcher and participants is both close through unstructured interview and somehow distant through structured questionnaires and documentary analysis.
- The researcher's stance in relation to the participants in Uganda can be described as a person who has experienced similar situation in Higher education therefore it was not easy to describe it as insider or outsider relationship.

The nature of data is mostly rich and deep, backed up with some descriptive statistics. This is hoped to assist the researcher come up with emergent issues on disability inclusion in higher education.

Chapter Six

Description, Analysis and Interpretation of the Empirical Research Findings

1. Introduction

Chapter four discussed the legislative context in Uganda upon which the development of policy for inclusion of disabled people in higher education is based. That discussion leads into this chapter, which focuses on the investigation of universities' policies and practices on disability inclusion through an empirical study. Experiences from both the students and the staff are investigated to assess the impact of the disability legislation. The impact points out the extent to which Uganda is realising rights of disabled people in higher education. The research design, the universities selected and interviewees have already been discussed in chapter five, the methodology chapter.

The discussion begins by providing an overview of the disabled students' population in higher education. This will be followed by presenting the empirical research findings as per the research themes. The themes are entry into higher education, the provision of disability support services, accessibility at halls of residence and university compounds, participation of disabled students in sports and recreational activities, access to library services, access to lectures and modes of assessment and examinations, and, lastly, staff attitudes. The summary and conclusion of the chapter forms the last part.

2 Disabled Students Population in Higher Education

In Uganda, data on education is not well developed. However, the Uganda Bureau Statistics (UBOS) through its annual Statistics Abstracts¹ provides some data on education, particularly on enrolments in primary, secondary and higher education; and number of educational establishments i.e. schools, higher education institutions. Also provided the statistics abstracts are efficiency indicators and access indicators on education. On enrolment, number of pupils / students with disabilities enrolled in primary and secondary schools is also indicated. However, data particularly pertaining to disabled students in higher education is generally lacking. Even within the universities that participated in this research, the actual number of disabled students could not be established. None has records of disabled students i.e. data about disabled students. This could be so because it is of recent that a sizeable number of disabled students are joining higher education. Therefore, lack of data on disabled students in the universities visited may indicate that disabled students are not a fully recognised group in higher education. Overall, it should be noted that, lack of data about disabled students in higher education is within lack of established data base on higher education in Uganda. Lack of established data on higher education is probably because there is no specific agency established to handle higher education statistics. In some countries, for example the Great Britain, such data is compiled and presented by Higher Education Statistical Agency (HESA). The benefit of such a body is that it provides aggregated data about higher education. For example, in academic year 2008/9 HESA indicates that 7% of the students' population in higher education are disabled people.²

In Uganda, it is hoped that soon data on disability in higher education will be available, probably starting with the report of the upcoming Uganda Population and Housing Census in 2014. This is so because the National Union of Disabled Persons of Uganda (NUDIPU) is vigorously sensitising the Uganda Bureau of Statistics (UBOS) on disability. It is hoped that through awareness raising, UBOS

¹ See Uganda Bureau of Statistics Statistical Abstracts for the years 2003-2012.

² Computation done by the author using HESA data 1994/1995 -2008/9 Academic Years

will take into considerations disability in the forth coming national housing and population census and this will hopefully pave way for compilation of statistics on disability in higher education.

In this research therefore, due to lack of data on disability in higher education, data from the returned filled questionnaires was used to show how disabled students are distributed in universities in relation to scheme of entry, number in each university and course of study. However, students from private university 2 did not return the questionnaires. But this does not significantly affect the result as the indication from the disabled student leader at private university 2 is that there were about 5 disabled students at the time of this research.

Table 10: Number of students and scheme of entry to the university

Scheme of entry to university	University			Total
	Public University 1	Public University 2	Private University 1	
Affirmative action-District Quota		4		4
Affirmative Action-disability	12	20		32
Direct Entry	1	1		2
Mature Age	1	6		7
Private	3	4	4	11
Diploma Entry		1		1
Total	17	36	4	57

From the table above, it can be seen that most of the students joining public universities enter through affirmative action. As noted in chapter four, the University and other Tertiary Institutions Act 2003 (UTIA) provides for admission of women, sports talented students and disabled students to public universities through affirmative action. In addition to those 3 groups, the fourth category of students admitted through affirmative action is those from the district

quota (this is also explained in chapter four). In brief, admission to public universities through district quota scheme is meant to reduce imbalances of students in public universities based on regions. Every district is allocated slots of students to be admitted to public universities through this scheme.

Table 11: Number of students per university who filled in the questionnaire

Type of Disability	University			Total
	Public University 1	Public University 2	Private University 1	
Physical disability wheelchairs	3	3		6
Physical disability non wheelchair users	8	20	4	32
Partially deaf		3		3
Totally blind	4	5		9
Partially blind	2	3		5
Others		2		2
Total	17	36	4	57

From the table above, it can be seen that most disabled students participating in this study through questionnaire are those with physical disabilities (38 out of 57). Generally in Uganda, the largest number of disabled people is those with physical disabilities. The table also shows that, most disabled students are admitted to public university 2. There was, however, no obvious reason why public university 2 is preferred to public university 1, but one possibility might be the history of public university 2 on disability-related courses. Perhaps as a result of this, it has slightly better facilities for disabled students than public university 1. Another reason is related to the courses disabled students are admitted to as indicated in the table below. 14 out of 57 disabled students are enrolled in disability related courses and most of those courses are offered by public university 2. Also from this data it can be assumed that most disabled students in higher education are enrolled in public universities.

Table 12: Number of students and course of study

Type of disability	Course					Total
	Human Rights & Law related	Arts and Social Sciences	Science Related	Disability Studies Related	Business Related	
Physical disability wheelchair users	1	2	2		1	6
Physical disability non wheelchair users	1	12	3	11	5	32
Partially deaf				2	1	3
Total blind		6			3	9
Partially blind		4			1	5
Others		1		1		2
Total	2	25	5	14	11	57

The table reveals that most of the disabled students are concentrated in Arts and Social Sciences related courses (25 out of 57), followed by disability related courses (14 out of 57). They are also fairly well represented in business related courses (5 out of 57). None indicated doing purely medicine courses such as human medicine and veterinary medicine. A couple of reasons can be drawn to explain that scenario. One, very few students do these courses in Uganda. This is due to general contextual factors affecting education at secondary that hinders most students to do purely science subjects at 'A' level. To disabled students again, some are discouraged that they cannot manage to do science related subjects due to their disabilities. Secondly, even those disabled students who qualify do these courses may not be admitted to do them as universities believe that they cannot manage the course due to their disabilities as observed in section 3 below. It is important to point out that such opinions amounts to universities directly discriminating against disabled students in those courses in accordance with the international human rights law framework discussed in chapter three. As noted in chapter two, discrimination is explained as any exclusion, distinction or

preference with the purpose or effect of nullifying or impairing the enjoyment of human rights [...]. The opinions of the university staff fall within that meaning. Unless (borrowing from the justification defence for indirect discrimination) the university shows that the disability of the said student, even with provision of reasonable accommodation, the disability cannot allow such a student to pass the core aspects of the course, without which, a candidate is deemed not to qualify as professional in the field, the course is qualified to do.

3. Entry to Higher Education

In chapter four it was noted that UTIA confers an obligation to admit disabled students through affirmative action on only public universities. The results of this study as pointed out in the previous section also indicate that neither of the participating private universities admitted disabled students through affirmative action.³ Generally, it is found that, a private university would only admit a disabled student on condition that it was able to meet the requirements of such a student.

*Within the current facilities the university has and the existing staff knowledge on disabilities, we would not admit a blind or a deaf student. If they apply, they would be advised to join a university that has facilities catering for their needs.*⁴

Outright, the decision illustrated above is ‘failing or refusing to admit’ and it is direct discrimination against disabled students by the university and contravenes section 6(2a) of PWDA as discussed in chapter four. This scenario (the decision of the university and ideals of the law) are real situations that show the interface between the real requirements of disabled students in higher education and the requirements of the law and ability of the institution to comply with the law. The

³ Information obtained through interviews with Academics of the private universities.

⁴ According to the Dean of Faculty and the Head of Department from one private University.

salient reasons advanced by staff for such discriminatory action relates directly to:

- i. Either inaccessible educational infrastructure or lack of personal assistance related support such as guides for the blind, sign language interpreters for the deaf and helpers for those with physical disabilities, required by disabled students to access learning like other students if admitted into the university.
- ii. Lack of awareness or knowledge by the staff on disability inclusion.

Logically and on a practical note, private universities demonstrate that, if they admit a certain category of disabled students, they lack basic and critical requirements needed to enable a disabled student learn like their counterparts - the non-disabled students. In that scenario disabled students would definitely be disadvantaged in both academic and non-academic programmes. Without the required disability support, a disabled person cannot achieve the expectation of every student of successfully completing their studies. That is to say that merely being in an educational institution, without learning, does not amount to a fulfilment of a person's right to education. A right to education in totality must be understood in the sense of accessing the learning facilities, thus a student learning. Within the facts raised in the quotation above, it may appear that, the decision by universities not to admit certain category of disabled students due to the university's inability to handle such students is logically acceptable and it seems realistic for a university to act in this way. However, it amounts to direct discrimination of disabled students according to PWDA and international human rights law framework and in no way does it exonerates such actions of the university from acts prohibited by the Act.

For admission of disabled students into any academic discipline, the view of the purely science based or medicine disciplines is that ‘by the nature of these courses students with disabilities cannot be admitted to them.’ One academic participant categorically stated that;

a person should be capable of physically doing a practical, i.e., one should be able to physically see and hear what is being examined during a practical. Thus, because of those conditions it is not advisable for a person with physical disability or visual impairment or hearing impairment to be enrolled for those courses as such a candidate cannot pass practical examinations.⁵

How can such opinion be synthesized in respect to disability inclusion and higher education? Does it connote disability to be a limitation or incapacity to perform? Perhaps, that is not case. But as opined by the critics of the social model of disability in chapter two, in some instances, impairment can be real in the exclusion of disabled people. In that situation, depending on the type of disability, it is possible that even providing reasonable accommodation measures may not remedy the effect of disability for such a disabled person to enrol for a medical course. Therefore, it might not be right to say that the opinion above sees disability as a medical issue not as a social issue.

It is important to note that, while the opinion of the academic participant above might be true of particular academic programmes, interpreting it as broadly as it is presented may cause universities generally to discriminate against disabled people in science and medical related disciplines. Therefore, the consideration of qualified disabled students to do science or medical courses should be under case to case basis, taking into account how provision of reasonable accommodation as appropriate individualised support measures can facilitate their learning.

⁵ Opinion from the Head of Department of Medical Related Faculty of Public University 1, obtained through face to face interviews with that staff.

4. Disabled Students Support Services

4.1 Type of Support

At the time of this study, only public universities were providing for support services to disabled students, but only to those students funded by government. The support provided is mainly personal assistance related support such as guides for the blind, sign language interpreters for the deaf and helpers for those with physical disabilities. In addition, funds are also provided to disabled students to purchase disability related devices, such as wheelchairs and Braille material. In the two public universities, according to the disabled students interviewed, the mode of providing the support differed. For example, in public university 1, the university provides disabled students with funds to employ personal assistant related support whereas in public university 2, the university employs for them with their recommendation. The difference in the provision of disability support to students in the opinion of this research is arising from lack of disability policy by higher education and lack of such a policy can be attributed to silence by the Ugandan legislation on disability and on higher education, namely, PWDA and UTIA respectively regarding requiring higher education institutions to provide support services to disabled students. Absence of such provisions in the named Acts shows that, despite an attempt by Ugandan legislators /policy makers to provide opportunities for disabled people to access higher education through affirmative action, equalising opportunities for disabled people while in the institutions is still lacking in the minds of these policy makers. Arguably, if the said Acts required institutions of higher education to provide support services to disabled people, then higher education would be compelled to comply with requirement by coming up with a policy on disability or guide to implement that provision. In that respect therefore, even the private universities would be compelled by such a policy to provide support to disabled students they have.

