

# THE LAW ON PERSONS WITH SPECIAL NEEDS: ADVOCACY FOR REDEMPTION AND DISENFRANCHISEMENT IN **UGANDA**



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***Table of Contents***

Introduction.....	6
About The Book.....	9
The Ancient Ugly laws on Disability.....	13
The Community History of disability.....	21
National legal framework on persons with special needs.....	22
The meaning of special needs in law.....	27
Categories of people with special needs.....	28
Characteristics of Individuals with Physical Disabilities, Health Disabilities, and Related Low-Incidence Disabilities.....	38
The International Perspective of Persons with Special Needs.....	39
Persons with Disabilities Act, 2020.....	44
Rights of People with Special Needs.....	45
Enforcement of rights of persons with Disabilities.....	51
Special Needs Education.....	52
Special education and needs disability.....	54
Special schools in Uganda.....	64
The world history of special schools.....	66
Disability policy in Uganda.....	70
Children with special needs.....	72
What should be taught in the special schools.....	74
The Civil and Political rights.....	75
Criminal cases against people with special needs.....	83
The Old Law.....	87
Judicial Activism.....	88
The M'Naghten rule in line persons of special needs.....	93
The finance institutions and people with special needs.....	95

Can people with special needs inherit property. ....	107
Owning accounts of people with special needs .....	110
Access to employment for persons with disabilities in uganda...	113
Ugandan laws on persons with special needs vis avis International perspective. ....	114
Articles of the African Charter:.....	123
Special Needs Trust .....	151
Discretionary trusts for children with special needs.....	153
Benefits of a Special Needs Trust. ....	155
War and Disability .....	174
People with special needs as competent witnesses.....	175
People with special needs in sports.....	180
The African Union Policy Framework for the Sustainable Development of Sport in Africa.....	182
Criminal charges of persons with special needs in uganda .....	183
Recommendations. ....	200
Admissibility of evidence.....	201
Property owned by people with special needs. ....	229
The National Policy on Disability in Uganda .....	233
References.....	270



## **Introduction.**

Often a number of questions are always posed on how the law treats the people with special needs, in the presence of equality provisions, it is absurd that there is still a wide lacuna to deal with people with special needs in our jurisprudence. Special Needs literally means a combination term referring to a wide range of conditions which causes a greater difficulty or restriction in a person's learning at a normal pace and performance of daily life activities. Like the U.N puts it clear that "The ultimate goal is to achieve [disability] equality"<sup>1</sup>The ongoing argument succumbs its roots from the different categories of special needs which include autism, cerebral palsy, Down syndrome, dyslexia, dyscalculia, dyspraxia, dysgraphia, blindness, deafness, ADHD, and cystic fibrosis. Basically these individuals require assistance for "disabilities" (not the right word) that may be medical, mental, or psychological. In the United States "special needs" is a legal term applying in foster care, derived from the language in the Adoption and Safe Families Act of 1997. It is a diagnosis used to classify children as needing "more" services than those children without special needs who are in the

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<sup>1</sup> From: UN ECOSOC (1997) quoted in Vera Hendriks, 2009:16)

foster care system. It is a diagnosis based on behavior, childhood and family history, and is usually made by a health care professional.

If you are a lawyer who enjoys entertainment Legal drama you must have loved and enjoyed the movie of Extraordinary Attorney Woo a 2022 South Korean television Serie. Young Attorney Woo Young Woo was a young lawyer with Asperger's syndrome. This is also seen as an aspect of Autism. She had a high IQ, an impressive memory and a wonderfully creative thought process, but she struggled with everyday interactions because of how people in the society treat those with special needs. Despite her good grades and best at Law School, she had failed to get a law firm to employ her.

In Uganda we have had people of that character who have managed to excel and even become great professionals like lawyers for example Florence Ndagire a female Ugandan lawyer, who works as a legal researcher and human rights lawyer at the United Nations (UN) based in Geneva, Switzerland. Ndagire, who is totally blind, also serves as the chairperson of the UN Women Regional Group, for Eastern and Southern Africa, comprising twelve countries. She is the first visually impaired person, male or female to qualify and receive licensure as a lawyer in Uganda. In his words Dr. Paul

Emong while at Leeds University<sup>2</sup> averred that “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..... During my childhood as a disabled person coming from the rural part of Uganda, my education as well as my future was bleak”.

Looking at school perspective for people with special needs, the integration of children with special needs into school systems is an issue that is being addressed worldwide. Schools like Mukisa Foundation, Dorna center Home for Autism, St Paul's Ggaba demonstration for special needs children among others.

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<sup>2</sup> 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 January, 2014





## **About The Book**

What is Special Needs Law?

Although there is no uniform definition of “special needs,” the phrase describes individuals with a wide variety of physical or mental conditions who may require legal support. That support may mean they need protection from ne’er-do-wells who would take advantage, it may mean they need access to public benefits, or any number of other types of assistance. Frequently, parents and grandparents are concerned about how their children and grandchildren will be cared for after the parent’s or grandparent’s death and will want to plan in advance to protect their special needs loved one.

There is no one-size-fits-all way of planning for individuals with special needs. It requires consideration of the child’s strengths and weaknesses, his or her abilities and inabilities including whether decision-making support is necessary. The goal is to enhance the child’s well-being, giving him or her the best chance for a normal, independent life. Because every child is different, every special needs plan will be different as you plan for him or her and those who will assist your child.

Special needs are the individualized care that a person with a disability - whether physical, mental, behavioral, emotional, or learning difficulties - requires to ensure their safety, access to public amenities, or ability to succeed in certain contexts. This individualized care might include accommodations or services, and persons with special needs are guaranteed this care in certain contexts.

Many public amenities - such as schools, places of employment, transportation services, government programs or services, and commercial facilities, among others - must make reasonable efforts to accommodate a person's special needs. This is due to the Ugandans with Disabilities Act which prohibits discrimination against persons with disabilities in many of the areas that are most closely tied to public

Clinical diagnostic and functional development, special needs (or additional needs) refers to individuals who require assistance for disabilities that may be medical, mental, or psychological.

Special needs can range from people with autism, cerebral palsy, Down syndrome, dyslexia, dyscalculia, dyspraxia, dysgraphia, blindness, deafness, ADHD, and cystic fibrosis. They can also include cleft lips and missing limbs. The types of special needs vary in severity, and a student with a special need is classified as being a severe case when the student's IQ

is between 20 and 35. These students typically need assistance in school, and have different services provided for them to succeed in a different setting.

Special needs usually refers to special needs within an educational context. This is also referred to as special educational needs (SEN) or special educational needs and disabilities.

The term is seen as a dysphemism by many disability rights advocates and is deprecated by a number of style guides.

Uganda is a signatory to the international agreements/commitments that provide for learners with special needs. One example of such instruments that bind those agreements is the Salamanca Statement and Framework for Action on Special Needs Education (1994).

**This instrument emphasizes:**

The Right of all children, including those with temporary and permanent needs for educational adjustments to attend school.

The Right of all children to attend school in their home communities in inclusive classes.

The Right of all children to participate in a child-centred education meeting individual needs.

The Right of all children to participate in quality education that is meaningful for everyone.

In consonance with the Government Constitution (1995), Uganda has put in place The Persons with Disability Act (2020) Act 3 Of 2020, National policy on Disability in Uganda and has also ratified the United Nations Convention on the rights of persons with disabilities (2008).

Both instruments demand for access, equity and quality as regards educational services for persons with special learning needs.

To meet those requirements, the Ministry of Education & Sports put in place a department responsible for special needs and inclusive education.

The traditional/long-established approach of Special Needs Education was and is still focusing on learners with disabilities specifically. Learning support was and still is provided in special schools and in special classes (Units/Annexes) integrated in the ordinary schools. Learners with barriers (special needs) arising from disability conditions usually require Specialized support services (e.g. Sign language interpreters, Braille transcribers etc.); Specialized teaching methods; Access to resource rooms and use of specialized technology to access curriculum. Summarily, this approach takes care of learners with visible impairments,

usually in the severe-profound levels requiring specialized support.

In the case of Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania<sup>3</sup>, the U.S. District Court, Eastern District of Pennsylvania, ruled that it was the obligation of the state of Pennsylvania to provide free public education to mentally disabled children, which it was not doing at that time. This decision struck down various state laws used to exclude disabled children from the public schools. Advocates cited this decision during public hearings that led to the passage of the Education for All Handicapped Children Act of 1975

### **The Ancient Ugly laws on Disability.**

The term "ugly laws" was coined in the mid-1970s by detractors Marcia Pearce Burgdorf and Robert Burgdorf, Jr.<sup>4</sup>

Between 1867 and 1974, various cities of the United States had unsightly beggar ordinances, in retrospect also dubbed ugly laws<sup>5</sup> These laws targeted poor people and disabled people. For instance, in San Francisco a law of 1867 deemed

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<sup>3</sup> 334 F. Supp. 1257 (E.D. Pa. 1971)

<sup>4</sup> Schweik, Susan M. (2009). *The ugly laws: disability in public*. New York: New York University Press. ISBN 9780814740576

<sup>5</sup> Albrecht, general ed. Gary L. (2006). *Encyclopedia of disability*. Thousand Oaks [u.a.]: SAGE Publ. pp. 1575

it illegal for "any person, who is diseased, maimed, mutilated or deformed in any way, so as to be an unsightly or disgusting object, to expose himself or herself to public view."<sup>6</sup> exceptions to public exposure were acceptable only if the people were subjects of demonstration, to illustrate the separation of disabled from nondisabled and their need for reformation<sup>7</sup>

The Charity Organization Society suggested that the best charity relief would be to investigate and counsel the people needing assistance instead of provide them with material relief<sup>8</sup> This created conflict in people between their desire to be good Christians and good citizens when seeing people in need of assistance. It was suggested that the beggars imposed guilt upon people in this way. "Pauperism is a disease upon the community, a sore upon the body politic, and being a disease, it must be, as far as possible, removed, and the curative purpose must be behind all our thought and effort for the pauper class."<sup>9</sup> Similar to what Slocum said, other authors suggested that giving charity to beggars without

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<sup>6</sup> Ibid 3

<sup>7</sup> Schweik, Susan M. (2009). *The ugly laws : disability in public*. New York: New York University Press. ISBN 9780814740576.

<sup>8</sup> Slocum, Jr., William Frederick (1886). *The Relation of Public and Private to Organized Charity*. Baltimore: Charity Organization Society.

<sup>9</sup> Slocum, Jr., William Frederick (1886). *The Relation of Public and Private to Organized Charity*. Baltimore: Charity Organization Society.

knowing what was to be done with the funds, was as "culpable as one who fires a gun into a crowd

In 1729 England, punishment was sometimes suggested for people with physical disabilities, whether they were born with disabilities or acquired later in life, who appeared in public.

Ugly laws in the United States arose in the late nineteenth century. During this period, urban spaces underwent an influx of new residents, which placed strain on the existing communities. The new residents were sometimes impoverished. This meant large numbers of people who were strangers to each other now occupied closer quarters than they had in small towns, where such local institutions as schools, families, and churches helped moderate social relations.<sup>[6][7]</sup> As a reaction to this influx of people who were impoverished, ministers, charitable organizers, city planners, and city officials across the United States worked to create ugly laws for their community.

The language of the unsightly beggar ordinances pertained to hiding the parts of the person that may appear disabled or diseased. This includes any movements that would indicate a disability or disease, like limping<sup>10</sup>.

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<sup>10</sup> Helper, Hilton (1948). *Dreadful California*. The Bobbs-Merrill Company.

The first American ordinance pertaining to preventing people with disabilities from appearing in public was passed in 1867 in San Francisco, California. This ordinance had to do with the broader topic of begging. It is noted that people who were perhaps in need of money traveled to California to "strike it rich" during the California Gold Rush. When they did not find themselves wealthy, they remained in California. Letters and documents from the period just after the California Gold Rush note the large number of "insane" people wandering the streets.<sup>[3]:25[8][9]</sup> Helper (1948) even refers to the "insane" people as "pitiable nuisance" and remarked that they were allowed in public with no one to care for them<sup>11</sup>.

New Orleans, Louisiana had a similar law police were strictly enforcing in 1883. A New Orleans newspaper reported on the City adopting a tough stance on begging as other cities in the United States had.

Portland, Oregon enacted an ugly law in 1881<sup>12</sup>

The Chicago ordinance of 1881 read as follows:

*Any person who is diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object, or an*

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<sup>11</sup> Ibid 9

<sup>12</sup> Susan M. Schweik (30 August 2010). *The Ugly Laws: Disability in Public*



*improper person to be allowed in or on the streets, highways, thoroughfares, or public places in the city, shall not therein or thereon expose himself or herself to public view, under the penalty of a fine of \$1 for each offense*<sup>13</sup>

The fine of \$1 equates to more than \$20 in 2018. In most cities, punishments for violating an ugly law ranged from incarceration to fines of up to \$50 for each offense.

In May 1881, the unsightly beggar ordinance went into effect in Chicago, Illinois. It was created by Chicago alderman James Peevey. Peevey is quoted in the Chicago Tribune from May 19, 1881, saying of the ordinance, "Its object is to abolish all street obstructions." Ugly laws identified groups of people as disturbing the flow of public life and forbid them from public spaces. Such people, deemed "unsightly" or "unseemly," were usually impoverished and often beggars. Thus ugly laws were methods by which lawmakers attempted to remove the poor from sight.

Laws similar to Chicago's followed in Denver, Colorado and Lincoln, Nebraska in 1889. At some time from 1881 to 1890 an ugly law was enacted in Omaha, Nebraska. Additionally, ugly laws were sparked by the Panic of 1893. These included Columbus, Ohio in 1894, and in 1891 for the entire state of

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<sup>13</sup> (Chicago City Code 1881)

Pennsylvania. Pennsylvania's was different as it contained language applying to cognitive disability as well as physical disability. An attempt was made at introducing ugly laws in New York, but it failed in 1895. Initial drafts in New York were similar to those in Pennsylvania as to include cognitive disabilities. Reno, Nevada instituted an ordinance before 1905. Los Angeles, California attempted to pass an ordinance in 1913.

In 1902, an ugly law similar to that of the United States was enacted in the City of Manila in the Philippines. This law was similar to those of the United States, being written in English and during a time when Manila was under American control, and included the common phrasing "no person who is diseased". This was one of the first ordinances to be written under American control. Other ordinances dealt with hygiene reform and considered unsightly beggars part of this indicative.

The last ugly laws were repealed in 1974. Omaha, Nebraska repealed its ugly law in 1967, yet had an arrest of a person for violating the unsightly beggar ordinance documented in 1974. Columbus, Ohio repealed its law in 1972. Chicago was the last to repeal its ugly law in 1974.

Ugly laws prevented some people with physical disabilities from going out in public at all, There was a connection between ugly laws and "public hygiene management

schemes" such as segregation, eugenics, institutionalization<sup>14</sup>. The policy makers suggested this was to prevent the children their union would produce from tainting society's heredity pool. Charity must "do what it can to check the spreading curse of race degeneration". People involved with charitable policy suggested that while euthanasia would be a release for the person struggling with their disabilities, it also went against the moral principles taught by religion.

The repeals of ugly laws followed soon after the passage of the Rehabilitation Act of 1973 and its Section 504, and the 1990 passage of the Americans with Disabilities Act further stopped any possibility of a recreation of ugly laws.

This disability rights timeline lists events relating to the civil rights of people with disabilities in the United States of America, including court decisions, the passage of legislation, activists' actions, significant abuses of people with disabilities, and the founding of various organizations. Although the disability rights movement itself began in the 1960s, advocacy for the rights of people with disabilities started much earlier and continues to the present.