4.2 Organisation and Administration of the Support

In both universities, the disability support services are under the jurisdictions of the office of the Dean of Students. In that respect, universities seem to consider this support to be largely a welfare support. This is also in accordance with the functions and powers vested onto the office of the Dean of Students, which is ‘the welfare of students’.⁶ By implication, and also as is borne out by this research, disability issues are very much regarded as a welfare issue and are not well addressed in relation to academic affairs. The research found that mechanisms for mainstreaming disability at faculty levels are generally lacking. If disability mainstreaming was taking place in the universities then indicators would be designated staff for disability probably at faculty level, awareness creation about disability to staff and collecting data on disability or experiences of disabled people used for planning purposes. According to the findings of this research, with exception of a specialist faculty on disability related studies of public university 2, none of the 24 academic units reached in the four universities had established mechanisms identified above. Consequently, the provision on access for disabled people is relatively more ad hoc at the faculty level than it is at the halls of residence as it will noted in the discussions in next sections.

Regarding the policy on provision of this support, the research found that none of the universities had a written (formal) policy on this. It was at the discretion of the office of the Dean of Students to make the final decision on what support to provide based on the ‘existing understanding’ of supporting disabled students. A staff in the office of the Dean of students of one public university observed:

This university has no written policy on provision of support to disabled students. The current practice is based on the University’s Council Meeting’s minute on the welfare of disabled students adopted at least 8 years ago.

⁶ See the University and other Tertiary institutions Act 2001, s.37 (2).

One of the Wardens in one public university clarified:

Because of the absence of such a policy, the external auditors have queried the basis of the payments to disabled students.

Additionally, none of the universities had clear criterion of supporting students who had disabilities such as asthma, sickle cell anaemia, albinism and mental illness. On this matter, one Warden explained:

Generally, the needs of those students are not clear to the Wardens. It is at the discretion of the Warden to determine what financial support to provide, but again in the absence or un-clarity of the policy on that, there is nothing much the Warden can do, other than sympathising at the situation.⁷

4.3 Disabled Students Feelings on the Support Services

Table 13: Showing the students feelings on the adequacy of the support services to them.

Type of disability	Feeling on the adequacy of services categorised under the percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users	1	2		3			6
Physical disability non-wheelchair users	6	4	5	11	6		32
Hearing impairment	1		2				3
Sight impairment	6	5	1	2			14
Other category of disability			2				2
Total	14	11	10	16	6		57

⁷ Warden of Hall Residence of Public University 1.

Interpretations of the percentage intervals: from 0 to 44% this is taken to mean that the support services are greatly inadequate in meeting the needs of the disabled students; 45%-74% this means fairly adequate and 75% above means adequate.

From the above table, it emerges that 35 out of 57 of the disabled students who completed the questionnaires felt that the support services were greatly inadequate in meeting their impairment needs and 22 out of 57 felt that the support is fairly adequate to meet in their impairment needs.

In both public universities, according to the focus group discussions, disabled students stated that, the support was largely dependent on the good will of staff rather than on university policy and was inadequate to meet their impairment needs. This appears to be occurring because of the lack of a framework or policy on which to base the support as expressed by staff interviewed, discussed above. The extent to which this support is inadequate is expressed by the disabled students' leader of one public university as follows:

The monetary value of the basic requirements for a blind student to effectively study exceeds far much the financial support he/she receives from the university. A blind student receives during the first year of his/her studies, 1,400,000/= Uganda Shillings (UGX). He/she is expected to buy; a Perkins machine which is 2,000,000/= UGX, a carton of Braille paper at 94,000/= UGX, Jaws computer software which is 2,300,000/= UGX, a laptop computer which is at least 1,200,000/= UGX. For the student of limited mobility using a wheel chair, the cost of a new wheelchair is 400,000/= UGX and the university provides him/her 200,000/= UGX.

As regards the privately funded students, in particular the deaf, this research found that none were able financially to employ a sign language interpreter. They were either sharing such services with a student funded by government or they were doing without. Cathy's experience illustrates the first challenge:

I cannot afford to employ a professional sign language interpreter. So I begged a colleague who is a government funded student, to share his interpreter. Sometimes, when my colleague is engaged with his interpreter outside the lecture, I rely only on what the lecturer writes on the black board.

Another challenge involved a deaf student who did not have a corresponding government student in his/her course and as a result attended lectures without a sign language interpreter. This attracted the intervention of one lecturer, who threatened to take legal action against university over what he termed as 'a gross violation of the rights of disabled students:'

It came to my attention that a privately sponsored student was attending lectures without the services of sign language interpreter. The university does not see it as its obligation to provide disability related support services to privately sponsored students. But the student had no money to employ the sign language interpreter and attending lectures without the sign interpreter was a disadvantage to him. I felt bad about this situation so I informed the university that I will secede from the university and take the university to court over violation of rights of the deaf students. That is when the university employed a sign language interpreter to the deaf student.⁸

⁸ Academic participant of one of the public universities.

5. Access to Halls of Residences and at the Universities' Compounds

5.1 Campuses

Other than private university 2, the other three universities each have a vast compound campus with an approximate diameter of 2.5 km (estimates of this research). None of the universities compounds have 'smooth' roads and pavements. They are filled with ditches or potholes. In one public university, in a bid to ease movements by disabled students within the campus, the association of the disabled students, lodged a request to the university to allow public motorcycles popularly known as 'bodabodas' to operate in the compound. These services are not allowed inside the university and if carrying a disabled person, it would be allowed entry informally. Although allowing bodabodas to operate within the university will ease mobility of disabled students from one point to another, it will be costly to the students in the long run unless the university pays for this or alternatively buys the motorcycles for this purpose.⁹ In other universities no such initiative was noted during the research. The table below provides the students' feelings about the accessibility of universities' compounds- see table in the next page.

⁹ At the time of finalising writing this thesis in 2014, a positive development was realised in this university. It has bought scooter vans to transport disabled students between lecture rooms during lectures.

Table 14: Showing the students feelings on the accessibility of the universities compounds

Type of disability	Feeling on the compound accessibility in percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users		3	1		2		6
Physical disability non-wheelchair users	2	2	5	9	13	1	32
Hearing impairment			1	1		1	3
Visual impairment	1	3	6	2	2		14
Other category of disability					1	1	2
Total	3	8	13	12	18	3	57

Interpretations of the percentage intervals: from 0 to 44% this is taken to mean that the compounds are greatly inaccessible; 45%-74% this means fairly accessible and 75% above mean the compound is accessible.

From the table, 24 out of the 57 of the disabled students find the compound greatly inaccessible, 30 out of the 57 feel it is fairly accessible and 3 feel it is accessible to them. It is also revealed that out of the 14 visually impaired students 10 reported experiencing the compound to be greatly inaccessible. The cause of this is the potholes or trenches or ditches in the compounds causing fear among students with visual impairments in their movements.

5.2 Halls of Residence

Meeting accommodation needs for students is a challenge to all institutions of higher education in Uganda. Residential accommodation facilities have not been expanded or increased to meet the growing demand. Although private hostels accommodate most students, congestion in the universities' halls of residences is

evident. Rooms are shared by at least 5 students. The toilet and washing facilities because of large number of students are always dirty. Whereas this is a general challenge to all students, disabled students face an additional challenge of inaccessibility of the halls. Other than private university 2, the other three universities have storied buildings halls of residences and none of them has a lift.

To reduce the access problem at these halls, students with mobility problems or the visually impaired are accommodated on the ground floors. The other categories of disabled students are accommodated on any floor. In public universities a student with severe mobility problems is considered for occupancy of a single room together with a full time helper.

The overall challenge presented in relation to accessibility of these halls is that they are old structures and making them accessible suitable to the needs of disabled students is considered an expensive investment that universities would not be able to meet.¹⁰

Table 15: Showing students feelings about the accessibility of halls of residences.

Type of disability	Feeling on the accessibility of halls of residence in percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users	1	2		1	1	1	6
Physical disability non-wheelchair users	2	7	4	3	13	2	32
Hearing impairment			1	1	1		3
visual impairment	2	1	7	2	2		14
Other category of disability						2	2
Total	5	10	12	7	17	6	57

¹⁰ Views from the university staff

The table indicates that 27 out of the 57 of the disabled students experience great difficulties in accessing halls of residence, 24 feel the halls are fairly accessible, while 6 students experience no access challenges in the halls of residences. The reason why slightly over a half of the students feel halls of residences are fairly accessible is that in public university 2, most of the disabled students, especially those with mobility problems are accommodated at North Hall, formally an institute for a special education campus. It has also lecture theatres /rooms. In this campus or hall both physical accessibility for wheelchair users and land marks to guide the visually impaired people are provided. For example the pavements, at their turning points have tactile markings (bricks) indicating a position of turning. Pillars are placed on the right when one is moving towards the lecture rooms and on the left when one is coming out of the lecture rooms. This is probably the main reason 21 out of 38 students with mobility problems feel halls of residences are fairly accessible to them. However, the situation is different in other halls of residences even in the same university. Particularly to students with visual impairments, as indicated in the table, 10 out of 14 feel halls of residences are greatly accessible to them. For example, during focus group discussions, blind students of public university 2 noted that windows fitted with window shutters when they are open (normally the shutters open out), the shutters pose a danger to them as they get hit by the opened windows as they walk along the verandas. While this appears a simple issue that could be avoided by the blind student by not walking along corridors, it contains a powerful message ‘as to how an inclusive building in a university or a public place should be.’

Overall, this research was not able to establish whether universities have proactive plans to address this challenge. No university indicated having accommodation policy on disability. Because of that universities varied in the ways they considered accommodating disabled students’ helpers (personal assistants). In public university 2, due to limited accommodation facilities, disabled students helpers would be accommodated with disabled students on special considerations. To students with visual impairments this limits their

participation at night as well as making them dependant on other students for guiding services.

6. Access to Library Services

In three universities, all the main libraries are storied buildings without lifts. According to the librarians interviewed from the three universities, their libraries have limited books and other publications, and restrictions are therefore imposed on borrowing some of the library materials. Underdeveloped technological infrastructure including the internet services adds to this challenge as access to online materials is very much limited in the country. As confirmed by Internet World Stats, which indicate that by June 2010 only 9.6% of the Ugandan population were using internet services,¹¹ access to online academic resources in Uganda is still a challenge.¹²

Table 16: Showing students feelings about the library services

Type of disability	Disabled students feelings on the access to library services in percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users			1	3	2		6
Physical disability non-wheelchair users	2	3	5	10	12		32
Hearing impairment	1	1		0	1		3
Sight impairment	5	2	4	2	1		14
Other category of disability			1		1		2
Total	8	6	11	15	17		57

¹¹ Internet World Stats –Africa, <http://www.internetworldstats.com/africa.htm#ug> accessed 3rd January 2011.

¹² Researcher’s observation.

From the table it becomes clear that all disabled students find the libraries inaccessible in one way or another. 25 out of the 57 the disabled students experience great difficulty in accessing the library services. 32 out of the 57 access the library with a considerable level of difficulty. While all categories of disabled students find the libraries inaccessible, students with visual impairments find them greatly inaccessible as revealed in the table. 11 out of 14 students with visual impairments who responded to the questionnaire reported this. 14 out of 38 students with mobility difficulties experienced little challenge in accessing the library. Most of their challenges are highly placed bookshelves and stairs in the library, which the attendants try to reduce by collecting the books for them.

The challenges for visually impaired students are unique. First, the restrictions on borrowing books pose greater challenges to blind students than other students, especially for books which are not allowed to be out of the library. The blind student referring to this book has to Braille the material within the library, which at times is an inconvenience to other library users as the brailing machine makes noise. On this there is no policy to address the concerns of blind students. Second, the modifications being undertaken in some libraries such as the provision of ramps target mainly people with physical disabilities. Third, with the exception of one faculty library, neither the universities' main libraries nor the departmental libraries have brailled publications or audio recorded publications in tapes or CDs or accessible online journals. The 'exceptional library' belongs to the specialised faculty on disability studies, at the time of this research the only faculty in Uganda offering a wide range of courses on special education and rehabilitation. It has a long history on this. Its library is both physically accessible and has some equipment for the visually impaired. It has a CCTV reader for users with low vision, a Braille printer, a voice synthesiser and a computer lab with 10 computers equipped with the JAWS program. Other than that it has limited online publications.

The research found that the universities recognise their obligation to provide equal access to all their users. Private university 1 ensured provisions for access

for wheelchair users in its architectural plan for a new library and public university 1 has reserved a room for disabled students with computers with jaws but it was not operational. Universities find it hard to ensure accessible library services just like the case of accommodation facilities. This is blamed on lack of resources as a constraint to provide for the necessary modifications. This is revealed by an interview with one of the senior librarians of public university 2.

This library developed a comprehensive plan to address accessibility needs of the blind and students with physical disabilities. However the funding proposal to that effect was not given positive consideration by the donors.

The researcher noted that towards the end of 2008, this university's main library acquired a Braille embosser but due to lack of staff with the skill to run the machine and limited resources to maintain it, according to the disabled students, the machine is not utilised.

Private universities are, in addition, limited by their lack of experience of providing for the needs of disabled students. The excerpt from the interview with one of the senior librarians of private university 1 provides the overall picture.

The challenge with this interview is that the university does not have many disabled people. The library was not thinking of disabled people until when we were confronted with a student with a wheelchair doing law. He could not enter the library with his wheelchair. So we open the emergency door for him to enter the library. Sometimes he would remain outside then his colleagues picked for him the books. A bigger challenge to him came in when we separated the law library and shifted it to the law faculty, there; he could not even enter the library because of the steps. Luckily enough he had many friends so he could send them to pick the books for him. In his situation, we agreed to serve him at his convenience.

Now there are also some disabled students who are limping but for them they do not have a big challenge in entering the library. Another case is a student with a burnt head; he puts on hat so as to avoid the heat from the sun. However the library policy does not allow wearing of hats or caps in the library, we thought of 'attacking' this boy, but when he explained his situation, we understood the requirement of his condition and he is allowed in the library wearing a hat.

What plans do you have for the blind students?

We do not have any. And I pray we don't get a blind student because we don't have any plan at the moment for the blind. In our plan for the new library to be built soon, there are provisions for a lift and ramps but for the blind we have not talked about their issues and there is no plan.

I acknowledge your research. It is sensitisations to us, because we are going to ask the question, we are breaking the ground for the new library, are we catering for the disabled?

This interview indicates that despite the ignorance of some staff about disability needs, the presence of disabled students triggers the internal initiatives to provide for disabled students. The law therefore should be enhancing such initiatives by requiring institutions to undertake a duty to provide reasonable accommodation to disabled people. This is the requirement of the CRPD as noted in chapter three. The interview also points out from the experience of a student with a bald head that there is a need to match the institutional policies with the impairment needs and where justifiable. The acknowledgement of the librarian to the lack of awareness about blind students and the proposed plans of action may mean that this research acted as an 'empowering' tool for some staff and raised their awareness on the needs of disabled students.

7. Sports and Recreation

Table 17: Showing students feelings about sports and recreational activities.

Type of disability	Disabled students feelings on the sports and recreation in percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users	6						6
Physical disability non-wheelchair users	16	7	6	3			32
Hearing impairment				3			3
Sight impairment	10	2	3	2			14
Other category of disability				1			2
Total	32	9	6	9		1	57

Interpretations of the percentage intervals: from 0 to 44% this is taken to mean that the students feel they greatly excluded; 45%-74% this means included and 75% above mean they feel included.

From the table, it appears that most of the disabled students 47 out of the 57 feel they are most excluded from sports and recreational; activities. This is attributed to the traditional sports activities which are exclusive of disabled people. This indicates that universities have not yet realised how to include disabled students in all their programmes despite the increasing numbers of disabled people in the institutions.

8. Access to Lectures and Mode of Assessment

The focus of the discussions with the teaching staff was to identify the accommodation measures for disabled people at the faculty level. The other is to identify, whether the faculties are developing proactive measures (administrative measures) towards providing for equal opportunities for disabled students. Twenty four academic units participated in this as follows: 8 from public university 1, 7 from public university 2, 8 from private university 1 and 1 from private university 2. See details in table 4 in chapter five.

8.1 An overview of the Faculties' Reasonable Accommodation Measures

Discussion with the staff revealed that a number of approaches have been applied by the staff to support disabled students access learning. The common approach is giving extra time to disabled students in course works and examinations. Others reported that they encouraged other students to assist disabled students in any way possible in accessing lectures. Other approaches depend on the requirements of each disability.

For students with mobility problems, their overall impediment in accessing lecture rooms is the physical inaccessibility of buildings as noted earlier on, on access to accommodation. Other than the recently constructed buildings, all the old buildings which contain a bulk of universities lectures rooms are to some extent inaccessible to people with mobility difficulties, more so most are storied. How the needs of disabled students are accommodated in this scenario depends on the considerations of those who draw the teaching timetable and allocate lecture rooms. According to both the staff and students interviewed, the consideration of disabled students is most often missed out in this process. However, there are some signs of improvements for the future. Although they are small in magnitude, they indicate that there is some level of awareness of disability needs. Among the recently constructed buildings, few are installed with

lifts, 'although most often the lifts are not functioning.'¹³ Also in one department in public university one an access toilet was provided. Also in some academic units, a lecture where disabled student is involved is conducted at the lecture rooms in the ground floor. In some, there are provisions for alternate routes for students to access the ground floor. In private university 2, most buildings are accessible as they are not storied and ramps constructed to access the buildings.

For the visually impaired students, the academic staff noted that there was a lack of facilities for them to support the visually impaired students in learning and in assessment. During examinations, if warranting, a blind student does it in a separate room and the questions read to him/her by the invigilator.

For the deaf, those who are hard of hearing are requested to sit in front during the lecture.

The research found that there is willingness among staff or existence of internal initiatives to support disabled students. It was evident from the discussions that the faculties' measures are mainly reactive 'reasonable accommodation' measures.

Nothing special offered to disabled students, except we are considerate when setting level of achievement for practical activities. Disabled students though not officially given concessions during practical classes and during assessment of practical are considered differently depending on their disability.¹⁴

According to the views gathered from the disabled students, these measures appear to be dependent on the good will of the individual lecturers not based on a formal policy. Each faculty determined what to do when confronted with a

¹³ Views from the disabled students gathered during focus group discussion and in-depth interview.

¹⁴ Academic staff of public university 2.

disabled student's needs; a practice faculties acknowledged poses a challenge to implement as illustrated by one academic participant.

It should be noted that the university has to put in place a better arrangements instead of waiting until the disabled students are admitted. It is even a bigger challenge to a science programme like ours especially for the blind.¹⁵

To some staff they attribute lack of proactive planning for disabled people to the overall limited resources within which universities operate.

We shall deal with barriers affecting disabled students as we receive disabled people. It is difficult to anticipate the barrier and plan for its removal within the limited resource environment we operate.¹⁶

From the responses above, the research observes that there is some level of awareness by the faculties on the matter of disability inclusion. But this awareness has not been enhanced. This research attributes that, based on the evidence from faculties, to the lack of established mechanisms for mainstreaming disability at the faculty level and generally by the universities' central administration. Faculties in the four universities (with the exception of disability related faculty of public university 2), indicate that disability awareness creation is largely lacking not only at faculty level but also by the university. Also most faculties do not collect data on disability or experiences of disabled people for planning purposes. Additionally, none of the faculties had designated staff for disability. The lack of established mechanism for inclusion of disabled people is attributable to the fact no university has a disability policy and also the lack of a directive on disability issues from the central university authorities.

¹⁵ Academic participant from a public university.

¹⁶ One of the administrators from a private university.

Consequently, the requirement that institutions teaching methods should change towards enhancing equality of opportunity for disabled students appears not part of the institutional teaching and learning policies, and most likely not also in discussions at department and course level. According to disabled students interviewed, the mode of delivering lectures and assessment is limiting their access to academic programmes. This is illustrated by the students feeling in the table below and students' experiences that follow.

8.2 Students' Feeling and Experiences on Accessing Lectures.

Table 18: Showing students feelings about the mode of delivering lectures.

Type of disability	Disabled students feelings on the mode of delivery lectures expressed in percentage interval						Total
	0-14	15-29	30-44	45-59	60-74	75+	
Physical disability – wheelchair users			1	1	4		6
Physical disability non-wheelchair users			6	8	15	3	32
Hearing impairment	1			1	1		3
Sight impairment	1	5	4	2	2		14
Other category of disability					2		2
Total	2	5	11	12	24	3	57

The table indicates 54 out of the 57 disabled students experience difficulty in accessing lectures although with levels of variation. 18 out of the 57 experience great difficulty while 36 out of the 57 access lectures with considerable level of difficulty. It can also be noted that 9 out of 14 of the blind students experience great difficulty while nearly 31 out of 38 students with physical disabilities access lectures with considerable level of difficulty. But this does not mean that the lecture rooms are physically accessible. It is that the mode of delivery of the

lectures is such a big constraint to the visually impaired or a student with hearing impairment compared to a student with physical disability.

More discussion on disabled students' experiences on accessing lectures is illustrated by their experiences of accessing lectures through dictation of notes, provision of the lecture handouts and physical accessibility to lectures.

Dictation of notes

Dictation of lecture notes to students is more favoured by the blind students than the deaf and those with physical disabilities. Blind students further appreciate if the spelling of words is also done verbally.¹⁷ The challenge expressed by the deaf in this mode of delivering a lecture is that lecturers both talk and write on the black board at the same time, in such a way that a deaf student would have to balance looking at the interpreter and the written work on the blackboard at the sometime. Those using the hearing aids feel severely affected; Justine a student of public university 2 illustrates it by sharing her experience.

The hearing aid is useless. It captures every sound in the hall. I have failed to determine a suitable position for myself to sit in the lecture halls, in order to hear lectures properly. Every side I try I cannot properly hear the lectures. The worst part is, even the height of a lecturer sometimes makes it difficult for me to hear the lecture. More so I do not even copy notes as most of the time lecturers dictate notes. I rely on photocopying notes from other students. In that respect, I spend a lot of money in photocopying.

The deaf students feel that the lecturers do not take their needs into considerations in both teaching and assessment. In that respect, they feel it is the university which is letting them down, not the government in the process of inclusion.

¹⁷ More often lecturers write the word on the blackboard when asked to spell it.

Lecture handouts-notes

Lecture handouts are mostly preferred by the deaf students and students with physical disabilities although it involves meeting the costs of photocopying them.¹⁸ To the blind students, they feel it is a double cost in terms of time and money, as they have to Braille the hand-outs again by themselves. Brailing requires a proficient reader, which their guides are not¹⁹ as a result blind students rely on other students to read for them the print notes as they brailled it. One student remarked,

this means looking around for a student who has some free time to read for you your work’.