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<sup>14</sup> tenBroek, Jacobus (1966). "The Right to Live in the World: The Disabled and the Law of Torts"

From 1946 to 1953, researchers from Quaker Oats Company, MIT and Harvard University carried out experiments at the Walter E. Fernald State School to determine how the minerals from cereals were metabolized. Parents of mentally disabled children were asked for permission to let their children be members of a *Science Club* and participate in research. Being a member of the Science Club gave the children special privileges. The parents were told that the children would be fed with a diet high in nutrients. However, they were not told (and the consent form contained no information indicating) that the food their children were fed contained radioactive calcium and iron<sup>15</sup>.

In the year 1974 , The last recorded American arrest related to an ugly law was in 1974, in regard to an Omaha, Nebraska ordinance. In that instance, the man arrested was homeless and the officer arresting him did so under the guise of the ugly law as the man had visible scars and marks on his body. The judge, Walter Cropper, and assistant prosecutor, Richard Epstein, in this case noted there was no legal definition for ugly and criminal prosecution would demand

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<sup>15</sup> BRONNER F, HARRIS RS, MALETSKOS CJ, BENDA CE (January 1956). "Studies in calcium metabolism. the fate of intravenously injected radiocalcium in human beings". *The Journal of Clinical Investigation*. 35 (1): 78-88

proving someone is ugly<sup>16</sup>. The end result was the city prosecutor, Gary Bucchino, did not file charges noting while the law was still active, this person did not meet the definition. That year marked the end of the ugly law era and the last ugly law was repealed, in Chicago, Illinois.

### **The Community History of disability.**

In some parts of our communities, disabled children were put to death. In some traditional rituals, infant body parts are claimed to bring benefits. Those who continue these practices describe it as "mercy killing"<sup>17</sup>, meaning that the children are spared from enduring painful disabilities in their understanding. People with disabilities are often excluded from community activities. Disabled children are usually hidden from the public, cast out, and even killed. Mothers of these children experience isolation from their extended families, while most of the fathers neglect their families. The Ugandan National Household Survey reports only record disabled people of age 5 and above; leaving out most children.

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<sup>16</sup> Schweik, Susan M. (2009). *The ugly laws : disability in public* ([Online-Ausg.]. ed.). New York: New York University Press.

<sup>17</sup> "The untold story of 'mercy killing' of disabled children in Uganda". Daily Record. 26 February 2018. Retrieved 9 May 2018.

7.1% of Ugandans, which is equivalent to 2.1 million people are reported to be disabled<sup>18</sup>

In Uganda, people with disabilities continue to be largely excluded from communal life. Disability places families, and especially mothers with disabled children, in an undervalued social status. They are denied full participation in society.

Clans and extended families put mothers under too much pressure, seeking to understand the causes of disability and casting a blame on the mother. In some cases, mothers were expelled from their husbands' households for producing disabled children.

### **National legal framework on persons with special needs.**

The 1995 Constitution of Uganda as amended

This is the Grund norm, a supreme national instrument providing for the rights of persons with disabilities in Uganda. The following are the common articles of the Constitution, which promote the respect of rights of persons with disabilities:

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<sup>18</sup> *"Helping mothers and disabled children - Uganda - AfricaOur Work - Home -". [www.malteser-international.org](http://www.malteser-international.org)*

Objective vi: The State shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies;

Objective xvi: The State and society shall recognise the rights of persons with disabilities to respect and human dignity;

Objective xxiv: The state shall promote the development of sign language for the deaf;

Article 21(1): All persons are equal before and under the law in all spheres of political, economic and social and cultural life and in every other respect and shall enjoy equal protection of the law;

Article 21(2): A person shall not be discriminated against on the basis of sex, race, colour, ethnic origin, tribe, birth, creed or religion or social economic standing, political opinion or disability;

Article 32(1): The state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reasons created by history, tradition or custom for the purpose of addressing imbalances which exist against them.

Article 35 (1): Persons with disabilities have a right to respect and human dignity and the state and society shall take

appropriate measures to ensure they realize their full mental and physical potential;

Article 35(2) Parliament shall enact laws appropriate for the protection of Persons with Disabilities

Article 32, provides for Affirmative Action, 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 the purpose of redressing imbalances which exist against them.

Article 35 of the 1995 Constitution as amended provides for Rights of persons with disabilities it provides that Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.

It goes further to provide under Clause 2, Parliament shall enact laws appropriate for the protection of persons with disabilities.

Legislators have come up with a number of laws to cater for the needs of persons with special needs.

**Other laws include:**

a) The Parliamentary Elections Statute of 1996 provides for 5 representatives of PWDs in Parliament, at least one of



whom should be a woman and the use of a sign language where applicable;

b) The Children's Statute of 1996 stipulates early assessment of disabilities among children for appropriate treatment, rehabilitation and education;

c). The Local Governments Act, of 1997 provides for representation of PWDs (female and male) at all local government levels;

b) The Uganda Communications Act of 1997 provides for development of techniques and technologies that facilitate accessibility to communications services by PWDs;

c) The Universal Primary Education Act of 1997 commands families with CWDs to give them priority at the time of enrolment;

d) The Uganda Traffic and Road Safety Act of 1998 stipulates that PWDs shall not be denied driving permits on the basis of their disability etc. by reason of his or her disability;

e) The UNISE Act of 1998 provides for establishment of the Uganda National Institute of Special Education, training of teachers for children with special needs as well as special education teachers;

f) The Land Act of 1998 provides that any transaction on customary land that discriminates on PWDs shall be null and void;

g) The National Council for Disability Act of 2003 mandates the Council to bring PWDs' issues to the attention of Government, NGOs, private sector and individuals so as to improve the lives of PWDs.

h) Uganda Communications Act, 1998, provides for the promotion of research into the development and use of new communications techniques and technologies, including those which promote accessibility of hearing-impaired people to communication services.\

i) The Business, Technical, Vocational Education and Training (BTVET) Act, No. 12, 2008, promotes equitable access to education and training for all disadvantaged groups, including disabled people

## **The meaning of special needs in law**

There is no clear definition to satisfy the meaning of special needs however it can be literally understood as The law no longer accredits the term “disability” it was defined by the Persons with Disabilities Act, 2020<sup>19</sup> that “disability” means a substantial functional limitation of a person’s daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on equal basis with others and includes an impairment specified in Schedule 3 to this Act;

However, many activists have come out to condemn such words in a perspective that they are insulting. Under the Penal code cap 120, Laws of Uganda, there was a section to deal with Defilement of idiots or imbeciles.

Be that as it may, it is still part of the legislation as seen in the Act of 2020, even the Grand norm stresses the same in the Constitution of the Republic of Uganda 1995 as amended<sup>20</sup>, The general public have been found to hold a strong stereotype of dangerousness and desire for social distance from individuals described as mentally ill.

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<sup>19</sup> Act 3 of 2020

<sup>20</sup> Objective XVI.

## **Categories of people with special needs.**

### **Autism.**

Autism spectrum disorder (ASD) is a developmental disability caused by differences in the brain. People with ASD often have problems with social communication and interaction, and restricted or repetitive behaviors or interests. People with ASD may also have different ways of learning, moving, or paying attention.

Autism spectrum disorder is a condition related to brain development that impacts how a person perceives and socializes with others, causing problems in social interaction and communication. The disorder also includes limited and repetitive patterns of behavior. The term "spectrum" in autism spectrum disorder refers to the wide range of symptoms and severity.

Autism spectrum disorder includes conditions that were previously considered separate — autism, Asperger's syndrome, childhood disintegrative disorder and an unspecified form of pervasive developmental disorder. Some people still use the term "Asperger's syndrome," which is generally thought to be at the mild end of autism spectrum disorder.

The World Health Organization's International Classification of Diseases (11th Revision) ICD-11, was

released in June 2018 and came into full effect as of January 2022. It describes ASD as follows:

Autism spectrum disorder is characterised by persistent deficits in the ability to initiate and to sustain reciprocal social interaction and social communication, and by a range of restricted, repetitive, and inflexible patterns of behaviour, interests or activities that are clearly atypical or excessive for the individual's age and sociocultural context. The onset of the disorder occurs during the developmental period, typically in early childhood, but symptoms may not become fully manifest until later, when social demands exceed limited capacities. Deficits are sufficiently severe to cause impairment in personal, family, social, educational, occupational or other important areas of functioning and are usually a pervasive feature of the individual's functioning observable in all settings, although they may vary according to social, educational, or other context. Individuals along the spectrum exhibit a full range of intellectual functioning and language abilities<sup>21</sup>

### **Physical disability caused by cerebral palsy.**

Cerebral palsy (CP) is a condition that affects movement and muscle tone. The exact cause, in many cases, is unknown, but

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<sup>21</sup> *ICD-11, chapter 6, section A02*

the disorder occurs when there is abnormal development or damage to areas in the brain that control motor function.

Cerebral palsy refers to a group of neurological disorders that appear in infancy or early childhood and permanently affect body movement and muscle coordination. Cerebral palsy (CP) is caused by damage to or abnormalities inside the developing brain that disrupt the brain's ability to control movement and maintain posture and balance. The term cerebral refers to the brain; palsy refers to the loss or impairment of motor function.

Cerebral palsy affects the motor area of the brain's outer layer (called the cerebral cortex), the part of the brain that directs muscle movement.

In some cases, the cerebral motor cortex hasn't developed normally during fetal growth. In others, the damage is a result of injury to the brain either before, during, or after birth. In either case, the damage is not repairable and the disabilities that result are permanent.

Cerebral palsy is caused by abnormal development of part of the brain or by damage to parts of the brain that control movement. This damage can occur before, during, or shortly after birth. The majority of children have congenital cerebral palsy CP (that is, they were born with it), although it may not be detected until months or years later. A small number of children have acquired cerebral palsy, which means the

disorder begins after birth. Some causes of acquired cerebral palsy include brain damage in the first few months or years of life, brain infections such as bacterial meningitis or viral encephalitis, problems with blood flow to the brain, or head injury from a motor vehicle accident, a fall, or child abuse.

### **Amputation of a limb, paralysis or deformity.**

Amputation is defined as surgical removal or loss of body part such as arms or limbs in part or full<sup>22</sup>. Some victims suffer the loss of a limb in the accident itself. Others may require amputation after the fact due to the severity of their injuries. No matter the case, the loss of a limb is a life-changing trauma. Even in instances where the limb is successfully reattached, victims may still experience significant loss of function and psychological distress.

### **Paralysis.**

A variety of factors can cause paralysis.

- Many paralysis cases are caused by physical trauma such as spinal cord injuries and brain injuries.

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<sup>22</sup> Shores JT, M.D. Health and Amputation by John Hopkins Medicine. Available from: <https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/amputation>

- Hearing disability including deafness and hard of hearing disability.
- Visual disability including blindness and low vision disability.
- Deaf and blind disability.
- Mental disability including psychiatric disability and learning. disability.
- Albinism.

Down syndrome is a condition in which a person has an extra chromosome.

### **Impairment**

This refers to any loss or abnormality of psychological, physical, neurological or anatomic function or structure.

### **Increased vulnerability**

Women with disabilities are extremely likely to face abuse, with at least one out of two disabled women experiencing some form of abuse in their lifetime<sup>23</sup>

The mental disorders are conceptualized as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with

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<sup>23</sup> Khetarpal, Abha (2017-12-20). "Why Is Media Coverage Of Violence Against Disabled Women Still Scant?"



present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom. In addition, this syndrome or pattern must not be merely an expectable and culturally sanctioned response to a particular event, for example, the death of a loved one. Whatever its original cause, it must currently be considered a manifestation of behavioral, psychological, or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious, or sexual) nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the individual, as described above.

You will note that The National Council for Disability Act<sup>24</sup> has had a wide impact to monitor and evaluate the rights of persons with disabilities as set out in international conventions and legal instruments, the Constitution and other laws.

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<sup>24</sup> (No. 14), 2003

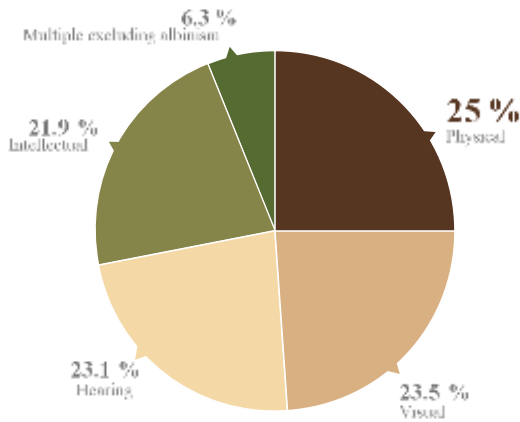
**Table 1: Population of disabled people, by type (2002)**

Disability type	Age			Total	%
	0-17	18-30	31+		
<b>Physical</b>	79,884	66,862	207,584	354,330	41.9
<b>Hearing</b>	62,958	16,539	48,196	127,693	15.1
<b>Visual</b>	36,554	22,484	129,712	188,750	22.3
<b>Speech</b>	18,682	6,736	7,205	32,623	3.9
<b>Intellectual</b>	12,862	7,971	9,205	30,038	3.6
<b>Mental illness</b>	10,421	8,142	12,073	30,636	3.6
<b>Epileptic</b>	11,762	4,891	4,671	21,324	2.5
<b>Rheumatism</b>	3,966	2,709	12,254	18,929	2.2
<b>Other</b>	13,715	7,999	18,804	40,518	4.8
<b>Total</b>	250,804	144,333	449,704	844,841	100.0
<b>%</b>	29.7	17.1	53.2	100.0	

*Source: UBOS (2005). National population and housing census.*

Several children and persons with disability face different type of disability.

Below is the pie-chart showing different disability percentages in Uganda.



*SOURCE: Children with disabilities in Uganda, the hidden reality.*

The European Parliament was involved in finding resolutions for the killings of disabled people in Uganda. They argued that the killings should not take place because: human rights should be respected at all times, everyone has a right to life despite their disabilities.<sup>25</sup>

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<sup>25</sup> European Parliament resolution on mercy killings in Uganda

Etiology of Physical Disabilities, Health Disabilities and Related Low-Incidence Disabilities. The etiology (or cause) of physical and health disabilities varies greatly according to the specific disease or disorder. Some of the most common etiologies resulting in physical and health disabilities are genetic and chromosomal defects, teratogenic causes, prematurity and complications of pregnancy, and acquired causes. In some cases, certain physical or health disabilities have multiple etiologies. For example, cerebral palsy can be caused by prenatal abnormalities, biochemical abnormalities, genetic causes, congenital infections, environmental toxins, prematurity-associated complications, or postnatal events (Griffin, Fitch, & Griffin, 2002; Heller & Tumlin-Garrett, 2009). On the other hand, the exact cause of some physical and health disabilities are unknown. Chromosomal and Genetic Causes Among the most common causes of physical and health disabilities are hereditary conditions resulting from defects in one or both parents' chromosomes or genes. Several genetic defects are believed to contribute to a range of physical and health disabilities, such as mus-

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(2018/2632(RSP))

cular dystrophy, sickle cell anemia, hemophilia, and cystic fibrosis (Heller, 2009b; Heller, Mezei, & Schwartzman, 2009). In some cases, infants may be born with several disabilities resulting from an inherited congenital syndrome (for example, Cockayne syndrome, which can result in mental retardation, dwarfism, deaf-blindness, unsteady gait, and tremors). In these examples, the inherited gene clearly causes the disease or disorder.

Although there are about sixty genetic causes of deaf-blindness (DB-Link, 2007), we have chosen only two illustrative syndromes. Our first example is CHARGE Association (syndrome), which represents a collection of physical irregularities present at birth. This syndrome is an extremely complex disorder typically involving extensive medical as well as physical challenges. CHARGE Association is a relatively rare disorder occurring in 1 out of every 9,000–10,000 births. In the vast majority of cases, there is no history of CHARGE syndrome or any other similar condition in the family (CHARGE Syndrome Foundation, 2007).

## **Characteristics of Individuals with Physical Disabilities, Health Disabilities, and Related Low-Incidence Disabilities**

The specific characteristics of an individual who has a physical or health disability will depend on the specific disease, its severity, and individual factors. Two individuals with identical diagnoses may be quite different in terms of their capabilities. Also, it is important to remember that students who have severe physical disabilities (even individuals who are unable to talk, walk, or feed themselves) may have normal or gifted intelligence. No one should judge a person's intellectual ability based on physical appearance.

A multitude of physical and health disabilities may be encountered at school. Each of them has differing characteristics, treatments, and prognoses. To illustrate the range of conditions included under physical and health disabilities, this section describes a number of sample conditions across the four IDEA categories of orthopedic impairments, multiple disabilities, traumatic brain injury, and other health impairments. Table 13.2 gives an outline of the categories, subcategories, and sample conditions that will

be discussed. Characteristics of individuals with deaf-blindness will also be reviewed. Characteristics of Students with Orthopedic Impairments The IDEA category of orthopedic impairments contains a wide variety of disorders. These can be divided into three main areas: neuromotor impairments, degenerative diseases, and musculoskeletal disorders. Each of these areas has unique characteristics and contains many different disabilities. Following is a sampling of some of the most commonly found orthopedic impairments in the school-age population.

## **The International Perspective of Persons with Special Needs.**

World Health Organisation estimates that approximately 10% of any population is disabled<sup>26</sup>

The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the

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<sup>26</sup> World Health Organization, report 1991

Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3 May 2008.

The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.



The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty<sup>27</sup>.

Article 1 provides for the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2 provides for various definition which include the meaning of “Discrimination on the basis of disability” which means 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

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<sup>27</sup> United Nations, Department of Economic and Social Affairs Disability, 6 May 2022

any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

**The general principles of the Convention under Article 3 include:**

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

It is prudent to note that Uganda is also State Party to the CRPD, ratified it in September 2008.

**Other international laws include the following**

The Alma Ata Declaration of 1978, which emphasises inclusion of the rehabilitation approach into the primary health care system;

The International Labour Organisation Convention No. 159 and Recommendation 168 on vocational rehabilitation and employment of PWDs;

The World Programme of Action 1983, which advocates for full participation of PWDs in the development process;

The World Declaration on Education for All, 1990;

The Vienna World Conference on Human Rights 1993 Resolutions, which stipulate promotion of rights of PWDs;

The UN Standard Rules for Equalisation of Opportunities 1993, which guides policy making;

The UNESCO Salamanca Framework of Action on Special Needs Education 1994, which emphasises promotion of education and inclusion of all CWDs.

Persons with disabilities as per the UN Convention on the Rights of Persons with Disabilities

include those who have long-term physical, mental, intellectual or sensory impairments and/or chronic conditions which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

### **Persons with Disabilities Act, 2020**

This is an Act to provide for the respect and promotion of the fundamental and other human rights and freedoms of persons with disabilities; to re-establish the National Council for Disability as the National Council for Persons with Disabilities; to transfer the property of the Uganda Foundation for the Blind to the National Council for Persons with Disabilities; to provide for the local government councils for persons with disabilities; to repeal the Persons with Disabilities Act, the National Council for Disability Act and the Uganda Foundation for the Blind Act, and to provide for related matters<sup>28</sup>.

In the outset, Part II of the Act provides for the Rights of persons with disabilities and non-discrimination.

It provides that A person with a disability shall enjoy the fundamental and other human rights and freedoms enshrined in the Constitution. In this way the Government

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<sup>28</sup> The long title of the Act, *ibid* 1

and all persons in Uganda are entitled to respect, uphold and promote the fundamental and other human rights and freedoms of persons with disabilities enshrined in the Constitution and the United Nations Convention on the Rights of Persons with Disabilities and its optional protocols. the Government and all persons in Uganda shall enforce and implement the laws of Uganda without discrimination on the basis of disability.

On this point you will note that in all public buildings the Government has made it a must to have way in and way out to help people with special needs to access these buildings.

Under section 1 of the Act building to which the public is allowed access” means a building specified in Schedule 2 to this Act. These include Government offices, Health units, Mosques, churches and other places of worship, Recreation and sports facilities, Court houses, Police stations, Schools and institutions of higher learning, Airport buildings, Shopping malls. Buildings where the services in Schedule 4 are provided.

### **Rights of People with Special Needs.**

Under the 1995 constitution of Uganda as amended, Article 21 provides for right of equality which avers that All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect

and shall enjoy equal protection of the law. clause 2 further provides that Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.

### **The right to enjoy family life**

This is provided under Section 4 of the Act which provides that A person with a disability has a right to a home, to found a family, adopt, be a guardian or trustee of a child in accordance with the relevant laws and is entitled to—

(a) have sexual and other intimate relationships;

(b) equal rights at and in marriage, during marriage and at its dissolution;

(c) raise his or her child and shall not be separated from his or her child except in accordance with the law and best interests of the child.

A child with a disability has a right not be separated from his or her family except in accordance with the law and best interests of the child. This is most cases called the “welfare principle” which is always a question of fact during Divorce on who is to take up custody of a child.

Section 4(3) goes further to provide that A child with a disability shall— (a)enjoy all the rights enshrined in the Children Act, Cap. 59 on an equal basis as a child without a disability; and (b)have the right to know and be cared for by his or her parents or guardian.

It therefore important to note that a parent or guardian of a child with a disability shall have the duty to raise the child and ensure the child's proper upbringing and development. (5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding twenty-four currency points or a term of imprisonment not exceeding twelve months, or both.

#### Prohibition of inhuman and degrading treatment for persons with disabilities

The Act under section 5 provides that A person with a disability shall not be subjected to any form of torture or cruel or degrading treatment. This is in line with the Constitutional provision under Article 24.

(2)A person with a disability shall not without his or her free and informed consent be subjected to— (a)medical or scientific research; (b)harmful traditional or cultural practices; or (c)forced sterilisation. (3)A person who subjects a person with a disability to a condition specified in this section commits an offence and is liable, on conviction,

to a fine not exceeding twenty currency points or imprisonment not exceeding one year, or both.

6. Non discrimination in the provision of education services

(1) An institution of learning shall not discriminate against a learner with a disability, on the basis of the disability.

(2) Subsection (1) does not apply where an institution of learning is established for learners of a specific disability, and the learner does not have that disability. (3) An institution of learning discriminates against a learner with a disability where—

(a) on the basis of the disability, the institution of learning refuses to accept an application for admission, made by the learner with a disability who is otherwise qualified for admission; (b) the conditions for admission to the institution of learning exclude the admission of learners with disabilities; (c) the institution of learning denies or limits access of a learner with a disability, to the available facilities and services; (d) the institution of learning expels a learner with a disability, on the basis of the disability; or (e) the institution of learning subjects the learner with a disability to any unfair treatment, on the basis of the disability.

(4) An institution of learning that enrolls a learner with a disability shall—

(a) provide an inclusive education system for the learner; and  
(b) make the necessary structural adjustments to the buildings



and premises of the institution of learning, to enable access to the building or premises by a learner with a disability, within three months from the date of admission of the learner. (5) In addition to the requirements under subsection (4), an institution of learning which is owned or aided by Government that enrolls a learner with a disability, shall provide sign language services, learning instructional materials and assistive devices, suitable for the learner and required for examinations by the learner. (6) A parent or guardian of a child with a disability has the responsibility of enrolling the child in an institution of learning or ensuring that the child is enrolled in an institution of learning.

(7) Where the child referred to in subsection (6) is to be enrolled in an institution of learning with an inclusive education system, the institution of learning shall, where applicable, be of the same or comparable standard as that in which the other children under the care of the parent or guardian are enrolled. (9) A person who willfully prevents a child with a disability from attaining education commits an offence, and is liable, on conviction, to a fine not exceeding twenty currency points or imprisonment for a term not exceeding six months or both. (10) In this section “inclusive education system” means a system where a learner with a disability is taught together with the other learners, in the same environment, and where, if required under subsection (5), extra support is given to the learner with a disability.

The right of Non-discrimination in the provision of health services.

This is provided for under Section 7 of the Act, Under subsection (1) provides that A health unit shall not discriminate against a person with a disability, on the basis of the disability. (a)on the basis of the disability, the person is denied admission or treatment at the health unit; (b)the health unit does not comply with the requirements of section 10(1) and (2)and is not accessible by persons with disabilities; or (c)the health unit does not provide accessible labour beds, examination tables or wheel chairs for persons with disabilities. For the purposes of subsections (2) and (3), “accessible labour bed” and “accessible examination table” means a labour bed or an examination table that is appropriate for the disability of the person using the bed or table. A parent or guardian of a child with a disability, shall ensure that the child receives required immunisation and medical treatment. A child with a disability shall be immunised and receive medical treatment at health unit of the same or comparable standard as those to which the other children under the care of the parent or guardian are immunised and receive treatment. The Government shall provide persons with albinism with skin protective creams and persons with disabilities with assistive devices at no cost or subsidised prices.

Habilitation and rehabilitation for persons with disabilities

The Minister responsible for health and the Minister responsible for education shall, in consultation with the Council and the Minister, provide habilitation and rehabilitation services and programmes for the persons with disabilities. The Government shall offer counselling services and inform persons with disabilities and their parents or guardians, caregivers and the members of communities where persons with disabilities are resident, on the habilitation and rehabilitation services that are available for persons with disabilities.

### **Enforcement of rights of persons with Disabilities.**

Article 50<sup>29</sup> provides for the Enforcement of rights and freedoms by courts under Clause 1, it puts it clear that Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

The Uganda Human Rights Commission in 2004 established a Vulnerable Persons' Unit to address issues raised by vulnerable groups – including people with disabilities. The issues raised by people with disabilities

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<sup>29</sup> 1995 Constitution as amended.

to the commission to date are mainly related to education, transport, employment and access to basic services.

### **Special Needs Education.**

It is learner centred, flexible and adjustable to the individual needs and potential of every child.

It prudent to note that An institution of learning that enrolls a learner with a disability shall provide sports facilities and equipment specific to the needs of the learner with a disability and put in place measures to facilitate the participation of learners with disabilities in sports and other co-curricular activities<sup>30</sup>.

In 1962 Mr. Edward Roberts a U.S Student successfully sued to gain admission to the University of California, Berkeley, making him the first student with severe disabilities to attend that school<sup>31</sup>

Objective XVIII of the 1995 Constitution as amended clearly provides for Education Objectives

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<sup>30</sup> Section 6(8) of the Persons with Disabilities Act 3, 2020

<sup>31</sup> *"National Association for Down Syndrome website*

- (i) The State shall promote free and compulsory basic education.
- (ii) The State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.
- (iii) Individuals, religious bodies and other non-governmental organisations shall be free to found and operate educational institutions if they comply with the general educational policy of the country and maintain national standards

Talking about education, Article 24<sup>32</sup> requires States to recognise a right to education for disabled people without discrimination and on the basis of equal opportunities.

Uganda is a signatory to the international agreements/commitments that provide for learners with special needs. One example of such instruments that bind those agreements is the Salamanca Statement and Framework for Action on Special Needs Education (1994). This instrument emphasizes:

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<sup>32</sup> The Convention on the Rights of Persons with Disabilities

1. The Right of all children, including those with temporary and permanent needs for educational adjustments to attend school.
2. The Right of all children to attend school in their home communities in inclusive classes.
3. The Right of all children to participate in a child-centred education meeting individual needs.
4. The Right of all children to participate in quality education that is meaningful for everyone.

In consonance with the Government Constitution (1995), Uganda has put in place The Persons with Disability Act (2020) and has also ratified the United Nations Convention on the rights of persons with disabilities (2008). Both instruments demand for access, equity and quality as regards educational services for persons with special learning needs.

To meet those requirements, the Ministry of Education & Sports put in place a department responsible for special needs and inclusive education.<sup>33</sup>

### **Special education and needs disability.**

The four main SEND areas are:

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<sup>33</sup> Education policy review commission, January 18, 2023.

- Communication and Interaction.
- Cognition and Learning.
- Social, Emotional and Mental Health difficulties.
- Physical and/or Sensory Needs.

According to twinkl, it breaks up the above main points in the following ways.

**Communication and interaction:**

We should understand that Communication and Interaction can encompass a lot of needs and issues that a child may have, including Autistic Spectrum Condition (ASC). Some communication and interaction issues that can present themselves in Autistic children include:

- Difficulties understanding and using verbal and non-verbal communication.
- Understanding social behaviours and expectations, which can impact on a child's ability to interact with other children and adults around them.
- A reliance on structure and routine in their life<sup>34</sup>.

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<sup>34</sup> <https://www.twinkl.com.ph/teaching-wiki/four-areas-of-send>

As well as ASC, Communication and Interaction can also include Speech, Language and Communication Needs (SLCN).

Children and young people can experience a range of difficulties that are linked with speech and language.

Speech, Language and Communication Needs can present themselves in a variety of ways, including:

- The production of speech.
- Struggling with finding the right word, or not being able to join words together in a meaningful way.
- Problems communicating through speech, for example difficulties finding the correct language to express thoughts and ideas that they are having.
- Difficulties and delays in understanding or responding to verbal cues from others.
- Understanding and using language in specific social situations<sup>35</sup>.

### **Cognition and Learning:**

Cognition and learning can cover a range of needs. Children are identified as having cognition and learning needs if they

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<sup>35</sup> Ibid 14



have difficulties with literacy and numeracy (which therefore impacts their ability to access learning across the curriculum), or if their levels of attainment are significantly below age-related expectations.

Some pupils with cognition and learning needs may have a Specific Learning Difficulty (SpLD) Some examples of specific learning difficulties are:

**Dyscalculia:**

Pupils with dyscalculia have difficulty in acquiring maths-based skills. This can be especially clear if a pupil performs well in all other subjects. Children with dyscalculia can struggle with spotting patterns and making estimates.

**Dysgraphia:**

Dysgraphia is a specific learning difficulty that can affect a child's ability to express themselves through writing. Dysgraphia affects fine motor skills. This means that it is often the case that children with dysgraphia can express themselves orally fluently but struggle when writing.

**Dyslexia:**

Dyslexia is a specific learning difficulty that affects the way that someone processes information. This makes skills like spelling and reading difficult, and can affect organisational skills and memory.

## **Dyspraxia:**

Dyspraxia is also known as developmental coordination disorder (DCD). For children with dyspraxia fine and gross motor skills can be difficult to learn. This means that they can show signs of clumsiness and struggle with organisation skills.

Pupils with dyspraxia may also have poor balance, coordination, and spatial awareness, and may try and avoid certain actions like running, skipping, and hopping.



Other children identified as having Cognition and Learning Needs may have more general learning difficulties or disabilities. These are known as global difficulties and include moderate learning difficulties (MLD), severe learning difficulties (SLD), and profound and multiple learning difficulties (PMLD).

### **Moderate Learning Difficulty (MLD)**

Children with MLD may have greater difficulty in basic literacy and numeracy. They may also have speech and language issues. Pupils with MLD are likely to need additional support outside of the National Curriculum.

The effects of having an MLD can also lead to children having lower self-esteem, lower levels of concentration, and under-developed social skills, so it is important that adults watch out for the well-being of pupils as well as their academic achievements.