Another student said,

one lecturer gave out notes for his module covering the whole semester, which was 300 pages. To transcribe that hand-out into Braille; means producing almost 1000 Braille papers of the notes. This requires a lot of time to do it and over relying on other students.

Physical accessibility to lectures

Physical accessibility to the lecture rooms poses a big challenge to disabled students in Ugandan universities. This challenge is compounded by the changing of lecture rooms whenever there is a change of a class. Sometimes the distances the students have to cover is rather long as these universities have vast campuses. A student of public university 1 narrates:

Fellow students are more aware of our disabilities and are prepared to help than the lecturers. A lecturer finds you struggling to climb the stairs and just passes by you and does not even show concern. When lecturer reaches the lecture room, he/she begins lecturing without bothering to wait for you to reach.

¹⁸ The common practice in the Ugandan universities is that lecturers after the lecture leave lecture handouts to students to photocopy.

¹⁹ Like in the case of access to library services, blind students are unable to employ a proficient reader due to limited funding.

One faculty administrator of one public university narrated an experience of one lecturer.

As you can see most of our lecture rooms are in the second floor. We faced a challenge when one of our Senior Staff got an accident that confined him to a wheelchair. He could not teach for seven months as no lecture room is accessible for him ...

Few buildings have lifts which are sometimes not functional. Godfrey's experiences illustrate the challenge further.

Godfrey is a student of one of the public universities. He is paraplegic and confined into a wheelchair. He often experiences some pain and heat around his waist. His muscles cannot control the excretion process so he uses catheters. He is gradually coming to terms with his condition and life in the university. The university provides him with a self contained room and allows him to employ a guide of his choice and reside with a guide.

He gets on well with other students and has an ambition of contesting to be the next Guild President. One of his challenges is travelling long distance daily from his accommodation to lecture rooms which are about 1 km away. In addition, there is shifting from one lecture hall to another. For lecture halls that involve climbing stairs Godfrey depends on other students to carry him up on his wheelchair to the lecture rooms.

This semester I have missed 4 lectures because each time I went late, I felt it embarrassing and inconveniencing calling down my colleagues to carry me up. A class coordinator raised my concern to the head of the department during the first semester but to this end of the year, no response has been received.

8.3 Students' Experiences in Course Work, Tests and Examinations

The experiences of disabled students in assessments varied from university to university and also from faculty to faculty. Some of these are set out below:

Blind students

The universities examinations are mostly in print. For the visually impaired students, the invigilator reads them the questions and the student brailles them before writing the answers. Blind students report that their examinations scripts are not marked in time. Universities find it challenging transcribing brailled work into print for marking. This causes delay for blind students' results. Sometimes this leads to confusion and the mistaken belief that they have not taken the examination or attended lectures. According to one such student:

I was surprised when I approached one of the heads of departments to complain about the delayed results, I learnt that the names of blind students were among the list of those who did not do the examination and again in a list of those who were not regular attendants of the lectures. This is because sometimes such lists pass around in classes and we do not notice it.²⁰

For those doing courses involving practical's, like sign language interpretation in Community Based Rehabilitation (CBR), they are exempted from attempting practical questions. But no alternative questions are provided. This alone leaves them with limited scope for choosing questions to answer as compared with non-disabled students. Thus, one student reported that:

In one semester, I was forced to do only questions in section 1 as most questions in section 2 were mainly practical. I felt the examinations were hard for me. I felt again that my former secondary school is better than

²⁰ Observation during focus group discussions.

this university in understanding my disability as it was brailing examinations for me. This university finds it challenging to transcribe brailled works into print as a result; blind students do exams for the second semester when they have not known the results for the first semester examination including course work results. Examinations are not brailled. I feel it is unethical. During examination we are asked to Braille paper before doing it.

A student from public university 1 had describes the following experience with his type writer during examinations.

In one examination, I did not know that the machine had adjusted its ribbon and was no longer producing words. I kept on typing. I realised it when I needed additional typing paper, when invigilator informed that I had sheets of paper which are not yet used. No, I said, I have typed on all of them. The invigilator replied, there is nothing written on them. Then I realised that the machine had a problem.

In one faculty in public university 1, blind students were allowed to use a typewriter in examinations and because of that they received their results the same time as other students. Universities were generally hesitant to allow blind students to use computers to type their work during examinations for fear that possibly notes related to examinations may be saved on the computer. Even if using computers was permitted, a majority of the blind students interviewed felt they could not afford JAWS and that using a computer would not therefore be of much help to them.

Physically disabled

One student with a physical disability had the following experience in a test:

In one semester, a test was administered in a room in second floor. I could not reach there. So I asked the invigilator whether I could do the test in the room in the ground floor which she accepted. I sat in the room waiting for 2 hours she was not coming then eventually I saw her walking way passed me with the other students' scripts in her hand. I reminded her, I have been waiting... she replied, I forgot about it. However, I did the test but after everyone else had done it.

The deaf

George, from public university 2, studying a business studies related course reported this experience.

I feel the lecturers have not understood our constraints. For me I don't get information through dictation but that is the order of the day and that is what the lecturers are used to. In one of the assessment tests, the lecturer made corrections verbally as such I did not get the corrections- he informed the students that 'in number..., a zero is missing so please add it in front of that figure....' The other was when another lecturer gave us course work of 2 numbers. The verbal instructions were, 'one number was to be done there and then as test; the other number was a take home course work. Because it was verbal instructions I did not hear it, as a result I did both numbers as a test. In some lectures, when I beg for pardon, the response is 'I do not repeat'.

8.4 Experiences Combining Access to Lectures and Mode of Assessment

Relevant experiences relating to this combination of issues is powerfully illustrated by a number of case studies:

Case Study 1: Grace

Grace was a visually impaired student taking a Social Science related course. She joined the university through an affirmative action scheme. Grace had studied at both primary level and ordinary level in an exclusive school for the blind and studied for her 'A' level in a mainstream or ordinary school.²¹ Her challenge began with the vast university compound and then extended into the university policies and the 'normal' daily practices in the university.

I admire moving in that compound but it is challenging. In terms of reading material, the library has neither brailled literature nor audio materials for the blind students. It is quite hard to be reading at the same time brailing the notes. At the lecture halls, there is congestion; thus access to seats is not easy. Couple to that we change lecture halls for each lecture. This brings in a scenario of hurrying from one lecture hall to another, sometimes in this scenario I cannot cope up with the speed at which my colleagues are walking as I fear knocking myself to any object on the way; in that way, I am left behind. During lectures, lecturers explain handouts at the sometime writing on the black board so I miss a lot of information. Even at times when I ask for clarification or spelling of some words, I am referred to the neighbour. This at times makes me writing inaccurate information and wrong spellings. In a test or examinations, I am the last to begin. Sometimes invigilators are not aware that there are visually impaired students so they read to me the questions when my colleagues have already settled to do examinations or when some corrections have been made. It takes long for us to get our results in tests, course work and examinations. A case in point is this, 'I

²¹ In Uganda, mainstream school means any school other than a special needs educational school.

am left with hardly one month to complete the course, but it was until last week when I got some of my results for the last two years examinations and course work'. Even then marks for some modules are missing'. This is because it takes long for the university to transcribe my brailled work into print for marking. At the hall of residence life is challenging the toilet is shared by many people and you would not know whether it is clean or not.

Case study 2: Hudson

Both Hudson's arms are paralysed by polio. He joined the university as a private student through mature age entry examinations. Before joining the university, he represented disabled people at his home district local authority as a councillor, where he gained confidence and experience to campaign for disability rights.

The nature of his disability affects his speed in writing and also handling objects like a calculator, which is key to his course. He takes a business related course. The effect of his disability on his handwriting is that, as he continues writing, the quality of the handwritten work deteriorates and sometimes becomes unreadable. When he realised that this was earning him lower marks in his initial tests, he explained his condition to the Academic Registrar. The Registrar asked for a medical assessment, and it was then recommended that he should be given an extra 45 minutes during examinations and 10-15 minutes during tests. To be sure that the lecturers understood his constraints, he indicated on his answer script ' My disability affects my hand writing so you may realise a variation in my hand writing...' By his second year, most lecturers understood him and were acting accordingly, although a few ignored the academic registrar's recommendation.

The nature of his disability allows him to climb the stairs so he has no difficulty in reaching the lecture rooms. His challenge is attending lectures from where there are no tables as he requires a suitable place to rest his books and on which to write; chairs with a provision to place books are not suitable for him in accordance with the requirements of his disability. Also, when he arrives late for a lecture and finds seats occupied, he has to 'disturb' another student to carry for

him a seat from the next room or leave a seat for him. The mode of delivering lectures by explaining the hand-out is appropriate to him except photocopying, which he feels is expensive. He feels that his situation was solved because of his assertiveness, but not because of the disability legislation. He observes that there was also a student who was a year ahead of him and had a similar situation. 'Although he raised his concern to the authorities he did not receive similar consideration, because that student did not follow up the issue.'

9. The Role played by Disabled Students Association in Policy Change

In the four universities that participated in the research, disabled students are organised through the Disabled Students Association. Disabled students are also represented in Students' Guild Council, the university students' voice. Normally, the association elects one of their leaders to represent them at the Council. This representative assumes the position of Secretary for Disability Affairs. This organisation of disabled students provides them with a voice in the university. Through this disabled students are engaging their universities and arguing for equal opportunities for disabled people. They also demand faculties reconsider their decisions on matters concerning inclusion of disabled students. A case in point is where one faculty had decided to suspend the studies of one blind student on grounds that the faculty was not able to teach and assess the student. The intervention of the leader of the disabled students association made the faculty reconsider its decision. The student leader recounted:

In my leadership, there are times I have seen administration make outrageous decisions on matters concerning disabled students. A case in point is a time when a visually impaired student was advised to apply for a dead year on grounds that the faculty was not able to set and supervise the student in examinations. The student had studied for a full semester and had passed the coursework assessment tests. One week to examinations, the Dean of the Faculty informed the student that, they said student could not sit the examinations and should thus apply for a dead year to give the faculty time to organize how to handle the situation. I

*however struggled with the faculty administration until the student was allowed to sit the examinations. This to me was indicative of limited understanding of the administration on matters of disabled students.*²²

While disabled students are seen as demanding equal opportunities, they are not directly engaged in the universities core policy developments and planning processes, as universities have not yet developed policies on disability inclusion. This also limits the powers of the disabled student's leadership in pressing for change. Because of that the leadership of disabled students also find it hard to persuade staff to listen to them, although this scenario varied from institution to institution and from academic to academic.

10. Reflection on the Research and its Challenges

10.1 Reflections on the Research

During the focus group discussions and the in-depth interviews, both disabled students and staff saw the research as a learning process for them. Questions raised by participants especially the lecturers were directed towards making them learning about disability inclusion as most issues for discussion appeared new to them. The lecturers were interested to know how institutions in other countries like Great Britain (where researcher is the student) were dealing with the issue of reasonable accommodation. In particular they asked:

- i. What are the characteristics of these people? (referring to dyslexic people)
- ii. This interview is an eye-opener for me to see the plight of these people (disabled students) in the institution. How can the situation in this university regarding disability inclusion be improved?

²² Email communication with Disabled Student Leader.

- iii. So how can the needs of deaf or blind students be catered for in the library?

For the disabled students, their common interest was how the British universities were providing for their disabled students. The common question asked was-how can we make the institutions accountable for our needs?

Those questions indicate limited awareness about disability inclusion in universities and that there is a need to create awareness about disability discrimination among staff and to empowered disabled students to bring about change. One of the many ways in which such challenges can be tackled is by undertaking disability emancipatory research in the institutions of higher education, as that has the effect of empowerment as well as creating awareness. This kind of research is currently lacking in Uganda.

10.2 Challenges Met

As pointed out in chapter 1, in the section concerning justification of this study, literature on Ugandan disability law is limited. This also includes limited written literature about disability work done in Uganda. This problem is compounded by the undeveloped internet services in Uganda and most work is not posted in the web.

Also, official documents were not easy to obtain during empirical research. This was not necessarily because the researcher was denied access to them, but because most staff concerned felt little as regards disabled people so there was nothing much in the documents about them.

For the disabled students, there was a challenge of finding some category of disabled students in some universities. For example, records of students with mental health problems were not available in three universities. Even those in one university, it was not possible to interview them due to administrative related issues. For the visually impaired and the hearing impaired, none of the private

universities visited enrolled them at time of this research as both private universities indicated their inability to teach those categories of students as a reason for not admitting them. Because of those factors, most of the disabled students that participated in this research were those from the two public universities.

For the staff, some declined to be interviewed, saying that they did not have any experience teaching disabled people yet, so they did not have any response for questions relating to disabled students in the university.

Despite all these challenges, the information obtained from the five focus group discussions, the in-depth interviews and the questionnaires is sufficient to support a meaningful conclusion about the research question.

11. Summary and Conclusion

The experiences of disabled students as well as of those of the university staff on disability inclusion captured in this chapter provides empirical evidence of the extent to which the Ugandan disability legislation has been translated into policy actions in the institutions of higher education. Firstly, it shows two gaps. One is the gap between the intent of the Uganda disability legislation and the practices in the institutions towards disabled people. According to these experiences, this gap it is wide and accounts for the limited enforcement of the disability law in the country. The second gap is that, the disability law in some instances excludes certain obligations from some higher education actors. Absence of affirmative action obligations on private universities is an example of that gap. This could be one of reasons why private universities appeared not making their institutions disability inclusive.

It is also evident that, beyond the admission stage the Uganda disability law has not penetrated the universities sufficiently to bring about a disability policy framework for inclusion of disabled people both in the academic and non-academic programmes. This research also established that none of the

universities visited has explicitly recognised disability in its strategic plan or given it a high profile in the way gender mainstreaming is given prominence. Additionally, none of these universities has enacted a disability policy. This explains why provision for disability related support services in the universities is ad hoc, inadequate to meet the needs required by disabled people to facilitate their stay in the universities and considering disability issues as largely welfare issues. As a result, efforts put into improving access by disabled students in academic programmes- during lectures and assessment are largely discretionally, dependent on the goodwill of the staff and reactive in nature. It is also evident in the four universities that no faculty has established a formal structure to promote disability inclusion; neither do they create awareness of disability amongst their staff nor collect information about the experiences of disabled students for planning purposes.

The general opinion in Uganda is that Uganda is a poor country and universities operate within the constraints of limited resources. Therefore, universities are unable to meet all the demands placed upon them, including providing for the inclusion of disabled people. The latter is an undisputable fact. But is limited resources the only factor contributing to the exclusion of disabled people from university services? Certainly it is not. This research established that lack of policy framework for disability inclusion in higher education makes universities visited not explicitly recognising disability in their strategic plans. Actually none of the universities visited has explicitly recognised disability in its strategic plan or given it a high profile in the way gender mainstreaming is given prominence. These two revelations mean that there is limited preparedness to address the disability issues in the Ugandan universities. It also seems that they are not recognising disabled people as rights claimants who deserve equal opportunities like everyone else in the institution. Therefore, the lack of a policy framework for the inclusion of disabled people, together with the lack of resources, intertwines to cause discrimination and exclusion for disabled people in these universities.

In addition, participants identified the following as contributing to causing the limited expansion of equal opportunities for disabled students in higher education. The major factors are limited government funding to the universities and liberation of education, both of which were explored in chapter four. This is followed by lack of directives on disability inclusion from the Ministry of Education and the National Council for Higher Education. Other factors include limited commitment to disability inclusion by the universities and limited knowledge among university staff about disability inclusion. Also there is a perception that providing for disability is expensive, even before effort is devoted to the issue.

Chapter Seven

Summary Findings, Recommendations and Conclusion

1. Introduction

This chapter draws on the main findings of the preceding chapters to answer the main research question, proposes how Ugandan disability legislation, policy and practices are to be enhanced to achieve disability equality in higher education and concludes the thesis. The chapter is divided into five sections. Section 2, provides an overview of the focus of the research. Section 3 highlights the key research findings. It also highlights issues that emerged in the study that underpin the realisation of a right to education for disabled people in Uganda. Section 4 provides recommendations (proposes a framework) for enhancing policy reforms in Uganda to ensure people with disability attain a right to education without discrimination and on the basis of equal opportunities as required by the international human rights law framework, and section 5 concludes this thesis.

2. Focus of the Research and overview of the Normative Framework Informing the Research

The focus of the study was on the extent to which Uganda is realising a right to education for disabled people in higher education without discrimination and on the basis of equal opportunities, as required by the international human rights law obligations, including the CRPD. Achieving a right to education without discrimination and on the basis of equal opportunities entails that educational institutions take account of the wide diversity of disability (individual educational needs of every category disability) in order to support their support learning. In that respect, states are to ensure that the education of disabled people is an integral part of the education system at all levels of education, with policy and budgetary priority on disability accorded to education to improve the education system to bring about

disability inclusion. Therefore, the extent to which Uganda is achieving an inclusive education in higher education in-line with international human rights law obligations was examined in two fronts.

One, through examining the scope of the of Uganda disability legislation relating to higher education using the CRPD provisions relating to equal access to education as overarching framework. To widen the discussion, the scope of the Ugandan disability legislation was also analysed in the perspective of the social model of disability and concepts of equality and non-discrimination as those two concepts provide a framework for realising a right to education s well as disability rights.

3. Key Research Findings

3.1 Breaking Disability Barriers, an Overall View

Most disabled people generally in poor countries like Uganda are disadvantaged by a cycle of barriers. These barriers are many and they include negative attitudes towards them (disabled people), stigma and stereotyping, accessibility challenges, poverty, lack of assistive devices, lack of disability related support, general structural and institutionalised barriers. Therefore, to bring about equal participation of disabled people in society and their access to social benefits like education requires breaking through the cycle of disability barriers. There appears to be some hope towards that goal; as seen from the perspectives of CRPD's obligations and benchmarks, the developments espoused by the social model of disability and the growing understanding that equality is a multidimensional concept. Those three developments are seen to be anchoring not only equality laws but also societal practices towards breaking the cycle of disability barriers. As discussed in chapter two, the social model of disability points out that, disability is not so much the cause of a disabled person's exclusion and discrimination, but the detrimental consequences attached to the disability. Thus, to bring about inclusion of disabled people in society, requires focusing on environmental and societal factors disadvantaging them. The multidimensional understanding of equality on the other hand Brings out the meaning of equality to be beyond the traditional understanding grounded on

intentional discrimination arising from open stereotyping and prejudices; and non-intentional discrimination arising from apparently neutral rules, standards, practices, or policies to how pervasive cultural or institutional contexts discriminates. Thus, the understanding of equality as multidimensional concept pursues breaking the cycle of disadvantage the marginalised groups are facing associated with their group memberships. It argues for individuals in society to be accorded respect first as people but not necessarily on their status or group membership. This understanding of equality also tackles stigma and stereotyping that individuals face by virtue of their group membership. The multidimensional understanding of equality also calls for transformation of society to accommodate individual differences through structural changes in order to minimize discrimination.

This research argues that, the aspirations of the social model of disability together with purpose and guarantees of the CRPD and the growing understanding of equality as multidimensional concept can, if put into practice potentially shift the way disability is viewed in society. It will shift viewing disability as an individual or medical problem that requires adjusting an individual to fit into society; to understanding disability as social or human rights issue that requires society to adjust its practices to accommodate disabled people. On other hand, this means viewing disability discrimination as systemic embedded in a complex interplay of institutional relations, practices and policies. This therefore, calls for not only focusing on focusing on the discriminatory attitudes of individual perpetrators but also focusing on the experiential effects of inequality and exclusion disabled people is facing in order to break the cycle of exclusionary barriers affecting them. In higher education, this will bring about institutions acknowledging adverse effects discrimination disabled people are facing resulting from the differential effects of apparently neutral policies and similar treatment. Once institutions acknowledge adverse effects of their practices to disabled people, they can start thinking of developing individual remedies and accommodation measures for disabled people and as well as developing proactive approaches to eliminate systemic discrimination i.e. bringing about institutional transformation to disability inclusion.

3.2 Disability Legal and Policy framework of Uganda

From the account of the Ugandan disability legislation in chapter 4, Uganda's disability legislation is based on all the equality models of formal equality, equality of results and equality of opportunity examined in chapter two. The three equality models are reflected in all the three strands of the disability legislation discussed in chapter 4. The formal equality approach is evident in the constitutional provision on equality and freedom from discrimination for all.¹ The equality of results approach is espoused by the constitutional provisions on affirmative action, and has largely been adopted in for disability in the Acts of Parliament relating to equality, other than the specific disability Acts. For example the requirement to admit disabled people into public universities through affirmative action and the requirement that a disabled person be a member of National Council for Higher Education Board. The equality of opportunity approach is also provided for in the constitution by the provision requiring society and State to enable disabled people to effectively utilise their mental and physical potential. More importantly, the Person's with Disabilities Act 2006 (PwDA) is drafted in the spirit of the equal opportunity equality model. On education, PwDA lays substantive obligations on both private and public educational bodies to bring disability equality through provisions on non-discrimination of disabled people in educational services, promotion of educational development of disabled people and accessibility. The obligations laid down by these provisions are wide enough to be interpreted to bring about equality of opportunity for disabled people in higher education. They are also broadly in-line with the CRPD provisions on education in article 24, accessibility, national implementation and monitoring and some extent with the provision on equality and non-discrimination. The non-compliance, however, is in relation to the meaning of discrimination in the Act as it lacks precisely providing for reasonable accommodation for disabled people in education, it does not provide for promotion of disability awareness-raising, a need for international cooperation on disability, a need for statistics and data collection on disability. These supplement provisions on accessibility and equality and non-

¹ Constitution of the Republic of Uganda 1995, Art 21(1-3). In particular in clause 2, 'it states, no person shall be discriminated against on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social economic factors standing, political opinion or disability.'

discrimination to promote deliver an inclusive education. The proposed framework set out in the next section is designed to address such gaps.

Although the Uganda disability law is seen to be largely in-line with requirement of international human rights law obligation on education, in practice, it largely operates in the context of equality of results model. This is due to the dominance of affirmative action approaches in the Ugandan disability law since promulgation of the current constitution in 1995 (the constitution enshrines affirmative action for the marginalised groups) to the enactment of the PWDA 2006. Throughout that decade, the disability legislation was largely guaranteeing preferential forms of treatment for disabled people. The disability legislation was inadequate in neither placing enforceable duties on institutions to remove disability barriers nor requiring institutions to develop plans and approaches to eliminate disability discrimination in a proactive manner. The enactment of PwDA 2006 is therefore seen to be addressing those gaps and as such extends the Ugandan disability legislation to eliminate systemic discrimination facing disabled people in the institutions of education.