### **Severe Learning Difficulty (SLD)**

Children with severe learning difficulties are likely to need substantial support in all areas of the curriculum.

Most children with SLD have other needs such as physical, sensory, communication, and interaction needs and social and emotional needs, as well as their cognition and learning needs.

### **Profound and Multiple Learning Difficulty (PMLD)**

Children with Profound and Multiple Learning Difficulties have more than one disability, the most significant of which is a profound learning disability.

Having a profound learning disability and other disabilities significantly affects an individual's ability to communicate and be independent.

Children with PMLD may have difficulties seeing, hearing, speaking, and moving. It is likely that they will have needs in all four areas.

Since cognition and learning cover a whole range of needs, we have lots of different Cognition and Learning resources to support you with your teaching. Some of these resources include:

Drag the Car Fine Motor Skills Game - This interactive game is a brilliant way to support the growth of fine motor skills in children. In each level, children will drag the car through increasingly difficult paths.

Dyslexia Intervention: Simple Sentences - We have a variety of different dyslexia intervention packs to help boost the confidence of children with dyslexia when dealing with different literacy skills. This pack looks at simple sentences and specifically at the importance of leaving appropriate space between words when writing them down.



### **Social, Emotional and Mental Emotional Health:**

Children with Social, Emotional, and Mental Emotional Health can display signs of this in a variety of different ways, some may be withdrawn and prefer to be alone, whilst others may be hyperactive and find it difficult to when concentrating on tasks.

For some children, their emotional needs may impact their learning. For example, they may not be able to follow requests such as to sit still with arms folded or stay quiet during lessons. It is important that children with SEMH needs are able to learn in an environment that suits them, for example, they may need to take regular movement breaks, use fidget items, and be given opportunities to move around the classroom or school whilst learning

Children with SEMH needs may have anxiety. This may be reduced by providing clear routines and explanations of what to expect each day. Children with anxiety may also benefit

from being provided with a calm space to go to whenever they need it.

Our Social, Emotional and Mental Health Difficulties are designed to help students to feel comfortable with their own emotions, and in positively expressing them. For example, you might find these resources useful:

Health and Wellbeing Pack - This pack is designed for adults to support children with their mental health and well-being. It includes activities that help to promote mindfulness like mindfulness colouring pages and how to create a positivity jar.

My Stress Bucket Lesson Pack - School can feel very overwhelming, and the activities contained in this lesson pack aim to help children in recognising and managing stress. It is great for encouraging children to visualise how their emotions may be affecting them.

### **Sensory and/or Physical:**

Some examples of sensory and physical needs include:

Hearing Impairments:

In educational settings, pupils are typically considered to have a Hearing Impairment if they require hearing aids or adaptations to their learning environment in order to access the National Curriculum.

### Visual Impairment:

In general, a Visual Impairment is defined as an eyesight problem that cannot be corrected with glasses, contact lenses, or surgery.

In educational settings there are a few different terms that may be used including partially sighted, low vision, legally blind, and totally blind to describe the level of sight a student has and help determine the adaptations that they may benefit from.

### Sensory Processing Difficulties:

Children with sensory processing difficulties may be sensory avoiders, or sensory seekers. This can result in them avoiding certain experiences or becoming anxious or overwhelmed by sensory input. It can also cause children to seek out sensory input, for example by making repeated movements, chewing items or fiddling. Sensory processing issues are particularly common among Autistic pupils, and providing a learning environment that meets these needs will enable pupils to learn more easily and improve wellbeing.

To help you, we have designed a range of activities and advice designed to support students with sensory or physical needs. Here are some resources we think you'll love:

Back to Earth with a Bump Sensory Story - Sensory stories are a fantastic way to engage children with the books you read in class. This particular sensory story can also help to engage children with a space topic. It plays with senses by using various light sources and even has rocket sounds! Make Shapes Flashcards- Our making shapes flashcards are a fantastic way to support children with gross motor skills in quick bursts.

## **Special schools in Uganda**

A special school is a school catering for students who have special educational needs due to learning difficulties, physical disabilities or behavioral problems. Special schools may be specifically designed, staffed and resourced to provide appropriate special education for children with additional needs.

The 2013 Uganda Bureau of Statistics illustrates the enrolment of children with disabilities in Primary and Secondary school for the period 2007-2010 as below:

**Table of enrolment of Primary schools pupils with Special Needs (2008-2010)**

<b>Class</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>P1</b>	38,169	40,023	40,895		
<b>P2</b>	28,502	30,430	31,263		
<b>P3</b>	30,828	36,528	34,847		



<b>P4</b>	29,572	33,796	35,128		
<b>P5</b>	24,881	28,287	27,781		
<b>P6</b>	19,585	21,986	22,233		
<b>P7</b>	12,000	13,302	12,871		
<b>TOTAL</b>	83,537	204,352	205,018	-	-

Source: UBOS Statistical abstract, 2013

Table of enrollment in Secondary school students with Special Needs (2007-2010)

<b>Year/ Class</b>	<b>S1</b>	<b>S2</b>	<b>S3</b>	<b>S4</b>	<b>S5</b>	<b>S6</b>	<b>Tot al</b>	<b>% of enrolm ent</b>
<b>2007</b>								1.3
	2,9 90	2,5 55	2,5 33	2,1 25	1,0 54	84 6	12, 103	
<b>2008</b>								1
	2,8 30	2,6 89	2,1 28	1,8 31	86 2	80 5	11, 145	
<b>2009</b>								1.1
	3,2 75	3,0 52	2,8 97	2,0 83	1,1 72	93 9	13, 418	
<b>2010</b>								1.1
	3,2 08	3,0 11	2,6 32	2,2 46	1,0 53	84 3	12, 993	

<b>2011</b>							-	
<b>2012</b>							-	

*Source: UBOS Statistical abstract, 2013*

## **The world history of special schools**

### History of special schools

One of the first special schools in the world was the Institute National des Jeunes Aveugles in Paris, which was founded in 1784. It was the first school in the world to teach blind students.<sup>[27]</sup> The first school in U.K. for the Deaf was established 1760 in Edinburgh by Thomas Braidwood, with education for visually impaired people beginning in the Edinburgh and Bristol in 1765.

In the 19th century, people with disabilities and the inhumane conditions where they were supposedly housed and educated were addressed in the literature of Charles Dickens. Dickens characterized people with severe disabilities

as having the same, if not more, compassion and insight in Bleak House and Little Dorrit<sup>36</sup>.

Such attention to the downtrodden conditions of people with disabilities brought resulted in reforms in Europe including the re-evaluation of special schools. In the United States reform came more slowly. Throughout the mid half of the 20th century, special schools, termed institutions, were not only accepted, but encouraged. disabled students were housed with people with mental illnesses, and they were not educated much, if at all<sup>37</sup>.

Deinstitutionalization proceeded in the US beginning in the 1970s following the exposes of the institutions, and it has taken sometime before the Education for All Handicapped Children's Act of 1974, to the Individuals with Disabilities Education Act (IDEA) and then Individuals with Disabilities Educational Improvement Act (IDEIA) have come into fruition<sup>38</sup> School integration was supported as early as the

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<sup>36</sup> *The history of special education: From isolation to integration*. MA Winzer

<sup>37</sup> *McCuen, Scott (February 1997). "Inventing the Feeble Mind: A History of Mental Retardation in the United States". Journal of Health Politics, Policy and Law. 22 (1): 254–257.*

<sup>38</sup> *Turnbull, H. R., Beegle, R. & Stowe, M.J. (2007). Public policy and developmental disabilities: A 35-year retrospective and a 5-year prospective on the core concepts in disability. In: S. Odom, R.H. Horner,*

1970s, and teacher preparation programs in higher education have carefully taught and instructed graduates on inclusion at the classroom, individual, school, and district levels for decades resulting in dual certification of "regular teachers".

With the Amendments to the Individuals with Disabilities Education Act of 1997, school districts in the United States began to slowly integrate students with moderate and severe special needs into regular school systems. This changed the form and function of special education services in many school districts and special schools subsequently saw a steady decrease in enrollment as districts weighed the cost per student. It also posed general funding dilemmas to certain local schools and districts, changed how schools view assessments, and formally introduced the concept of inclusion to many educators, students and parents<sup>39</sup>.

In Uganda's perspective, it is important for us to borrow a leaf from Article. 13<sup>40</sup> it provides for the Right to Education,

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M.E. Snell, & J. Blacher, *Handbook on Developmental Disabilities*, 15-34. London: Guilford Press.

<sup>39</sup> Jorgensen, C.M. (1998). *Restructuring high school for all students: Taking inclusion to the next level*. Baltimore: Paul H. Brooks Publishing co

<sup>40</sup> Covenant UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.3, 8 December 1999, E/C.12/1999/10, para 6

Therefore, with such history there has been a development of a number of Special schools around the globe. In Uganda such schools include: These schools include the following:

- Glory Special Needs Primary School Kitgum Special Needs
- Mbale School For The Deaf Mbale Special Needs
- Mulago School For The Deaf Kampala Special Needs
  
- Ngora School For The Deaf Ngora Special Needs
- Salama School For The Blind Mukono Special Needs
- St. Francis Secondary School For The Blind Soroti Special Needs
- St. Francis Primary School For The Blind Soroti Special Needs
- Uganda School For The Deaf Kampala Special Needs
- Glory Special Needs Primary School
- Mulago School For The Deaf
- St. Francis Secondary School For The Blind
- St. Francis Primary School For The Blind
- Ngora School For The Deaf
- Uganda School For The Deaf
- Nancy Comp Secondary School For The Deaf
- Salama School For The Blind

These have impacted a lot in the learning area of those that are considered to be with special needs.

In the case *Mills v. Board of Education of District of Columbia*<sup>41</sup>, it was a lawsuit filed against the District of Columbia in the United States District Court for the District of Columbia. The court ruled that students with disabilities must be given a public education even if the students are unable to pay for the cost of the education.<sup>[80]</sup> The case established that "all children are entitled to free public education and training appropriate to their learning capacities".<sup>[81]</sup> Peter D. Roos, a former staff attorney at Harvard University's Center for Law and Education, described *Mills* as a "leading case" in a series of lawsuits that attempted to provide access to education for children with disabilities.

### **Disability policy in Uganda.**

After years of civil conflicts, the NRM came to power in 1986 and brought some measure of stability and economic progress to Uganda. In an effort to revive the education sector, the Museveni government established the Education Policy Review Commission (EPRC) in 1987 to examine the state of education and recommend measures to improve the sector. The EPRC recommended the government implement free universal primary education (UPE) by 2000

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<sup>41</sup> 348 F.Supp. 866 (D.D.C. 1972),

(Ministry of Education and Sports, 1999)<sup>42</sup>. In 1992 the government appointed a White Paper committee that subsequently accepted the major recommendations of the EPRC, as a result preparation to implement UPE begun. In addition to UPE, the White Paper proposed increased financial support for special education institutions and the introduction of inclusive education. The UPE policy was implemented in 1997. Under the policy the government pledged to pay tuition fees for four children per family, pay for instructional materials, built basic physical facilities in schools and paid for teachers (Ministry of Education and Sports, 1999). If the household had a child with disabilities, the disabled child was to be given first priority; this is line with the constitution that guarantees affirmative action in favor of people with disabilities<sup>43</sup>. However, the UPE policy was amended in 2003 to benefit all children in a family.

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<sup>42</sup> Access to education for children with disabilities in Uganda: Implications

for Education for All Peter Moyi, University of South Carolina

<sup>43</sup> <http://www.right-to-education.org/country-ode/400/country-constitutional>

## **Children with special needs**

Article 7<sup>44</sup> provides for the rights of Children with disabilities, it goes further to state the following provisions

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

In Uganda about 16% of Ugandan children have a disability, this suggests that most children with disabilities are not able to attend school and that learners with special needs fail to transition from one educational level to another. Only 5

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<sup>44</sup> The Convention on the Rights of Persons with Disabilities



percent of children with disabilities can access education through Inclusive Schools and 10% through special schools<sup>45</sup>

According to the Ministry of Education and Sports (2017) some 9,597 pupils enrolled in pre-primary schools (1.6%) have impairments. The majority were children with ‘mental impairment’ (28%) followed by ‘hearing impairments’ (25%), ‘visual impairment’ (22%), ‘physical impairment’ (16%), ‘autism’ (5%) and ‘multiple handicaps-deaf and blind’ (4%).

There are 172,864 children with special needs in primary schools, which is 2.0% of total primary level enrollment and 9% of the overall children with special needs. Regarding the category of impairment, hearing (27.2%), mental (22.7%), visual (25.8%), and physical impairments (17.9%) constitute the percentages. More than half (52.6%) of the pupils with disabilities are males.

Out of 1,370,583 students enrolled in a secondary school in Uganda, 8,945 students (0.6%) have special learning needs. Visually impaired students comprise the largest share of these students, followed by those with physical disabilities. Pupils with autism and multiple handicaps were fewer among enrolled students. There is no data available on students with disabilities enrolled in universities and other tertiary

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<sup>45</sup> (UNICEF, 2014).

institutions. There is an urgent need for such data to ensure equitable access to tertiary education.<sup>46</sup>

The form of treatment given to people with disability has not been encouraging of late. A July report released by the National Council on Disability (NCD) indicated 55 percent of persons with disabilities lacked functional literacy skills, and only 33 percent studied to primary grade seven<sup>47</sup>

### **What should be taught in the special schools**

After acknowledging the presence of these schools, it is quite important to understand what is taught there is another thing, Baumgart, D noted that One of the basic goals of educational programs for severely handicapped students should be to teach the performance of chronological age-appropriate and functional skills in as many school and non-school environments as possible. However, as one examines actual educational programs, it is usually obvious that such a goal is far from realized or, in many cases, it is never even

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<sup>46</sup>Special Needs Education in Uganda: Sustainable Development Goal (SDG) #4 Concerns Quality and Inclusive Education, February 7, 2020

<sup>47</sup>Uganda 2012 Human Rights Report (Report). Bureau of Democracy, Human Rights, and Labor. 2012

addressed.<sup>48</sup> he goes further to introduce an age hypothesis, he averred that the All or Nothing Hypothesis refers to the requirement that there are reasonable assurances that a student can acquire all the skills in an activity before instruction is initiated. Utilizers of the all or nothing hypothesis assume that unless it is the considered judgment of an adult that a student will be able to perform all the skills required, at least several possibilities are more appropriate.

## **The Civil and Political rights.**

Civil rights.

In 1973 – The Rehabilitation Act of 1973 became law; Section 504 of the Act states “No otherwise qualified handicapped individual in the United States, shall, solely by reason of his [sic] handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

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<sup>48</sup> Baumgart, D., Brown, L., Pumpian, I., Nisbet, J., Ford, A., Sweet, M. Messina, R., & Schroeder, J. (1982). Principle of partial participation and individualized adaptations in educational programs for severely handicapped students. *Journal of the Association for Persons with Severe Disabilities*, 7, 17-27.

federal financial assistance." This was one of the first U.S. federal civil rights protections for people with disabilities. The Rehabilitation Act of 1973<sup>49</sup>, is a federal law, that exists to extend and revise the authorization of grants to states for vocational rehabilitation services, with special emphasis on services to those with the most severe disabilities, to expand special federal responsibilities and research and training programs with respect to individuals with disabilities, to establish special responsibilities in the Secretary of Health, Education, and Welfare for coordination of all programs with respect to individuals with disabilities within the Department of Health, Education, and Welfare, and for other purposes. The Rehabilitation Act requires affirmative action in employment by the federal government and by government contractors and prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.

Article 59<sup>50</sup> provides for a right to vote regardless of ones' status as long as he or she is above 18 years.

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<sup>49</sup> (Pub. L. 93-112, 87 Stat. 355, enacted September 26, 1973

<sup>50</sup> 1995 Constitution of Uganda as amended

Political participation of people with Special needs.

In the U.S, In 1984 the Voting Accessibility for the Elderly and Handicapped Act became law in the U.S., and it mandated "handicapped and elderly" access to polling places, and provided for the creation of permanent disabled access voter registration sites

In the government's effort to ensure that there is adequate representation of people with disability in roles of position, there are 5 seats in parliament which have been reserved for persons with disabilities<sup>51</sup>

A very few number of Disabilities rights activists included at a time of which included Margaret Baba Diri. Margaret Baba Diri is a Ugandan politician who was first elected into the Ugandan Parliament as a representative of people with disabilities in 1996 where she has been to date. Prior to joining politics she worked as a teacher at St. Charles Lwanga in Koboko between 1976 and 1990 and also as a gender development officer at National Union of Disabled Persons of Uganda (NUDIPU) between 1992 and 1996. She later joined politics as a representative of persons with disabilities. She has been in Parliament for five terms from 1996 within

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<sup>51</sup> "Etiology of Physical Disabilities, Health Disabilities, and Related Low-Incidence Disabilities"

which she also represented Koboko as a Woman Member of Parliament<sup>52</sup>.

She has been on a core front of legislating better laws for people with disabilities. Margaret Baba Diri is a member of the Parliamentary Committee on Commissions, State Authorities and State Enterprises and also a member of the Parliamentary Committee on Education and Sports

Prior to the enactment of The National Council for Disability (Amendment) Act, Act 6 of 2013 the election of representatives of this particular special interest group were governed by section 8(4) (e) of the Act 17 of 2005, SI No. 30 of 2001 as amended by SI No. 6 of 2011.

These provisions were challenged in the case of *Kasozi & 3 Ors v Attorney General* which was a combination of three petitions including Constitutional Petition No.37 of 2010, Constitution Petition No. 40 of 2010 and Constitution Petition No. 48 of 2010. Challenging the manner in which the election of persons with special needs was conducted.

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<sup>52</sup> "Visually impaired MP, Margaret Baba Diri still striving in Parliament". NTV Uganda. NTV News.

In the case of *Kasozi & 3 Ors v Attorney General & 2 Ors*<sup>53</sup> this was a combination of three petitions. All the above three petitions were filed in 2010 challenging the constitutionality of different aspects of the law relating to the election of special interest groups to Parliament. Unfortunately, these petitions were not heard until the latter part of 2015. In the meantime, one national parliamentary election had taken place in 2011 under the challenged law and another election is about to take place in early 2016. The failure by this court to hear and dispose of these matters in time as required by the Constitution, including setting aside every other matter to dispose of pending constitutional matters is a regrettable lapse which is simply not acceptable.

Prior to the hearing of the said petitions the court ordered that the said petitions be heard together as the matters in issue were basically challenging the constitutionality of election law in relation to special interest groups and it was convenient that the same be heard together. Parties were allowed to file amended petitions to take account of later developments from the time of the filing of the petitions to date which impacted the petitioners' complaints while these petitions were in limbo. All the petitioners filed amended

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<sup>53</sup> (Constitutional Petition 37 of 2010) [2015]

petitions and the respondents responded in respect of CP No.37 of 2010.

Looking at the first Petition Constitutional Petition No. 37 of 2010

It is contended in CP No. 37 of 2010 that sections 8 (4) (b), (c), (d) and (e) of the Parliamentary Elections Act; SI No. 31 as amended by SI No. 6 of 2011; National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act are inconsistent with and contravene Article 78 (4) of the Constitution. It is further contended that the Parliamentary Elections (Special Interest Groups) Regulations S1 31 of 2001 as amended by SI 6 of 2011 is inconsistent with Articles 29(d), (e); 38(1); 61(a); 67(1) and 1(4) of the Constitution. It was further contended that sections 18 to 20 of the National Youth Council Act are inconsistent with and contravene Article 155 of the Constitution.

The 2011 general elections in respect of the workers, youth and persons with disabilities as special interest groups are contended to be inconsistent with and to have contravened Article 29(d) and (e) of the Constitution.

The National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act 2010 are challenged for being inconsistent with Articles 29(e) and 38(1) of the Constitution.



The substance of the petitioner's complaint is set out in paragraph 2 of the petition and we shall reproduce the same:

(a) That the constitution requires parliament to enact law prescribing the procedure for elections of parliamentary representatives for the army, youth, workers and persons with disabilities.

(b) That instead of prescribing the procedure parliament made law delegating its authority to the minister.

(c) That in respect of the army the minister then made regulations delegating the delegated authority to prescribe the procedure to the army council.

(d) That the army council has never made known to Uganda the procedure by which army representatives are elected.

(e) That in respect of representatives of workers, the minister did not prescribe the procedure but instead invoked the constitution of the Federation of Trade Union Organisations.

(f) That in respect of person with disabilities the minister prescribed the procedure to elect members of Parliament in one sentence. The "procedure" does not amount to a procedure intended by Article 78 (4) of the Constitution.

(g) In respect of the youth no procedure exists since provision establishing district youth councils which form the Electoral

College were declared unconstitutional. The National Youth Council (Amendment) Act 2010 and the National Women's Council (Amendment) Act 2010 are themselves unconstitutional and their term had come to an end.

(h) The national budget of 2010/11 contains provision for National Youth Councils which are voluntary organisations and as such not expenditure envisaged by Article 155(1) of the Constitution.

(i) Whereas the constitution provides for workers representatives, the majority of workers have no voice in determining who will represent them.

(j) Both Parliament and the minister have not prescribed a procedure as required by the Constitution.'

The Petitioner seeks several declarations relating to the laws which are inconsistent with and contravene the Constitution and specifically seeks the following orders.

'(a) That parliament enacts a law as required by Article 78(4) of the Constitution.

(b) A permanent injunction do issue against holding elections in respect of the special interest groups under the present legal framework.'

## **Criminal cases against people with special needs.**

In 1972, In the case of Jackson v. Indiana, the U.S. Supreme Court ruled that a person adjudicated incompetent could not be indefinitely committed<sup>54</sup>.

In Rouse v. Cameron<sup>55</sup>, the facts of the case were Charles Rouse had been tried for carrying a weapon without a license, and was found not guilty by reason of insanity and committed without a hearing to St. Elizabeth's Hospital in Washington, D.C. The maximum sentence was one year on the criminal charge. Years later, still in the hospital, Rouse filed a petition for habeas corpus challenging his confinement. Judge David Bazelon, writing for the court in Rouse, became the first appellate judge to say that civilly committed mental patients had a "right to treatment.

In the case of Bushoborozi v Uganda<sup>56</sup> This is an application brought under Section 33 and 39 of the Judicature Act and

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<sup>54</sup> "The University of Alabama, article title Psychiatry and the Law, Landmark Cases, Case Name: Theon JACKSON v. State of INDIANA, 406 US 715; 92 S Ct 1845.

<sup>55</sup> 373 F.2d 451 (D.C. Cir. 1966

<sup>56</sup> (HCT-01-CV-MC 11 of 2015) [2015] UGHCCRD 14

Article 139 (1) of the Constitution of the Republic of Uganda. The Applicant, Bushoborozi Eric, was first detained at Katojo Government Prison, Fort Portal in 2002 for the murder of his child whose head he cut off from the neck claiming that he was killing a snake. He was tried in the High Court before Justice Rugadya Atwooki. Court found that he was insane and therefore returned a special finding of Not guilty by virtue of section 48 (1) of the Trial on Indictment Act (T.I.A). He was then remanded on December 1, 2006 pending the minister's orders as to where should be taken for mental treatment or otherwise be dealt with.

It was submitted by Senior Counsel Cosma Kateeba for the applicant that since December 2006, the minister has never made any orders in respect of the applicant. That the name of the applicant with others is submitted to the Minister every year but he has taken no action. Counsel made reference to a letter (Annexure B2) from the Commissioner General of Prisons dated 17th August, 2012 which shows that efforts are made regularly submitting the names of all inmates remanded pending minister's orders.

Counsel also referred to a letter he wrote to the Chief Registrar on 17th June, 2014 bringing the applicant's case to his attention. He got no remedy. Counsel further submitted that it has become routine for the prison authorities to bring to the attention of every Chief Justice, Principal Judge and resident Judge the many cases pending the Minister's orders

including the instant case. He noted that all the judicial officers have always promised to handle the matter but their promises have turned out to be empty promises.

The special case for this application is that much as he was later treated and became normal, having gained all mental stability, he cannot be released by the prison authorities without a Minister's order.

Counsel submitted that there is no specific provision in any law or procedure to apply for the release of prisoners pending the Minister's order. That when the Minister fails to issue his orders the prison remains stuck with the prisoner and the prisoner cannot lawfully regain his freedom. That is why he moved this court under Article 139 of the Constitution and the general provisions under S. 33 and S. 39 of the Judicature Act.

Mr. Wasswa Adam, the Senior State Attorney, conceded that it was a complex case without an express procedure or solution. He admitted the fact that he had filed no affidavit in reply but prayed that he be granted audience due to the importance of the matter. Court granted him that prayer.

Mr. Wasswa Adam submitted that much as the prisoner had been on remand since his arrest in 2002, court cannot release such a dangerous mental case to the unsuspecting public. He advised that the best procedure is for the applicant to apply for orders of Mandamus to force the minister to make the

orders. He further submitted that if the applicant is released court will have set a bad precedent where ministers and public officers who disobey court orders are not forced to obey and will continue to disobey with impunity.

In final reply Senior Counsel Kateeba submitted that his client is no longer a mental case or a danger to society. He relied on the letter from the In-Charge Katojo Prison (Annexure B1) showing that his client has been in a stable mental state off the treatment since 2012. Counsel said that there is no medical evidence adduced by the state to rebut this report.

Senior Counsel Kateeba further submitted that an applicant who comes to court is like a mendicant who has come to the temple of justice. He is entitled to a just remedy and cannot go away empty handed. That this court has got unlimited inherent powers to grant him a remedy even if he has not applied for orders of mandamus. He prayed that this matter be treated as a special case to grant the applicant the freedom he is entitled to.

Senior Counsel Kateeba made very little reference to the affidavit of the applicant made in support of the application. But it is on record and it stands uncontested. The applicant swears that he committed the murder when he was insane. That he has been on remand since July 2002. He was tried and found not guilty by reason of his insanity. That since his

acquittal in December 2006, he has been on remand at Katojo prison pending the minister's order. That he underwent mental treatment and has been declared mentally stable by the relevant doctors. He attached a report of his stable mental status to his affidavit.

### **The Old Law**

This case demonstrates the ills in our criminal Justice system which we must work so hard to eliminate. It also points at the weakness of the law giving politicians (ministers) judicial powers without a procedure of monitoring and evaluating execution of their orders. Sub-section (3) of Section 48 of the T.I.A gives such judicial powers to the Minister to determine whether an insane prisoner may be confined in a mental hospital, prison or other suitable place of custody or be discharged.

Subsection (4) of Section 48 provides that the superintendent of a mental hospital, prison or other place in which any criminal lunatic is detained by order of the Minister under subsection (3) shall make a report to the Minister of the condition, history and circumstances of every such lunatic at the expiration of three years from the date of the Minister's order and thereafter at the expiration of periods of two years from the date of the last report.

It was conceded by the state that in the instant case and many other cases the prison authorities have been making regular reports to the Minister but he has made no orders to either discharge or otherwise deal with the criminal lunatics. The court is being asked to give justice to such criminal lunatics and in this particular case to give freedom to a former lunatic who has been treated and declared mentally stable. This is a special case where upon receiving the report that the prisoner is no longer a threat or danger to the general public, the Minister should have ordered that he be discharged from custody forthwith.

### **Judicial Activism**

It is true that no procedure is provided for returning the prisoner to court for appropriate orders where the Minister has failed or ignored to issue the necessary orders. But Section 39 of the Judicature Act deals with the jurisdiction of the High Court in the absence of procedures.

Section 39 (2) provides; “where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.”

The learned State Attorney submitted that the best option should have been to sue and apply for orders of Mandamus to force the Minister to make the appropriate orders. No. I



do not agree. Suing the Attorney General for orders of Mandamus will unnecessarily increase litigation costs when the court can actually still act on the same criminal case file. The orders sought are not civil orders. This is a criminal matter whose file has never been closed. Whatever orders are to be given, after the trial of a prisoner, must be judicial orders relating to the execution of the treatment, continued detention of the criminal lunatic or discharge of that prisoner. The question is whether the minister is the most proper person to issue such judicial orders.

Judicial power belongs to the people of Uganda and the people have, through the constitution, vested their judicial power with the Courts of law and not the minister. Article 126 of the Constitution of the Republic of Uganda reads in part:

“(1) Judicial power is derived from the people and shall be exercised by the courts established under the constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people”

Read together with Article 274 clause (1), this law requiring the Minister to exercise judicial power to determine the fate of a prisoner in criminal proceedings would be inappropriate or outdated. Article 274 (1) provides;

“Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.”

The law on Minister’s orders under S. 48 of the Trial on Indictment Act is such a law that should be construed with modifications, adaptations, qualifications and exceptions to bring it in conformity with the constitutional provisions on judicial powers and the right to a fair and speedy trial before an independent and impartial court established by law. (Refer to article 28 of the Constitution). This is a case which calls for judicial activism on the part of judicial officers to breathe life into the law in articles 126,128 and 274 of our Constitution. The Constitution allows our courts to be innovative and introduce changes that will give the law the most correct interpretation and effect that serves the ends of substantive justice. Our hands are not tied by the existing law.

I want to borrow the words of Lord Denning in PARKER vs. PARKER [1954] ALL E.R. 22 and say; what is the argument on the other side? Only this, that no other case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere.

The law will stand still whilst the rest of the world goes on: and that will be bad for both. Thus the winds of change are upon us. We have a duty to give the law a persuasive and liberal legal interpretation.

Hon. Justice Batema N.D.A recommended for the adoption of the following procedure:

Where the trial court makes a special finding that the criminal lunatic is not guilty by reason of being insane, the judge must make special orders as to the discharge or continued incarceration of the prisoner in an appropriate place.

The trial court must order, in line with Subsection (4) of Section 48 of the T.I.A that the superintendent of the mental hospital, prison or other place detaining the prisoner makes periodic reports to the court which may issue appropriate special orders for the discharge of the Criminal lunatic or otherwise deal with him or her.

The Registrar of the Court shall periodically, and in any case not later than three years from the date of the last court order or report from the institution keeping the prisoner, make a production warrant for the prisoner and present the case file before the High Court or any other Court of competent jurisdiction for appropriate special orders.

The need for law reform in the law relating to criminal lunatics remanded pending the Minister's orders has been

made by so many Judges in their reports on Criminal Sessions and decisions. We need not lament more than that. The Deputy Registrar sitting at Fort Portal is hereby directed to serve a copy of my ruling to the Rules Committee and the Principal Judge with a view of prompting the development of some rules and or Practice Directions along what I have recommended in this ruling.

The applicant has been kept on remand for an unjustified period of 14 years in clear violation of his human rights and should be set free forthwith unconditionally.

The application is granted setting free the prisoner.