3.3 Extent of Policy Change for Disabled People in Higher Education

In Uganda, this research has found out that, significant improvements to access to education for disabled people at primary and secondary levels of education have been achieved. The same has not been achieved for higher education. Therefore, there is an infrastructure in education for attaining equal opportunities for disabled people at lower levels of education than at higher education. Thus, in Uganda, higher education is inadequately prepared to receive disabled students. Yet, due to the increasingly favourable environment at lower levels, more disabled people are now enrolling into higher education.

The empirical element of this project examined the extent to which universities included disabled people. It investigated universities' practices, policies and criteria on admission, modes of delivery of teaching, learning and assessment. It also

examined how universities are meeting accessibility requirements for disabled people and provision of support services for disabled people.

On admission, Ugandan law permits government universities to admit disabled students through affirmative action as government sponsored students. At the time of this research, 64 places were reserved for disabled students to be shared by 5 public universities. Although this scheme is seen to be improving access by disabled students to higher education, it is short of widening it. First, the affirmative action provision in the Universities and other Tertiary Institutions Act (UTIA) is narrowly constructed as it appears to be limited to public universities alone, rather than all institutions of higher education. The reason for exclusively imposing affirmative action obligation to public universities is that government provides them with funding to meet the needs of disabled students admitted. Whereas this appears reasonable, the drafters of the Act were short of realising that, such an obligation creates awareness about disability to institutions of higher to think about equal opportunities for disabled people. Two, 64 slots for 4 universities is small compared to at least 1000 disabled students projected to join higher education annually.

In relation to provision of support services, this research found that disability support is only provided by public universities and only to government-sponsored students. This appears to be the result of the fact that government provides funds only to public universities to meet the needs of government funded disabled students. Further, even in the public universities, the provision is ad hoc and inadequate and, in particular. It is largely viewed as a welfare issue; hence these support services are not adequately tailored to support the academic needs of these students. In addition, no university had a staff exclusively designated for disability inclusion. Neither was there a mechanism in each university to increase disability awareness at the faculty level for disability inclusion.

On accessibility, Ugandan universities are faced with enormous challenges of meeting the accessibility requirements for disabled people i.e. accessibility related to information, architectural barriers and physical environment. Although universities are seen incorporating physical accessibility requirements in their new building plans

and are trying to improvise, the accessibility challenges remain enormous in these universities. This is attributed to limited infrastructure development, in terms of technology providing accessible information, the difficulties of adapting old buildings to accommodate disabled students, and to limited resources with which to meet the accessibility requirements.

To reduce on this challenge, disability' physical accessibility requirements should need be integrated into universities' new buildings and refurbishment plans. Also, universities should be undertaking accessibility audits to gauge their current levels of accessibility and to identify areas that need improvements. This would be paving way for putting in place a considerable amount of anticipatory reasonable accommodations measures.

On teaching, learning and assessment, due to challenges related to accessibility coupled with inadequate provision of disability support services, disabled students' access to academic programmes in Ugandan universities is often a great challenge. The research found that the reasonable accommodation measures provided during lectures and assessment were patchy and at the discretion of the lecturer. As pointed out before, this situation can be remedied by universities placing staff designated for disability work, creating awareness on disability, collecting data and developing plans on disability equality. Also, it can be remedied by ensuring that disability equality issues are regularly reflected within support work, site planning, admissions, learning and teaching, and assessment and should be firmly embedded within the agenda of higher education policy. Such arrangements are generally lacking in Uganda. The reason could be that disability inclusion in higher education is new concern in Ugandan education. No educational infrastructure exists to exclusively bring disability inclusion in higher education.

The research also noted that in both public universities investigated, but to differing degrees, there is inconsistency in provision for the required adjustments in assessment and examinations. This inconsistency is between lecturers in the same subject area, between one year of study and another, between subjects, and also between the treatments received by students with the same impairments. This

research considers that an indicator of lack of clarity of the legislation on reasonable accommodation, the lack of policies on disability in higher education institutions and limited staff awareness of disability inclusion.

This research demonstrates that even the substantive enforceable obligations in the Act have not successfully been translated into practice in the institutions of higher education. This may be due, at least in part, to the weak enforcement mechanism of the disability legislation. Therefore, in relation to higher education, the main impact of the legislation has been confined to removing obstacles at entry point only. It has not resulted into pro-disability policies and practices in higher education. Neither has it brought the surrounding physical environment are adapted, where reasonable, to accommodate the needs of specific disabled people; nor has it made institutions to develop plans and approaches to eliminate disability discrimination in a proactive manner. These weaknesses may be attributed, among other factors, to the limited economic capability of Uganda in meeting the accessibility requirements and inadequacy of the Ugandan disability legislation to lay down precise and detailed obligations towards disabled people.

In concluding this section, it can be stated that in Uganda, there is minimal access and equal opportunity for disabled people in general. Evidence from the empirical research shows that there is limited transformation of institutional policies and practices in the inclusion process, and thus, limited inclusion of disabled people in higher education. According to this research, the limited inclusion of disabled people by institutions in Uganda should not be seen as emanating from the disability legislation alone. It should be viewed as a result of the intertwining weaknesses of the disability legislation, its limited enforcement, and various contextual factors affecting the operation of these institutions both internally and externally.

On the contextual factors, this research has found that disability discrimination in the institutions is grounded in limited understanding by the staff of what constitutes disability discrimination, and limited planning for disability inclusion. In the four universities visited, disability did not feature in strategic plans. This suggests that disability inclusion is not a priority in the institutions' long term agendas. Coupled

with this was a belief that putting in place anticipatory requirements for disabled students could not be realised within the resource constraints of the institutions. This belief featured prominently in all four universities. This is particularly surprising in the public universities because the PwDA requires governments to commit no less than 10% of all educational expenditure to the educational needs of persons with disabilities.² However, the experiences described in this research suggest a lack of strategic planning for disabled people by these institutions, with neither the universities fulfilling the PwDA requirement, nor the responsible ministries providing guidance as to how the money should be spent.

4. Recommendations

The experiences of both disabled people and staff discussed in chapter 6 shows that institutions of higher education in Uganda are not measuring up-to the international human rights law obligation of achieving a right to education for disabled people without discrimination and on the basis of equal opportunities. This brings the discussion to the question ‘on the evidence of this research, how can disability inclusion be bolstered in Ugandan higher education to meet the international human rights law requirement expectations? One way of realising that task is disability inclusion becoming a cross-cutting issue in the universities plans and programmes. To achieve that, both legal and non-legal means of realising human rights need to be strengthened in higher education in light of the uniqueness of disability discrimination discussed in chapter 2 and challenges facing Ugandan higher education discussed in chapter 4.

²Chapter 3, section 3.4.4.

4.1 Strengthening the Disability Legislation

The legal means can be strengthened by ensuring that the spirit of the disability legislation fully embraces the social model of disability, that, it is the higher education environment in terms of its practices, policies, criteria, attitudes and accessibility which are barriers to disabled people's participation not the individual with a disability. In that respect, the disability legislation should be drafted to explicitly:

- Outlaw intentional discrimination (direct discrimination) on grounds of disability.
- Outlaw non-intentional discrimination (indirect discrimination). This is kind of discrimination against disabled people arising from policies, criteria, and practices which are neutral in nature but discriminatory in effect.
- Require institutions provide reasonable accommodation and undertake positive actions required by the disabled person.
- Place an obligation on government to fund (facilitate) institutions of higher education whether public or private to meet the support services for disabled students in higher education. This is necessary because it is beyond most parents' means to fund their children's disability related requirements at the universities, as noted in chapter six. The PwDA, as already noted, requires that 10% of educational funds are allocated for disability work. But this appears not to be adhered to. Therefore, this proposed obligation on government warrants change of government policy relating to funding disability related support from the current position of supporting only public universities to facilitating all categories of institutions of higher education on disability related matters. This will make both government and institutions adhere to that requirement.
- Provide uniform obligations on disability equality across institutions of higher education without distinction between public and private institutions.

The present law as noted in chapter four in regards to admission to higher education through affirmative action mandates only public universities to do so. This contributes reluctance by private universities to advance disability equality in their programmes.

- Provide for enforcement mechanism that brings self-awareness of the institutions about disability inclusion. This requires making disability a cross cutting issue in institutions programmes. Also, require involvement of disabled students associations, in the process of disability inclusion in higher education. This is in-line with the CRPD 4(3). In Uganda, as already noted, disabled people are involved in making decisions at legislative organs of government and associations of disabled students at the universities do exist. However, involvement of disabled students associations in matters that affect them in higher education institutions is not legally required.
- Entail institutions develop proactive approaches to prevent discrimination and social exclusion arising from systemic and institutionalised barriers in higher education. The proactive approach has therefore a potential of making institutions scrutinise their decision making and institutional processes that create and reproduce exclusion of disabled people. It is evident again from chapter 6 that, although Uganda has a robust disability legal framework, it is not explicit to take account of the above attributes. More limiting though, is the fact that it is rarely enforced in higher education, other than its provisions on affirmative action, which also have their own limitations as noted in chapter 4.

4.2 Promotional Approaches

The non-legal means are the promotional approaches to enhance the disability legislation in bringing policy and social changes in higher education regarding disability. They include awareness-raising, having disability designated staff at faculty level, disability inclusive guidelines/ codes of practice for institutions of higher education, monitoring and reviewing disability inclusion, carrying out surveys including access audits on disability inclusion, a disability data bank and

mainstreaming disability across all university's policies and programmes. Through these approaches, this research argues that, the expanding scope of higher education stakeholders following the higher education reforms will also be drawn in the process of bringing disability inclusion in higher education. These stakeholders include the state, parents, students, and business sector, private but not for profit organisations like faith based bodies, donors, the international education services providers and the academic community.

According to this research, the above promotional approaches can be achieved in higher education if an effective interplay of the bodies that have a primary mandate over higher education and those with a primary mandate on disability inclusion are enhanced. Those with direct legal mandate over higher education are the Ministry of Education- Commission for Higher Education and the NCHE. Those with legal mandate on disability inclusion are the Directorate of Disability and Elderly Affairs in the Ministry of Gender, Labour and Social Development (MGLD), National Council for Disability (NCD), the Equal Opportunities Commission (EOC) and the Uganda Human Rights Commission (UHRC), whose mandate is monitoring human rights adherence in the country. These bodies have statutory powers to promote disability inclusion in higher education as discussed in chapter 4. However, at the time of this research, these bodies appeared passive in the process of disability inclusion in higher education.

This research argues that, bringing about the active involvement of these bodies has a potential of strengthening internal initiatives within higher institutions to deliver equal opportunities for disabled people. In chapter 6, it was noted that these initiatives already exist, although they operate at minimal level and with limited capacity to bring about the required change. These initiatives include individual faculties' initiatives, individual lecturer's efforts to enhance disability inclusion and disabled students associations' efforts. Such initiatives create opportunities to support the development of the institution's disability policy and wider mainstreaming of disability. Discussion on chapter 4 indicates that before the extension of an enforceable disability right to education, inclusion was based entirely

on the institution's internal initiatives.³ The enactment of enforceable disability rights legislation complemented these initiatives. The law's effectiveness is likely to depend on the continuance and strengthening of internal initiatives. This research further argues that, enhancing the universities internal initiatives can bring about improved coordination of the mechanism of dealing with the needs of disabled people like timetabling and allocation of lecture halls. This at least reduces the impact of physical inaccessibility on disabled people. Internal initiatives can bring about periodic review by faculties or libraries of their experiences with disabled students and devising improved methods of dealing with them.

5. Conclusion

In Uganda, disability inclusion in higher education is an emerging issue. Although, disability is fully recognised in Ugandan law as an equality issue, it is yet to be fully reflected in universities policies and practices as an equality issue. Ugandan universities' recognition of disability inclusion is explicitly seen at the admission stage but only by public universities. Beyond these practices and policies, the physical environments of the universities do not sufficiently accommodate disabled people. The proactive approach of accommodating the needs of disabled people, a practice required by law, is not yet developed in Uganda. It is sufficient to state that, although Ugandan disability legislation provisions on education are generally in line with the CRPD, the practices and policies in the universities fall short of delivering a right to education for disabled people without discrimination and on the basis of equal opportunities.

It is recommended that urgent attention be given to this problem. The right to education is a universal right and higher education should be equally available to every qualified individual. Moreover, as noted in chapter four, sooner rather than

³ It is noted that Makerere University introduced affirmative action informally around 1996 (A Working Paper for the Review of Admission of Candidates with disabilities on Government Sponsorship (Makerere University Senate Admissions Board) 2007/2008) and this was formalised by the Universities and other Tertiary Institutions Act 2001, which further introduced it to other public universities.

later, due to increasingly favourable disability policies at primary and secondary levels, the expected number of disabled students wishing to join higher education is likely to be at least 5 times more than the number currently enrolled. Yet higher education appears to be unprepared for disabled students, because their facilities are inaccessible to disabled people; their practices, provisions and criteria are largely exclusionary of disabled people; and their inadequate and patchy support services for disabled students.

Disability discrimination, as noted in chapter two, is unique and quite different from other discrimination faced by other disadvantaged groups and as such requires a different interpretation of the law. Taking a leaf from that observation, this research argues that government should reconsider its policies on funding support for disabled students in higher education and place more emphasis on disability inclusion in higher education. It is not enough to grant affirmative action approaches and leave the entirety of the institutions inaccessible for disabled people without any national guidance to bring about equality of opportunity for disabled people in the institutions of higher education.

The experiences of disabled people, and the lack of formal policies on disability inclusion in the institutions of higher education, suggests that the reforms these institutions have experienced and are still experiencing are not highlighting disability as a significant issue. Disability inclusion is consequently not recognised as an issue in the reform agenda for higher education.

Although the findings of this study might be viewed as limited given the relatively small number of institutions reached (i.e. only four out of 27 universities or 137 institutions of higher education), it nevertheless illuminates broad issues concerning policy and practice relating to disability inclusion as raised by the staff and disabled students who participated. At a general level, the findings from the 4 universities illustrate the fate of disabled students in higher education in the country more broadly. There is no higher education institution in Uganda which has a unique socio- economic, environmental or cultural context as regards disabled people. The findings provide compelling evidence for a need for concerted action and a

comprehensive higher education disability policy in order to develop an inclusive higher education for disabled people.

Appendices

Appendix 1: Copy of the Complaints by Disabled Students to Public Institution A, Expressed in form of a Petition.

*The institution in question is one of the specialised professional training public institutions in Uganda. In this research, this institution is not identified by its real name. It is here by referred to as **Public Institution A**. Also, the names of the relevant departments have been omitted. This is to protect the identity of the authors of the document and the image of the institution as required by the research ethics regulations.*

RE: Challenging Systems and Practices of the Institution that are Not Disability - Friendly

To: The Chairperson Management Committee Public Institution A

Introduction

We write to express our disappointment with the way Public Institution A has handled our issues for the period we have officially been registered as students. We are a group of four disabled persons writing to petition on our own behalf, on behalf of six other disabled persons who were discontinued before progressing to fourth term and on behalf of all the other students with disabilities who will join the institution in future. We applied and were admitted to the Post Graduate programme during the academic year 2007/2008. Out of the 10 students with disabilities that were admitted that year, seven (7) had severe disabilities with two persons permanently confined to wheelchairs, two moving with crutches, two amputees and one totally blind student.

Education – A right to every one including persons with disabilities

Article 24 (5) of the Convention on the Rights of Persons with Disabilities (which Uganda signed and ratified) requires States Parties to ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, and that States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Rule 5 of the Standard Rules for the Equalisation of Opportunities for Persons with Disabilities provides that;

(a) Access to the physical environment for persons with disabilities means accessibility to houses, buildings,

(b) Access to information and communication includes availability of Braille, tape services, large prints and appropriate technologies to access spoken information for persons with auditory impairments or comprehension difficulties, including computerized information. Deaf

persons should be able to benefit from sign language interpretation services.

Rule 6 of the same Rules requires that the education of persons with disabilities should be an integral part of the educational system of a given study institution.

Objective XVIII (ii) of the Constitution of the Republic of Uganda mandates the state to take appropriate measures to afford every citizen equal opportunity to attain the highest educational standards possible. And,

Objective XVI of the Constitution specifically mandates the state and society to recognise the rights of persons with disabilities to respect and dignity.

Article 30 of the Constitution of the republic of Uganda avails a right to education to all persons in Uganda.

Article 35 (1) of the Constitution of the Republic of Uganda provides that persons with disabilities have a right to respect and dignity and that the state and society shall take appropriate measures to ensure that they realise their full mental and physical potential.

Article 32 (1) mandates the state to take affirmative action in favour of persons with disabilities for purposes of redressing imbalances which exist against them.

Article 20 (1) clearly provides that such rights are inherent and not granted by the state, and therefore shall be respected, upheld and promoted by all organs and agencies of government and by all persons.

Section 5 of the Persons with Disability Act, 2006 mandates government to promote the educational development of persons with disabilities through encouragement of inclusive education and formulating educational policies that promote special needs and requirements of persons with disabilities.

Section 19 of the same Act, makes it the duty of all organs in both public and private institutions to provide suitable exits for persons with disabilities and universal standards or designs of public toilets.

Section 20 makes it an obligation to any person who constructs a building for public usage to ensure access for persons with disabilities through among others; providing safe and accessible urinals, and bathrooms, ramps, rails, and elevators.

Section 6 (1) Persons with Disability Act, 2006, and Section 6 (2) (c) considers it to be discrimination where a person with a disability is denied or limited access to any benefit or service provided by the educational institution.

Current Situation for Students with Disabilities at Public Institution A

Despite the clarity of the above legal provisions, the Public Institution A still runs way below the above standards, which has had untold effects on the academic performance for students with disabilities. Below are some of the experiences students with disabilities go through while at the institution.

Accessibility is a very big challenge to even the most focal places at the institute. No single toilet is accessible for any wheelchair user. On top of having small entrances, none of the toilets have seats, meaning that wheelchair users can only use these facilities by crawling and sitting on the dirty squat toilet. The administration block is so inaccessible that accessing the director and

secretary's office also carries the same difficulty; the situation goes on with regard to the library mainly because of the steep landscape at institution which we were promised was to be worked on in a few months after our admission.

The postgraduate section has only three departments that a disabled person can meaningfully access, the rest, you either encounter steps or very steep and flimsy ramps. This means that direct participation in core subjects and other inter-departmental discussions conducted in those departments was constrained for persons with disabilities.

Specifically with regard to exams, we are proud to report that we passed so highly with regard to oral and written practical exams combined, and some of us ranked amongst the best in some oral exams.

The problem mainly lies in the written practical examinations. First, for the totally blind students, their only means of writing is Braille, which is supposed to be transcribed by examiners into print. This institution has, without any reasonable justification, consistently refused or neglected to avail those services. A blind student therefore brings a non professional to read for her an exam and have her answers typed by the same person. This has practical challenges in that there may be no adequate time to allow this student to finish the exam, conceptualizing something being read out by another person is usually very difficult, and on top of this, it was this blind student to hire a laptop on her own, pay the person to help her throughout the two weeks of exams, among other obvious challenges.

Attempts to solicit for alternatives such as tape - recorded exams by the institution which could be replayed to a blind student on a cassette from a lecture's dialect also failed without any administrative explanation. For subject like accounts and revenue, lecturers confessed they had no basic skills to teach the mathematical concepts in the subjects to a totally blind student, and yet she had to sit the same exam like all the other students. At the end of it all, it is the blind student who is discontinued after failing three consecutive exams and the institution has not yet established means of facilitating her studies!!

For people with severe physical disabilities, classified as having severe loss of usage of upper limbs, the nature and severity of the disability have very adverse academic implications. Some of us are victims of severe polio which significantly affected our hands and paralysis is a very common resultant effect. One of us is completely losing the strength in his right hand and the speed and ease with which he can use his hands is medically worrying. This has had both physically and psychological implications to his performance in addition to the above challenges.

While written practical examinations go on for eight hours, wheelchair users have to sit for this long without access to toilet services, meaning one will not take lunch or a drink, so as to guard against any emergencies. The resultant implications do not need explanation. We used to miss discussion after class, rushing to go home and ease ourselves, despite their obvious relevance to a student.

With the examination period specifically, having to sit for two uninterrupted weeks of exams under the conditions explained above means that one is most likely to fail the last exams. Some of us did most of these exams on pain killers. It was very common of us to take a special hire back home to just ease ourselves especially during normal class and examination periods.

While the institution's examination regulations allow students to go to the library for research during exams, students with disabilities do not enjoy this right; the library is not that accessible and even if it were, problems arising from the landscape have been well articulated.

While one might further argue that failure is a common trend in institutions like this one even for the none disabled students, none of us has a record of failure at any academic level and its not possible that the circumstances at this institution and lack of any form of positive discrimination in our favor has no bearing on our performance.

While the Department of Post Graduate Studies management acknowledges the fact that our failure partly has roots in the way the institution is structured, they are clear in alluding to the fact that it is not in their mandate, but the management and particularly the examination board that do not accord us the special treatment that we by law, courtesy and good conscience deserve. This is entirely to our academic and professional detriment not reiterating the social and economic implications.

We have on several occasions been told that framers of regulations governing this institution did not foresee that persons with disabilities will be admitted for this postgraduate programme.

We humbly appreciate this position bearing in mind the years of discrimination and exclusion that disabled persons have experienced in nearly all sectors of life, despite their proven abilities.

It should however be noted that Persons with Disabilities are now at the institution and an integral part of this noble profession, we therefore recommend inclusive standards should be designed.

We tried our best to bear with the above situations despite the very demanding nature of the bar course, physically, psychologically and mentally, and we are sure whatever we produced was to the best of our constrained abilities.

Recommendations:

Basing on the above, we demand that the following measures be undertaken by the respective stakeholders at the Public Institution A in order to give the above legal regime its intended meaning and purpose.

- 1. Management should constitute an immediate committee to holistically look at our examination results again.*
 - a) The same committee should examine our disability related needs and sanction for medical examinations to be done on us (and all students with disabilities the Institution will admit in subsequent years) so as to ascertain our respective weaknesses from a medical perspective, on the basis of which we should be assessed.*

- b) *A few institution's lecturers should be part of the committee especially those who have taught students with disabilities and can clearly testify our academic abilities and have witnessed the challenges that students with disabilities face at institute.*
 - c) *The constituted committee should produce a report showing its findings preferably within one month of filing this petition so that we can adequately prepare for its recommendations.*
2. *Disabled students discontinued on the "three paper rule" should be reinstated and given a chance to sit the three papers as supplements since repeating the entire process is practically impossible bearing in mind that the barriers at the institution may not be worked upon immediately.*
 3. *Special toilets MUST be constructed and/ or reserved for Persons with Disabilities for the respective gender. These should have wide doors, sitters and handles so as to reasonably accommodate them.*
 4. *Affirmative action should as of right be provided to Persons with Disabilities both at Post graduate and undergraduate programs. This institution being a government institution which takes on products of affirmative action from the respective universities is legally obliged to fall suit. A formula should be designed to have a percentage of disabled students incorporated in the state sponsored students on a special merit.*
 5. *New rules should be designed to reflect concerns of Persons with Disabilities and we propose that disabled students or specialists in disability matters are directly involved in their formulation since it's them who can best explain the respective needs.*
 6. *Alternative exams especially orals should be availed to those students with disabilities who write with extra difficulties and this should extend to the last semester.*
 7. *We request that a special office at this institution be assigned to handle disability issues right from admission, examinations and clerkship placements. This will limit on the obstacles incurred in finding assistance and keeping truck of disability needs for future usage by the Institution.*
 8. *No new structures should be approved and/or constructed at the institute without informed accessibility alternatives for Persons with Disabilities.*

Our academic and professional destiny lies in your urgent attention to our plight!