*In the case of* United States v. Brawner<sup>57</sup>, it is a decision by the United States Court of Appeals for the District of Columbia Circuit in which the Court held that a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he lacked substantial capacity either to appreciate the criminality of his conduct or conform his conduct to the requirements of the law. The case relied on the Durham rule for determining whether a defendant was not guilty by reason of insanity. The Court ruled that the primary reason they were departing from the old test of insanity is that it put substantial dominance on the testimony of experts. The Court

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<sup>57</sup> 471 F.2d 969 (D.C. Cir. 1972)

exhaustively examined the justification for the defense of insanity and the need to guide the jury with a specific framework for the insanity defense. The American Law Institute provided a better framework in the majority's opinion because it took part of the reliance on experts away and focused on the acts and mental state of a defendant at the time he committed the acts constituting the crime

### **The M'Naghten rule in line persons of special needs**

The M'Naghten rule (pronounced and sometimes spelled, "McNaughton") is any variant of the 1840s jury instruction in a criminal case when there is a defense of insanity:

*"that every man is to be presumed to be sane, and... that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong."*

The rules so formulated as *M'Naghten's Case*<sup>58</sup> have been a standard test for criminal liability in relation to mentally disordered defendants in common law jurisdictions ever

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<sup>58</sup> 1843 10 C & F 200

since, with some minor adjustments. When the tests set out by the Rules are satisfied, the accused may be adjudged "not guilty by reason of insanity" or "guilty but insane" and the sentence may be a mandatory or discretionary (but usually indeterminate) period of treatment in a secure hospital facility, or otherwise at the discretion of the court (depending on the country and the offence charged) instead of a punitive disposal. The insanity defence is recognized in Australia, Canada, England and Wales, Hong Kong, India, the Republic of Ireland, New Zealand, Norway and most U.S. states with the exception of Idaho, Kansas, Montana, Utah, and Vermont but not all of these jurisdictions still use the M'Naghten Rules.

In 1850s, When Illinois opened its first hospital for the mentally ill in 1851, the state legislature passed a law that within two years of its passage was amended to require a public hearing before a person could be committed against his or her will. There was one exception, however: a husband could have his wife committed without either a public hearing or her consent.

In 1867, The first American ordinance pertaining to preventing people with disabilities from appearing in public was one passed in 1867 in San Francisco, California. This ordinance had to do with the broader topic of begging. The wording in the San Francisco ordinance indicates violators

will be sent to the almshouse. This connects with the Victorian Era poor law policy<sup>59</sup>.

In 1867, The first recorded arrest pertaining to ugly laws was Martin Oates in San Francisco, California in July 1867. Oates was a former Union soldier during the American Civil War.

### **The finance institutions and people with special needs.**

Basically, a financial institution is an organization that deals in a variety of monetary transactions, such as cash deposits, loans, exchanging securities, and raising capital. Literally, is a company engaged in the business of dealing with financial and monetary transactions such as deposits, loans, investments, and currency exchange.

In U.K, the “Achieving a Better Life Experience Act of 2014” created ABLE accounts. ABLE accounts are tax-advantaged savings accounts for individuals with disabilities and their families and which are based on college 529 Plans. They allow an individual with disabilities to open one account that

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<sup>59</sup> Schweik, Susan M. (2009). *The ugly laws : disability in public* ([Online-Ausg.]. ed.). New York: New York University Press

is not countable as a resource when determining the individual's eligibility

ABLE Accounts, which are tax-advantaged savings accounts for individuals with disabilities and their families. In U.K, the money in an ABLE account also grows tax-free. The disabled person can use the funds to pay for "qualified disability expenses" such as education, food, housing, health care, and transportation.

We should realize that everyone living in a developed economy has an ongoing or at least periodic need for the services of financial institutions.

The question of the day now will be whether people with special needs are allowed to access and manage their financial accounts. In the case of *Crane Bank Ltd V Commissioner General Uganda Revenue Authority*<sup>60</sup> the facts of the case are that the plaintiff, crane bank limited filed the present suit against the Defendant, Commissioner General, Uganda Revenue authority seeking a declaration that it is entitled to a 15% tax deduction on all taxes payable within the meaning of section 17 of the persons with disabilities Act, 2006 for its years income, 1<sup>st</sup> January, 2008 to 31<sup>st</sup> December, 2008. The plaintiff also claimed general damages and costs. While the

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<sup>60</sup> (HCT-00-CC-CS 106 of 2009) [2013]



Defendant was represented by the legal services and Board Affairs Department of Uganda Revenue Authority.

The brief facts as outlined in the Joint Scheduling Memorandum were as follows: -

1. The plaintiff is a company carrying on the business of providing banking services, and has a year of income running from the 1<sup>st</sup> day of January to 31<sup>st</sup> December every year. Between the 17<sup>th</sup> day of November, 2008 and the 12<sup>th</sup> day of January 2009, the plaintiff hired/employed 12 persons with disabilities.
2. On the 9.12.2008, the plaintiff wrote to the Defendant and claimed a 15% tax deduction under section 17 of the persons with disabilities Act, 2006 and section 22 (i) of the Income Tax Amendment Act. This was followed by a written request by the Defendant to the plaintiff to submit documents verifying the claim. The plaintiff submitted the documents to the defendants on 16.1.2009.
3. The defendants by a letter dated 28.1.2009 rejected the plaintiffs claim on the ground that the provisions of the Income Tax amendment) Act did not apply to the plaintiff. The reason given was that the plaintiff's year of income which ended on 31.12.2008 had

commenced on 1.1.2008 and not on or after 31.7.2008 as stated in the Act (Commencement date).

4. The plaintiff made another appeal in a letter dated 23.2.2009 to which the Defendant responded on 20.3.2009 re-affirming the earlier position that the plaintiff is not entitled to the tax deduction since their year of income commenced on 1.1.2009 and not on or after July, 2008. At the scheduling conference, the following issues were framed for determination by the court.
5. Whether the persons with Disabilities Act, 2006 is applicable to the plaintiffs claim for a tax deduction.
6. Whether the Income Tax (Amendment) (No 2) Act 2008 covers the year of income commencing 1<sup>st</sup> January, 2008.
7. Whether a tax deduction is deductible before arriving at a chargeable income or it is deductible after arriving at the tax payable.
8. What remedies are available in the circumstances?

On the 1<sup>st</sup> issue, counsel for the plaintiff submitted that the persons with Disabilities Act 2006, applied to all private employers employing 10 or more persons at the time it was subsisting. They added that the law did not provide for a

minimum time for which the persons with disability should be employed. It was further submitted that the persons with Disability Act, came into force on 4.8.2006 and applied to all businesses and persons in Uganda irrespective of what any other law provided. Counsel for the plaintiff further added that the Act became relevant to the plaintiff from the time the plaintiff employed 10 people, and that was on 9.12.2008 reference was also made to section 2 of the Income Tax Amendment Act, 2008 under which section 17 of the persons with Disabilities Act was repealed.

Counsel for the defendant on the other hand submitted that the PWD Act does not apply to the plaintiff's claim for Tax deduction in view of the repeal of S. 17 of the persons with disabilities Act. Counsel for the Defendant relied on the principle of statutory interpretation to the effect that no inference is proper if it goes against the express words parliament has used. (*expressum facit cessare tunc*). That Latin maxim was re-instated in *Whiteman Vs Sadler* (1910) AC 514, that express Enactment shuts the door to further implication.

Counsel for the Defendant therefore submitted that the Persons with Disability Act was not applicable as the evidence on record that as appointment letters issued by the plaintiff to persons with disability show that plaintiff employed Persons with Disability between 17.11.2008 to 8.12.2008. They added that by that time, S.17 of the Persons

with Disability Act had been repealed under the Income Tax (Amendment) Act (No. 2) of 2008.

As far as the 1<sup>st</sup> issue is concerned, and in the view of the submissions by both sides, it is pertinent to state the long title of the People with Disabilities Act. It provides: -

“An Act to provide a comprehensive legal protection for persons with disabilities in accordance with Article 32 and 35 of the constitution; to make provision for the elimination of all forms of discrimination against persons with disabilities towards equalization of opportunities and for related matters.”

The main purpose of the law was to address the affirmative action with regard to persons with disabilities. Under 3(a) of the Persons with Disabilities Act, it is stated that the object of the Act are: -

1. To provide dignity and equal opportunities to persons with disabilities and it is equally important to re-instate section 17 of the Act: -

“private employers who employ ten or more persons with disabilities either as a regular employer, apprentice, or learner on fulltime basis shall be entitled to tax reduction of fifteen percent of all payable tax upon proof to the Uganda Revenue Authority.”

The following grounds have to be satisfied before the 15% deduction is considered:-

1. Such employees' people with disabilities should either be regular, apprentice or learner employees.
2. They should be on full time basis and;
3. The claim for tax deduction should first be presented to URA for proof.

The Act came into force on 4.8. 2006.

The Act did not provide the meaning of "payable tax" under section 17. Since this was not a tax statute, it implies that recourse to such a definition is from that tax statute.

This then leads me to the Income Tax Act Cap. 340 and the Income Tax (Amendment) Act, No. 2 of 2008. Section 5 (I) of the Income Tax Amendment) Act repealed section 17 of the People with Disabilities Act. It provides as follows: -

"5. Amendment of Section 22 of the Principal Act is amended

(f) Section 17 of the persons with disabilities Act is repealed."

In view of the above provisions of the law, it becomes clear that by the time the plaintiff wrote to the defendant claiming a 15% Tax deduction, the Act No.2 of 2008 which repealed section 17 of People with Disabilities Act was already in

force. I am therefore obliged to agree with the submissions of counsel for the Defendant that section 17 of the People with Disabilities was repealed by section 5(f) of the Income Tax Amendment Act, No. 2 of 2008, and is therefore not applicable to the claim by the plaintiff. I accordingly find the 1<sup>st</sup> issue in the negative. I now turn to the 2nd issue as to whether the income Tax (Amendment) Act No2 of 2008 covers the years of income concerning 1<sup>st</sup> January 2008.

Counsel for the plaintiff's submissions were that the above issue arises from interpretations of the word, "year of income" reference was made to S.2 (aaaa) of the income Tax Act which defines years of income to mean;

"the period of twelve months ending on 30<sup>th</sup> June, and includes a substituted year of income and a transitional year of income."

It was further submitted that section 2(aaaa) of the income Tax Act and section 2 of the Income Tax Amendment) (No. 2) Act 2008 should be read together with section 46(2) of the financial Institutions Act. And finally that between November, 2008 and July 2009, the plaintiff was an employer and employed at least 10 people with disabilities. Counsel for the plaintiff concluded that the law does not discriminate between those who operated years of income re running from January to December, which has not been expressly stated. On the other hand, Counsel for the

respondents submitted that the Income Tax Amendment Act (No. 2) of 2008 provided for the relevant commencement date as:

“... This Act shall be deemed to have come in force on 1<sup>st</sup> July 2008...”

It was further submitted on behalf of the defendant that section 2 of the Income Tax (Amendment) (No 2) of 2008 applies to 2 years of income.

(a) Year of income commencing on or after 1<sup>st</sup> July 2008 which is relevant to the plaintiffs case

Year of income commencing on or after 1<sup>st</sup> July 1997 which applied to part IXA of the principal Act.

And part IXA of the Income Tax Act, Cap 340 makes special provisions for taxation of petroleum operations and is not relevant to the present case. Counsel for the Defendant quoted the case of Attorney General Vs Bugisu Coffee Marketing Association Limited (1963) E.A. 38, where at page 41, Slade J. quoted with approval the case of Canadian Eagle Oil C. Ltd VS R (1946) A.C. 119 as follows:-

“in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a Tax. There is no presumption as to a

tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language use”

This court has carefully considered the submissions on both sides and is highly persuaded by the quoted passage from the Judgment of Slade J. in the case of Attorney General Vs Bugisu Coffee Marketing Association Limited. Emphasis was that as far as a taxing Act is concerned, there should be no presumption and there is no equity about Tax. So one has to interpret the language used as fairly as possible.

It is therefore important as far as this case is concerned to re-instate what “a substantial year of income” means Section 39 (I) of the Act provides:-

“A tax payer may, apply in writing to use as a tax payer of income being a twelve month period other than a normal year of income and the commissioner may subject to subsection (3) by Notice in Writing, approve the application.”

In their submissions, counsel for the plaintiffs stated that the plaintiff is a financial institution governed by the Financial Institutions Act, whose year of income under section 46 (2) states on every 1<sup>st</sup> day of January to 31<sup>st</sup> day of December each year.

The question that arises is whether the plaintiff's year of income falls within that given by the Act and if so when



could the tax deduction of 15% be claimed by the plaintiff. When the plaintiff submitted documents to the defendant to verify their claim, the plaintiff submitted several contract of employment and /or appointment letters of the twelve employees whose earlier date of appointment was:

Kimuli Kigozi Arnold 8.11.2008 and latest is Nakanjako Josephine of 12.1.2009.

It is the therefore clear and plain that the plaintiff obtained the statutory number of a minimum of 10 persons for tax purposes under Act No. 2 of the 2008 by 28.12.2008. And on 9.12.2008 the plaintiff wrote claiming a tax deduction of 15 % as already noted.

In such circumstances, this court finds and holds that it would therefore be presumptuous and misleading on the part of counsel for the plaintiff to urge that the section should extend to apply to substituted years of income which fall within the entire year of 2008. To do so would be stretching the argument too far and would mean that the plaintiff benefits from the 15% deductions including the period when they had not yet employed the minimum 10 persons with disabilities. This court cannot accept such a misleading interpretation of the law by learned counsel for the plaintiff. In conclusion on this issue therefore, I find and hold that the proper commencement date for the 15% tax

deduction is 1<sup>st</sup> July 2008 for a normal year of income, and 1<sup>st</sup> January, 2009 for the plaintiffs substituted year of income.

The next issue is whether the tax deduction is deductible before arriving at a chargeable income or is deductible after arriving at a tax payable. According to the submissions of Counsel for the plaintiff, court is to follow the literal interpretation of first ascertaining all the payable tax and then deduct 15% of the total, such that the employer pays 85% of what should have been paid. Counsel of the plaintiff therefore concluded that in respect of the period before the person with Disabilities Act was repealed, the computation of the deduction remains the same and should cover all tax heads including customs, VAT, Excise Duty, etc. With effect from the period when the required number of persons with disabilities were employed. Counsel for the Defendant opposed the above submissions. This court finds and holds that the Income Tax law as amended in 2008 made it clear that it is only Income Tax that is applicable. That tax relief is specifically granted in the income Tax Act and does not extend to value added tax, customs duty, excise tax or any other as the rest have their own laws and statutes like the Value Added Tax Act and the East African Customs Management Act.

On the last issue of remedies, it is a known rule of law and practice that cost follow the success of a matter. However, courts are anxious to promote reconciliation and

harmonious working relationship among litigants, particularly in matters of Taxation by a National Taxation body such as the defendant Uganda Revenue Authority. Uganda Revenue Authority requires the cooperation and good working relationship with all tax payers so as to effectively collect all taxes due in the interests of this country and the people of Uganda. In such circumstances, and in view of this court's powers under S. 98 of the Civil Procedure Act, and as a gesture of reconciliation, I order that each party meets or bears their own costs.

In the result, I order as follows:-

1. Sections 17 of the person with disabilities act was repealed by section 6 (f) of Act No. 2 of 2008 and therefore does not apply to the instant case.
2. The income tax (Amendment) Act No. 2 of 2008 does not cover years of income commencing 1<sup>st</sup> January 2008 but only years of income commencing 1<sup>st</sup> July, 2008 to 20<sup>th</sup> June 2009 and for purposes of the plaintiff who used a substituted year of income commencing 1<sup>st</sup> January to 31<sup>st</sup> December, 2009.