Dated August, 2009, we the undersigned affirm our disappointments and submit this document for your urgent consideration.

Appendix 2

2a: Approval Letter From AREA

Research Support

3 Cavendish Road
University of Leeds
Leeds LS2 9JT

Tel: 0113 343 1561

e-mail: l.m.sawiuk@adm.leeds.ac.uk



AREA Faculty Research Ethics Committee University of Leeds

c/o Laura Sawiuk
Senior Research Ethics Administrator
Research Support
3 Cavendish Road
University of Leeds
LS2 9JT
Tel: 0113 343 1561
Email: l.m.sawiuk@adm.leeds.ac.uk

16th July 2009

Mr Paul Emong

Phd student

School of Law

University of Leeds


Dear Mr Emong,

Title of study: **An Investigation into the realisation of human rights for disabled people in higher education in Uganda through disability legislation.**

Ethics reference number: **AREA 08-046**

The above project, and your further information was reviewed by the Chair of the AREA Faculty Research Ethics Committee on 15th July 2009.

2b: Approval letter from Uganda National Council for Science and Technology


Uganda National Council For Science and Technology
(Established by Act of Parliament of the Republic of Uganda)

Your Ref:.....
 Our Ref:..... SS 2190
 Date:.....20/03/09.....

Mr. Emong Paul
 AHEAD
 P.O. Box 28332
 Kampala

Dear Mr. Emong,

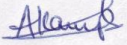
RE: RESEARCH PROJECT, "AN INVESTIGATION INTO THE REALISATION OF HUMAN RIGHTS FOR DISABLED PEOPLE IN HIGHER EDUCATION IN UGANDA THROUGH DISABILITY LEGISLATION"

This is to inform you that the Uganda National Council for Science and Technology (UNCST) approved the above research proposal on **February 05, 2009**. The approval will expire on **February 05, 2010**. If it is necessary to continue with the research beyond the expiry date, a request for continuation should be made in writing to the Executive Secretary, UNCST.

Any problems of a serious nature related to the execution of your research project should be brought to the attention of the UNCST, and any changes to the research protocol should not be implemented without UNCST's approval except when necessary to eliminate apparent immediate hazards to the research participant(s).

This letter also serves as proof of UNCST approval and as a reminder for you to submit to UNCST timely progress reports and a final report on completion of the research project.

Yours sincerely,


 Akampurira Innocent
 for: Executive Secretary
UGANDA NATIONAL COUNCIL FOR SCIENCE AND TECHNOLOGY

<p>LOCATION/CORRESPONDENCE</p> <p>Plot 3/5/7, Nasser Road P.O. Box 6884 KAMPALA, UGANDA.</p>	<p>COMMUNICATION</p> <p>TEL: (256) 414-250499, (256) 414 705500 FAX: (256) 414-234579 EMAIL: uncst@starcom.co.ug</p>
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Appendix 3 Tools for data collection

3a: Interview Guide for Faculty/ Department Interview

Name of the University: _____ Faculty _____
 Department (if applicable) _____

Section A: Specific reasonable accommodation for specific impairments

The needs of some students with disabilities require the faculty/department to undertake reasonable accommodation in order to enable them effectively access learning and also be assessed without being disadvantaged by the disability. Please indicate in the table below, what reasonable accommodation the faculty /department undertakes according to each type of disability.

Type of disability	Reasonable accommodation undertaken
Total Blind	
Partially sighted	
Physical disabilities-wheel chair user or mobility difficulty	
Specific learning difficulty e.g. Dyslexia	
Autistic spectrum disorder or asperger syndrome	
Mental health	
Completely Deaf	
partially deaf	
Epilepsy	
Any other condition not listed above	

In this table, please circle the most appropriate for the faculty:

Question	Yes	No	Working towards attaining it	No Plans for it currently
Does the faculty have designated (assigned) staff leading work on disability inclusion?	Yes	No	Working towards attaining it	No Plans for it currently
Does the faculty create awareness to its staff about disability related needs of its students with disabilities?	Yes, to a large extent it does	Yes, to some extent it does	Rarely is it done.	Working towards attaining it
Does the university in general create awareness to the staff about the disability related needs of students with disabilities?	Yes, to a large extent it does	Yes, to some extent it does	Rarely is it done.	Working towards attaining it

<i>Does the University have training programme on disability for its staff?</i>	<i>Yes</i>	<i>No</i>	<i>Working towards attaining it</i>	
<i>Does the university central policy enforce you to comply with the reasonable accommodation for disabled students?</i>	<i>Yes</i>	<i>No</i>	<i>The University is working towards attaining it</i>	<i>There is no University Policy on this.</i>
<i>At the end of Semester or academic year, does your faculty collect information/statistics relating to the experiences of disabled students in your faculty regarding access to learning?</i>	<i>Yes</i>	<i>No</i>	<i>Working towards attaining it</i>	<i>There is no University Policy on this.</i>
<i>Are those experiences used when considering major policies in the faculty?</i>	<i>Yes, to a large extent it is used</i>	<i>Yes, to some extent it is used</i>	<i>Rarely is it used for that.</i>	<i>Working towards attaining it</i>
<i>Has the faculty developed targets to be achieved for the effective inclusion of disabled students</i>	<i>Yes, to a large extent</i>	<i>Yes, to some extent</i>	<i>Working towards attaining it</i>	

3b: Questionnaire for the Wardens of Halls of Residence

Dear Sir/Madam,

I am Paul Emong, doing a PhD in Law, at the School of Law, University of Leeds. My research is on 'inclusion of disabled students in higher education.' I wish to kindly request you to fill this questionnaire on provision of disabled students at the halls of residence. All the information obtained through this questionnaire is for academic purposes only and will be treated with the confidentiality it deserves.

- 1 Name of the Hall _____
 2 How many students are accommodated in this hall _____
 3 How many disabled students are accommodated in this hall _____
 if possible categorise them according to the types of disabilities

Category of disability	Number of students
Visually impaired	
Physical disability -using a wheelchair	
Physical disability- not using a wheelchair	
Deaf	
Mental illness	
Epilepsy	
Albino	
Any other (specify)	
Total	

4 Are there adjustments or provisions put in place in this hall of residence to ensure students with disabilities are catered for in respect to their disabilities?

If yes, may you list down those adjustments made or provisions?

5 Are the adjustments or provisions for students with disabilities referred to above arising from; (please tick all those which are applicable to your situation)

(1) The university policy on disability, (2) University written policy on accommodation of disabled students, (3) A university's principle on supporting students with disabilities, even though there is no university policy on disability.

6 If this policy is part of the general policy on the university accommodation, may I request you quote for me those sections providing for the accommodation for students with disabilities?

.....

7 What is the future plan of the university in relation to accommodation of disabled students, may you provide examples?

.....

8 In your experience as a Warden, what are the challenges faced by the halls of residence in ensuring access by disabled students.

.....

9 In relation to the accommodation of disabled students in this university, may you provide any other information not captured by the above questions?

.....

Thank you very much for sparing your valuable time to answer this questionnaire.

3c: The Individual Disabled Students Interview Structured Questionnaire

Dear colleague,

I am Paul Emong, doing a PhD in Law. My research is on ‘inclusion of disabled students in University education’. I wish to kindly request you to be my respondent as I do this research. All the information obtained through this questionnaire is for academic purposes only and will be treated with the confidentiality it deserves.

Name (optional) _____
 1 Sex____ 2 Age_____
 3 Type of disability [describe it]_____
 4 Your Course of Study_____ 5 Year of study_____
 6 Under what scheme did you join the university? (a) Affirmative action
 (b) District Quota, (c) Merit (d) Private sponsorship (e) Mature age entry
 (f) Any other, please specify.....

May I ask you to rate the university based on your personal experience as a disabled person and as per the arrangements the university has put in place to meet the requirements of your impairment(s) in order to enable you be included in university environment? In this rating please indicate appropriate percentage as per the intervals provided as: 0-14%, 15%-29%, 30%-44%, 45%-59%, 60%-74%, and 75%+. You are to rate the following areas: physical accessibility, accessing lectures, mode of assessing and examining you based on your disability, the support you receive in the university, and your feeling about the attitudes of the staff towards you. Also indicate the reason for that percentage interval.

7a

Key Area	
<i>Physical /structural accessibility in:</i>	Percentage interval
<i>Halls of residence</i>	
<i>Lecture rooms</i>	
<i>University Compound</i>	
<i>Library</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

7b

Key Area	Percentage interval
<i>Mode of delivering lectures</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

7c

Key Area	Percentage interval
<i>Sports and recreation</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

7d

Key Area	Percentage interval
<i>Mode of Assessment and Examination</i>	
<i>Course works</i>	
<i>Tests</i>	
<i>Examinations</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

7e

Key Area	Percentage interval
<i>Disabled Student Support Services in respect to:</i>	
<i>Availability</i>	
<i>Adequacy in meeting your impairment needs in accordance with the demands of the university to you.</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

7f

Key Area	Percentage interval
<i>Staff Attitudes</i>	
<i>Student attitudes</i>	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

Does the nature of your disability limit you in the way you socialise with other students or building social networks with other students? State the percentage to the extent it limits you

.....

7g

Key Area	Percentage interval
Library services	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

7h

Key Area	Percentage interval
Any other issue (specify)	

Specific Reasons where possible with appropriate examples why you feel the university deserves that percentage interval in that area.

.....

May I ask you to suggest the improvements the university should put in place to meet the requirements of your impairment(s) in order to enable you be included in university environment. Please base your suggestion on your personal experience as a disabled person and as per your impairment. In case you need more space you can use the other side of the page.

8a) Physical /structural accessibility in:

Halls of residence

University Compound

Lecture rooms

8b) Access to Library

8b) Mode of delivery of lecturers

8c) Sports and recreation

8d) Mode of assessment in:

Coursework.....

Tests

Examinations

8e) Disabled students support services

F) Staff attitudes

Thank you very much for your response. God Bless You

Appendix 4 Participant Consent Form

Participant's Consent Form

In this form, I am seeking for your consent to be a participant of this research. In addition, I am also seeking for your permission to contact you if need be to clarify any information you are providing regarding this research.

NAME or Title of the Participant (optional)

Title of the Research: An Investigation into the Realisation of Human Rights for Disabled People in Higher Education in Uganda through disability legislation.

Name, address and telephone contact of the researcher: Mr. Emong Paul, School of Law, University of Leeds, LS2 9JT, Leeds, UK. Email: emongopaul@yahoo.co.uk Tel: +447513023770

- *I agree to take part in the above research. I have understood the purpose of this research and my role in this research.*
- *I agree the researcher to contact me to clarify any information I provide to him in this research. I further agree that he can contact me by phone or by email, I provide to him.*
- *I understand that I am free to withdraw from the research at my time, for any reason and without prejudice by informing the researcher.*
- *I have been informed of the purpose of the information I provide. It is for academic purposes only.*

Signature

Date

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