### **Can people with special needs inherit property.**

In the case of Re: Rhona Kibuka Musoke (A Person of Unsound Mind) & In Re: An Application for the

Administration of her Estate by Norah Lwanga & 2 Ors<sup>61</sup>. Before the Honourable Mr. Justice Egonda-Ntende. The facts of the case is that Rhona Kibuka Musoke is a single woman 78 years old and is now living and being cared for by one Kamugisha at Namungona near Kampala. She is the daughter of the late Festus Kibuka Musoke and the late Elsie Nansubuga Kibuka Musoke. The applicants are her relatives. This application is supported by affidavits of Norah Lwanga and Dr. Tom Onen.

Medical evidence relating to the unsoundness of Rhona's mind is provided by Dr. Tom Onen in his affidavit. Dr. Onen is a Senior Consultant Psychiatrist working with Mirembe Specialist Clinic in Kampala. He deposes that he examined Rhona and found her to be a person of unsound mind.

The law applicable to the facts of this case is the Administration of Estates of Persons of Unsound Mind Act, Chapter 155. Under Section 2 thereof this court may appoint, among several classes of people, a relative of a person of unsound mind to be the manager of the estate of such person. The first 2 applicants are sisters to Rhona. The third applicant is a niece of Rhona. Clearly all the applicants on the

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<sup>61</sup> (HCT-00-FD-MC 1 of 2009) [2009] UGHC 20

face of this application qualify, either individually or jointly, as managers of the estate of Rhona.

This application is granted. The applicants are jointly appointed managers of the estate of Rhona Kibuka Musoke, but shall not without special permission of this court, mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist of; lease any such property for a term exceeding 5 years or invest in any securities other than those authorized by the Trustees Act. Likewise the managers shall not invest any funds belonging to the estate of which they are managers in any company or undertaking in which they or any one of them has an interest. Nor may the managers herein appointed purchase immovable property, without the prior consent of the court.

I further order the managers to file in this court within 6 months from today an inventory of the property belonging to Rhona and of all such sums of money, goods, and effects as they shall receive on account of the estate together with a statement of all the debts due to Rhona. The managers shall annually furnish this court with an account showing the sums received and disbursed on account of the estate and the balance remaining in their hands.

Unless otherwise ordered by this court the managers herein appointed shall serve gratuitously.

## **Owning accounts of people with special needs**

In the case of Re: John Edward Kimera<sup>62</sup> The applicant through Nalwadda Immaculate the sister, brought this application under section 94 and 98 of the Civil Procedure Act cap. 71 and section 45 of the Mental Treatment Act, cap 279 for orders that:

The Applicant be appointed legal guardian of John Edward Kimera (hereinafter known as known as “sick person”).

The application was supported by the affidavit of the applicant dated 27th July, 2010. The grounds of the application were briefly as follows:

- i) That the applicant is the biological sister of the sick person.
- ii) That the sick person has been a client of TASO since, 2006.
- iii) That as a result of the sickness, HIV/AIDS, he got a mental illness which he has lived with to date - wondering everywhere. Copies of the medical forms/receipts were attached hereto and marked “B”.
- iv) That as a result of the mental disability he has not been able to operate his account with DFCU bank.

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<sup>62</sup>(Family Cause 142 of 2010) [2010] UGHC 97

v) That it is the applicant who has been operating the Account, taking custody of the ATM since he got a mental disorder.

vi) That in November, 2009, the ATM Card got lost and the applicant reported the matter to Clock Tower Police Station. This is confirmed by Annexure “C”.

vii) That it is in the interest of justice that, the applicant is appointed the legal guardian. At the hearing of the application, the applicant represented herself.

The High court has unlimited jurisdiction in matters of lunacy, provided for under Section 45 of the Mental Treatment Act cap. 279.

In the exercise of that jurisdiction, the High Court has powers to grant such remedies as are necessary to prevent the abuse of court process. This has been set out in Section 98 of the CPA cap. 71

Ms. Nalwadda submitted that she is the biological sister of the sick person and that the sick person has a mental problem. This submission is supported by a letter from the LC1-Abayita Ababiri Local Council 1, Sabaddu — Katabi, Entebbe, where the sick person has been resident.

Ms. Nalwadda further submitted that the brother (sick person), has an account at DECU bank, which she wants to operate.

Further, that she is the one having custody of him, including his 3 children. She added that the sick person was not married.

The Applicant submitted that she wants to operate the account so that she can take care of the sick person together with his 3 children.

In view of the fact that the applicant is a biological sister to the sick person and she is the one taking care of him and his 3 children, it will be in the best interests and welfare of the sick person that guardianship of the sick person is granted to the applicant, so that she legally runs his affairs.

Consequently, the application was allowed in the following terms:

- 1 .The applicant Naiwadda Immaculate is appointed the legal guardian of John Edward Kimera.
3. The applicant is permitted to operate his account Number - 01L5005303200 with DFCU Bank for the benefit of the sick person.



## **Access to employment for persons with disabilities in uganda**

Over the past regimes, the interests of persons with disabilities hasn't been represented, it was only when NRM came to power in 1986, the National Union of Disabled Persons in Uganda (NUDIPU) was formed as a representative group for PWDs and advocate for their rights which include a right to work. They were also represented in the 1994-1995 Constituent Assembly Delegates (CAD), this enabled them to make favorable provisions for all without discrimination.

Forexample under the Objective XIV<sup>63</sup> of General Social and Economic Objectives, it provides that The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that

- (i) all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people; and
- (ii) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work. decent

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<sup>63</sup> The 1995 constitution of Uganda as amended.

shelter, adequate clothing, food security and pension and retirement benefits.

### **Ugandan laws on persons with special needs vis avis International perspective.**

In the case of Centre for Health, Human Rights & Development & Anor. v Attorney General<sup>64</sup>

in this petition, the petitioners alleged that Uganda has ratified a wide range of international and regional human rights treaties relating to protection of the rights of persons with mental disabilities, including the United Nations Convention on the Rights of Persons with Disabilities and the African Charter on Human and People's Rights. That notwithstanding, the provisions of sections: 45(5), 82(6) of the Trial on Indictments Act and Section 130 of the Penal Act regarding the procedure in case of insanity or other incapacity of an accused person or the victim and derogatory language used under Section 130 of the Penal Act are unconstitutional in as far as they run contrary and against Articles 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution of the Republic of Uganda.

More specifically, the Petitioner alleges, inter alia that;

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<sup>64</sup>(Constitutional Petition 64 of 2011) [2015] UGCC 14

Section 82(6) of the Trial on Indictments Act is discriminatory in so far as it provides that if the accused is acquitted, he or she shall be immediately discharged from custody unless he or she is acquitted by reason of insanity thereby setting different treatment between other people and persons with mental disabilities contrary to Article 21 of the Constitution; Section 45(5) of the Trial on Indictments Act adjudges a person who is not proven guilty as a criminal by referring to him as a criminal lunatic contrary to Article 28(3) (a) of the Constitution. Section 130 of the Penal Code Act is unconstitutional so far as it refers to persons with mental disabilities as idiots and imbeciles as the same discriminates on the ground of disability contrary to Article 21 of the Constitution.

Section 130 of the Penal Code Act is unconstitutional in so far as it refers to persons with mental disabilities as idiots and imbeciles and as such subjecting them to inhuman and degrading treatment contrary to Articles 24 and 35 of the Constitution. To the extent that mental illness is a disability, the practice of detaining persons regarded as mentally ill as enumerated in section of and without due process constitutes discrimination by the section failing to meet the standards of anti-discrimination and equal protection of the law contrary to . The implementation of the above sections of and and the conditions, under which persons with mental disabilities are detained under those Acts, together constitute

violations of respect for human dignity of persons with mental illness contrary to f The impugned sections referred to above are by virtue of and of contrary to and against the spirit of the international legal instruments which Uganda has ratified, particularly the which guarantees the rights of persons with disabilities. The above cited provisions of and fail in themselves to promote the dignity, respect, autonomy and nondiscrimination of people with mental disabilities or to incorporate safeguards against abuses related to involuntary admission and treatment. The Constitution is the supreme law of the land under and of are inconsistent with and in contravention of and should be struck down.

Counsels argued issues 1 and 3 together and issue 2 separately. We have resolved issue no. 1 first and resolved issues 2 and 3 together.

### **Submissions of the parties**

Counsel for the Petitioner submitted that;

The state has failed to protect the rights of persons with mental disabilities by maintaining sections 45(5) and 81(6) of the Trial on Indictments Act (cap 23) and section 130 of the Penal Code Act (Cap 120), which violate the rights of persons with mental disabilities in respect of the procedure they prescribe in case of the insanity or other incapacity of an accused person.

Uganda has ratified a wide range of international and regional human rights treaties related to the enjoyment of human rights on equal basis and without discrimination, particularly on the ground of disability. Equality and freedom from discrimination are guaranteed under the Constitution.

Under Article 35 of the Constitution, the State and society are obliged to take appropriate measures to realize the full mental and physical potential of persons living with disabilities. Mental illness was a disability under Section 2 of the Persons with Disabilities Act “Disability” was also defined under the same section. Discrimination against persons with disabilities was prohibited by Article 35 of the Constitution.

Regarding section 45(5) of the Trial on Indictments Act, the letter and spirit of section 45(5) of the Trial on Indictments Act is that it presumes criminality instead of innocence by using the words “criminal lunatic”. Article 28(3) (a) of the Constitution enshrined the principle of presumption of innocence. Section 45(5) of the Trial on Indictments Act contravenes the presumption of innocence in this regard.

Furthermore, the word “lunatic” was dehumanizing, and devoid of any form of dignity. Mentally ill persons have a right to human dignity.

Regarding section 82(6) of the Trial on Indictments Act, Counsel for the Petitioner submitted that it sets and gives

different treatment to other persons and persons with mental illness by virtue of their disability contrary to Article 21 of the Constitution.

On the right to liberty, Counsel submitted that section 82(6) of the Trial on Indictments Act violates the right to liberty of an acquitted person because of insanity. He prayed for an order that the acquitted person should not be kept in custody because of insanity. Such person should be referred to a mental health facility.

Sections 45(5) and 82(6) of the Trial on Indictments Act set a different standard in the criminal justice system and give different treatment to 5 other people in contrast to persons with mental illness. This amounted to discriminating against persons with mental illness contrary to Article of the Constitution. Counsel called for an expert body to be set up to review persons with mental disability so that they are not put in jail. He also prayed that both sections be declared null and void.

On section 130 of the Penal Code Act, Counsel submitted that the words “idiot” and “imbecile” used in that section were derogatory in nature and should not be on the statute books. Counsel prayed that the section be found to contravene Article 24 of the Constitution.

He prayed that section 130 of the Penal Code Act be found in contravention of Article 24 of the Constitution in as far as the language in it was derogatory.

Counsel for the Respondent on his part:-

Submitted that the Respondent concedes that Uganda has ratified a wide range of international and regional human rights treaties related to the protection of the right of persons with mental disabilities, including the United Nations Convention on the Rights of Persons with disabilities and the African Charter on Human and People's Rights.

Counsel also conceded to the various allegations in the Petition.

He did not however agree that section 82(6) of the Trial on Indictments Act violates the right to liberty of a person with a mental illness.

On setting up an expert body, he submitted that this was a huge and broad task. However, he prayed that court should order that the laws be reviewed to create clarity on how people with insanity should be handled.

Preliminary observations

There is no dispute between the parties as to what is at stake in this petition. In fact, learned Counsel for the State concedes to the Petition. In effect, this means that he agrees

to what is stated in the Petition and supporting evidence in the accompanying affidavits of Mulumba Moses; that the impugned provisions are discriminatory against people with mental disabilities and do not afford them equal protection. The provisions simply prescribe detention of mentally disabled persons for long and indefinite periods without subjecting such detention to due process. They also denigrate the personal integrity and dignity of mentally disabled persons by referring to them as “idiots” and “imbeciles”. They therefore contravene the stated provisions of the Constitution.

#### Constitutional principles

In spite of the concessions made by learned Counsel for the Respondent on the alleged violations, it is incumbent upon this court to examine the language and substance of the impugned sections scrupulously, so as to determine whether they violate the Constitution and whether or not this Court should grant the reliefs sought. In this task, Court is guided by the following constitutional principles;

1. Equal protection of the law
2. Due process

The Court is also guided by the following applicable International Instruments namely; the Universal Declaration of Human Rights ^ 1948, Article 1, the International



Covenant on Civil and Political Rights (ICCPR) Article 14(1), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 2, 5, 14, 15, and 17, and the African Charter on Human and Peoples Rights Article 2, 3, 5 and 6. The same are set out here below:-

Article 1 UDHR:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 14(1) ICCPR:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligation in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Articles of UNCRPD

Article 2: Definitions

“Discrimination on the basis of disability” means 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.

Article 5: Equality and non-discrimination

States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equals benefit of the law.

Article 14: Liberty and Security of the person

States Parties shall ensure that person with disabilities, on an equal basis with others:

Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principals of this Convention, including by provision of reasonable accommodation.

Article 15:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 17:

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

## **Articles of the African Charter:**

Article 2:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, or any other opinion, national or social origin, fortune, birth or other status.

Article 3:

Every individual shall be equal before the law

Every individual shall be entitled to equal protection of the law

Article 5:

Every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment is prohibited.

Article 6:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions

previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

We note that all the above international and regional instruments have as one of their core principles respect for human rights and fundamental freedoms without discrimination. The UDHR stipulates that all human beings are born free and equal in dignity and rights. The ICCPR and the African Charter provide for equality before the law and

equal protection of the law and non-discrimination. The right to liberty and security of persons is guaranteed by both the ICCPR; the UNCRPWD and the African Charter.

The Vienna Declaration and Program of Action 1993 captured it aptly when it declared that “all human rights are universal, indivisible, interdependent, and interrelated.” Indeed, the above principles are enshrined in the various articles of the 1995 Constitution quoted throughout this judgment.

Specific protection is given to people with disabilities particular note of Article 35 of the Constitution. It provides;

“35(1) Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential.

(2)...”

We also note that section 2, which is the interpretation section of The Persons with Disabilities Act, 2006 defines a person with disability. It also defines “Disability”. It provides:

Interpretation

In this Act, unless the context otherwise requires-

“Person with disability ” means a person having physical, intellectual, sensory or mental impairment which substantially limits one or more of the major life activities of that person.

“Disability” means a substantial functional limitation of daily life activities caused by physical mental or sensory impairment and environment barriers resulting in limited participation (emphasis ours)

From the above definitions, we conclude that mental illness is a disability under Section 2 of the Persons with Disabilities Act of 2006.

Resolution of issue 1

With the above observations in mind, we now move to resolve the issues. Counsel for the Petitioner challenged the provisions of Section 45(5) of the Trial on Indictments Act as being unconstitutional. It is important to appreciate the meaning and context of the entire section 45.

Section 45(1) of the Trial on Indictments Act provides;

Inquiry by the court as to the insanity of the accused —

1. When in the course of a trial the High Court has reason to believe that the accused is of unsound mind

and consequently incapable of making his or her defence, it shall inquire into the fact of such unsoundness.

We note that the subsection requires a court to conduct an inquiry as to the insanity of an accused person to establish whether he/she is of unsound mind and consequently incapable of making his/her defense. This in our view requires medical evidence, preferably from a psychiatrist, regarding the status of the mind of the accused. The accused on his/her part, if he/she is able, should also be given an opportunity to be heard. The issue of due process arises with the subsequent sub-sections of Section 45. But first, we need to address the meaning of due process.

Black's Law Dictionary, in its sixth edition, at page 500, defines "due process";

(Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be presumed conclusively against him, this is not due process of law...

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case...

Fundamental requisite of due process is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. ”

We understand this to mean that before any decision is made that affects a fundamental right or freedom of any person, such person must be given an opportunity to be heard. We consider that the language of subsection (5) of Section 45 of the Trial on Indictments Act poses a problem in this regard. It provides as follows:

Inquiry by the court as to the insanity of the accused

Notwithstanding subsection (1), if the court is of the opinion that it is expedient so to do and in the interests of the accused person, the court may postpone the inquiry mentioned in that subsection until anytime up to the opening of the case for the defense; and if before the inquiry is made the court acquits the accused person on the count or each of the counts on which he or she is being tried, the inquiry shall not take place. If as result of an inquiry made under this section the court is of the opinion that the accused person is of unsound



mind and consequently incapable of making his or her defense it shall postpone further proceedings in the case. The court shall order the accused to be detained in safe custody in such place and manner as it may think fit and shall transmit the court record or a certified copy of it to the Minister. Upon consideration of the record, the Minister may, by warrant under his or her hand directed to the court, order that the accused be confined as a criminal lunatic in a mental hospital or other suitable place of custody; and the court shall give any directions necessary to carry out the order. Any such warrant of the Minister shall be sufficient authority for the detention of the accused person until the Minister shall make a further order in the matter or until the court finding him or her incapable of making his or her defense shall order him or her to be brought before it again in the manner provided by sections 46 and The import of subsections 2, 3 and 4 is that the court is given latitude to postpone the inquiry until any time up to the opening of the case for the defense, if it is expedient to do so and it is in the interests of the accused person. If the accused person is acquitted at that stage, the court need not go ahead with the inquiry. But if after the inquiry, the court is of the opinion that the accused is not capable of making his or her defense, the court is obliged to postpone the trial and order that he/she should be detained in safe custody in a designated place. The problem stems from the language of subsection (5), which empowers the

Minister after considering the record, to order by warrant that the accused be confined as a “criminal lunatic”.

The phrase “criminal lunatic” is unfortunate for various reasons, which we discuss below. First, we have already established that mental illness/impairment is a disability. The potential of persons living with disability cannot be realized if their dignity is not ensured. Therefore, the language used in all statutes must respect the dignity of such persons, and indeed of all individuals. It must also uphold their equality with is other persons.

We further observe that under Article 35 of the Constitution, the State and society are obliged to take appropriate measures to realize the full mental and physical potential of persons living with disabilities; and that Section 32 of the Persons with Disability Act obliges all organs and , agencies of government and all persons to respect, uphold and promote the constitutional rights and freedoms of persons with disabilities enshrined in Chapter Four of the Constitution. It provides;

“Section 32

The fundamental rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons in respect to persons with disabilities.”

The courts and all other persons mentioned in Section 32 of the Persons with Disability Act are obliged by national and international law to do likewise.

We also take cognizance of the provisions of Article 24 of the Constitution.

#### Article 24

No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

This is one of the non-derogable rights under Article 44 of the Constitution.

In conclusion, we find that the language of sections 45(5) of the Trial on Indictments Act is derogatory and thus contravenes Article 24 of the Constitution that provides for respect for human dignity and protection from inhuman treatment. It strips mentally disabled/impaired persons of dignity.

In reaching this conclusion, we have drawn inspiration from the case of Purohit and Moore v. The Gambia, African Commission on Human and Peoples Rights, Communication No. 241/2001 (2003). The applicants in that case challenged the Lunatics Detention Act (LDA) of the Gambia. One of the grounds for their complaint was that the provisions of the LDA condemning any person described

as a lunatic to automatic and indefinite institutionalization are incompatible with and violate Articles 2 and 3 of the African Charter. Section 2 of the LDA defines a “lunatic” as including “an idiot or person of unsound mind.” The complainants argued that to the extent that mental illness is a disability, the practice of detaining persons regarded as mentally ill indefinitely and without due process constitutes discrimination on the analogous ground of disability.

The African Commission held that human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities, as the case may be, are entitled to without discrimination.

It reiterated its earlier decision in the case of *Media Rights Agenda v.*

Nigeria, where it stated that “cruel, inhuman or degrading punishment and treatment” is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental. The Commission also relied on its earlier decision in the *John K. Modise Vs Botswana* (2000) AHRLR 25 (ACHPR 1997) where it held that exposing victims to personal suffering and indignity violates the right to human dignity.

The above case interpreted the provisions of a Gambian statute vis-a-vis the African Charter that is worded in a similar language to the Uganda section 45(5) of the Trial on Indictments Act. We consider it to be a persuasive authority. It is absolutely essential that before subjecting any person to a criminal trial, the trial court ascertains and establishes that he/she will follow and understand the proceedings. We thus come to the conclusion on this aspect, section 45(5) violates the letter and spirit of Article 24 of the Constitution as it subjects persons living with mental illness/impairment to inhuman and degrading treatment in the language used to describe them, contrary to Article 24 of the Constitution.

Second, it prejudices an individual who is presumed to be mentally ill/impaired as a criminal lunatic before such person has been tried. This is not only discriminatory but also contravenes the principle of the presumption of innocence.

Non-discrimination is a constitutional principle embodied in all the cited international instruments reproduced above, namely the UDHR Article

1. the ICCPR Article 14(1), the UNCRPD Articles 2 and 5

African Charter Article 3.

Article 2 of the UNCRPD defines “discrimination on the basis of disability” to mean 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 equal basis with others, of all human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. Uganda is signatory to this Convention. The Persons with Disabilities Act does not give a definition of discrimination on the basis of disability. Instead it provides in Section 32 as follows;

“The fundamental rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons in respect of persons with disabilities. ”

However, one of the freedoms guaranteed in Article 21 of the Constitution is nondiscrimination. It provides;

21. All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

- Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.
- For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to the respective descriptions by sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or .”

The definition of discrimination in that Article specifically mentions disability. The Constitution of Uganda Articles 20, 21 and 35, among others, incorporate this principle as well. We have reproduced the said Articles below;

“20 Fundamental rights and freedoms of the individual are inherent and not granted by the State.

- The rights and freedoms of the individual and groups enshrined in this

Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

“35 Rights of persons with disabilities

- Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential.
- Parliament shall enact laws appropriate for the protection of persons with disabilities. ”

Our view is that Section 45(5) of the Trial on Indictments Act gives different treatment to persons with mental illness/impairment from other people with or without disabilities in that it imputes criminality on the person of the mentally ill/impaired who has not been adjudged a criminal. This is discriminatory. Uganda, being a signatory to both the UNCRPD and the African Charter should have taken and ought to take steps to align section 45(5) of the Trial on Indictments Act with the Constitution and with its international obligations. Our judgment is that the presumption of innocence should apply to all without discrimination.

Thirdly, at the stage where section 45(5) of the Trial on Indictments Act comes into play during criminal proceedings, the defense has not been heard and the trial has not been concluded. There is no judgment against the accused person convicting him/her of any offence. Nevertheless he/she is labeled a “criminal lunatic” by statute. The term “criminal lunatic” imputes to the mind of the



accused guilty for an offence for which he/she may not have been fully tried. This contravenes the constitutional principle of the presumption of innocence embodied in Article 28(3) of the Constitution. Article 28 provides;

Right to a fair hearing

(1) in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

- Every person who is charged with a criminal offence shall-
- be presumed to be innocent until proved guilty or until that person has pleaded guilty,(The emphasis is ours)

We therefore consider that Counsel for the respondent has rightly conceded that the use of the words “criminal lunatic” in section 45(1) of the Trial on Indictments Act violates the presumption of innocence enshrined in Article 28(3) (a) of the Constitution.

We now revert to the issue of due process and whether the powers given to the Minister in section 45(1) of the Trial on Indictments Act to detain the accused accord with this principle. To establish whether the accused is fit to stand

trial, a trial court is required to conduct an inquiry. But when it comes to determining whether a particular accused person should be detained, no guidance whatever is given to the court or the Minister to determine whether the accused poses any risk. Yet the Constitution offers ample guidance in Articles 23(1) (f). It provides;

- No person shall be deprived of personal liberty except in any of the following cases\_

(f) In the case of a person who is. or is reasonably suspected to be. of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community (emphasis ours).

The Trial on Indictments Act, predates the 1995 Constitution. Therefore, section 45(1) of the Trial on Indictments Act must be construed with such modifications, adaptations, among others, to bring it in conformity with the Constitution in accordance with Article 274 5 reproduced below:

“Existing Law

- Subject to the provisions of this article the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall

be construed with such modifications, adaptations, qualifications and

exceptions as may be necessary to bring it into conformity with this Constitution.

- For the purposes of this article the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or

made before that date which is to come into force on or after that date.”

When section 45(5) of The Trial on Indictments Act is read subject to Article 274 and the provisions of Article 23(f) are taken into account, it becomes clear that when it comes to the detention of the accused, a matter that involves denying him/her the right to liberty, whether directed by the Court or the Minister, there is no clear indication as to what standards the detention order of such accused should comply with before it is issued. After having found that the accused person is of unsound mind and consequently incapable of making her/his defense, the court is enjoined to order the detention of the accused in safe custody in such place or manner as it may deem fit. The purpose of such detention is not stated. It is also not stated how the court should go about

establishing that such an accused is a person that deserves to be detained.

The problem is further compounded when section 45(5) of The Trial on Indictments Act grants powers to the Minister to act, where he/she deems it fit, by warrant under his/her hand directed to the court, to order that the accused be confined as a criminal lunatic in a mental hospital or other suitable place of custody. The Minister, by merely looking at the record, has power to label the accused a “criminal lunatic”. He/she is not obliged to seek professional/ medical or other professional advice regarding the propriety of the detention nor the length of it. The court is then required to implement the Minister’s decision by giving directions thereon.

Article 23(1) (f) of the Constitution, stipulates that such an accused who is, or is reasonably suspected to be, of unsound mind, should be deprived of his/her liberty only for the purpose of the care or treatment of that person or the protection of the community generally. Section 45(5) of is The Trial on Indictments Act is silent on the purpose for detaining a mentally ill person and as such contravenes Article 23(1) (f) of the Constitution in this regard. The process of determining whether or not an accused person should be detained should be left to the trial Court only. Such detention should be strictly for medical treatment. It is the Court that should also determine when the accused is

ready to stand trial or be released to the community, based on concrete medical evidence, provided by a psychiatrist. The entire procedure to declare a person unfit for trial, the duration and place of his detention, and the time when he should be released should be determined by the court, after full inquiry based on medical evidence, in full compliance with due process.

We have already found guidance in the case of Purohit and Moore v. The Gambia, African Commission on Human and People's Rights,

(supra), to which we revert. In that case, the complainants also challenged the automatic detention of persons considered "lunatics" under the provisions of the LDA and argued that this violates the right to personal liberty. The African Commission held and we quote;

Article 6 of the African Charter guarantees every individual, be they disabled or

not, the right to liberty and security of the person. Deprivation of such liberty is only acceptable if it is authorized by law and is compatible with the obligations of States Parties under the Charter... Article 6 of the African Charter further states that no one may be arbitrarily arrested or detained. Prohibition against arbitrariness requires among other things that deprivation of liberty shall be under the

authority and supervision of persons procedurally and substantively competent to certify it." (Emphasis added)

We have found this jurisprudence persuasive, especially as the African Charter is similar to Article 23 of the Constitution. Both protect the liberty of the individual. We therefore conclude that the Minister is procedurally and substantively not a competent person to certify the deprivation of the liberty of the alleged mentally ill accused person, without first seeking medical advice and without according the affected person a hearing.

The consequence of the current procedure is that it contains great potential for injustice as it may deprive an accused person of personal liberty for an indefinite period of time. There is a very real risk of \_ mentally disabled persons disappearing in the criminal justice system without proper standards being set for involuntary confinement and procedures for review. This has already happened in the case of *Uganda v. Tesimana HC Criminal Revision Case No. MSK-00-CR-CV-0013 of 1999*, where Egonda J., as he then was, stayed the criminal proceedings after the accused had spent 8 years in the criminal justice system without being tried. The trial court in that case triggered this unfortunate state of affairs when it ordered that the accused should be taken to hospital for mental examination after she looked to be of unsound mind. This order was not followed up and she stayed in prison for 8 years without being

tried and without receiving proper treatment. There is dire need to avoid a recurrence of such injustice.

We therefore find that section 45(5) of the Trial on Indictments Act contravenes Articles 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution and we so declare.

Whether Section 82(6) of the Trial on Indictments Act contravenes the Constitution.

The section provides;

“ Verdict and sentence

(1) When the case on both sides is closed, the judge shall sum up the law and

the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. The judge shall take a note of his or her summing up to the assessors.

The judge shall then give his or her judgment, but in so doing shall not be bound to conform with the opinions of the assessors. Where the judge does not conform with the opinions of the majority of the assessors, he or she shall state his or her reasons for departing from their opinions in his or her judgment.

The assessors may retire to consider their opinions if they so wish and during any such retirement or at any time during the trial, may consult with one another.< >If the accused person is convicted, the judge shall pass sentence on him or her according to law from custody unless he or she is acquitted by reason of insanity.”

We note that under sub-section (6) of the above section, an acquitted person should be freed, unless he/she is being detained on some other lawful charge. However, if such person is acquitted by reason of insanity, then the law provides that he/she should be detained.

We consider that the reason such person is detained is because he/she is found to have committed the act that would amount to an offence if he/she was of sound mind, but is only acquitted because he/she is deemed not to have known what he/she was doing or that it was wrong. This is different from someone acquitted, for example, for lack of evidence. It is therefore not discrimination to detain such a person, as the purpose for the detention is not punishment for any offence but it is for the person’s security, safety and health care as well as the security of the community. What needs to be put in place is a process of review of the detention of such a person so that he/she is not detained

indefinitely. We are therefore, constrained to construe section 82(6) of the Trial on Indictments Act in accordance



with Article 274 of the Constitution with such modifications, adaptations, and qualifications and exceptions as may be necessary to bring it in conformity with the Constitution. We accordingly modify it to cater for the purpose of the detention, the duration of the detention, and for the place of detention. The details of the modifications to section 82(6) will appear below in the course of resolving issues 2 and 3.

#### Resolution of the Issues 2 and 3

1. Whether section 130 of the Penal Code Act, contravenes the right to dignity of persons with mental disabilities guaranteed under Article 24 of the Constitution
2. Whether section 130 of the Penal Code Act contravenes the right to freedom from non-discrimination guaranteed under Article 21 of the Constitution

For convenience, we have combined the resolution of these two issues together.

Section 130 of the Penal Code Act provides as follows;

Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but

which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, commits a felony and is liable to imprisonment for fourteen years.

Article 24 provides that:

No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

Under Article 35 of the Constitution, the State and society are obliged to take appropriate measures to realize the full mental and physical potential of persons living with disabilities. This potential cannot be realized if their dignity is not ensured.

Furthermore, Section 32 of the Persons with Disability Act obliges all organs and agencies of Government and all persons to respect, uphold and promote the constitutional rights and freedoms of persons with disabilities enshrined in Chapter Four of the Constitution.

As a preliminary matter, we observe that the objective of the section is to safeguard women and girls who are mentally handicapped from being sexually abused. However, the language “idiot” and “imbecile” used to describe women and girls who are mentally handicapped is dehumanizing of these people.

One of the arguments of the complainants in the Purohit and Moore v. The Gambia, African Commission on Human and People's Rights

case (supra), which we have found persuasive, was that under the LDA, persons with mental illness had been branded as “lunatics” and “idiots”, terms which were dehumanizing and denied them any form of dignity. The African Commission decided that the terms were dehumanizing and denied them any form of dignity in contravention of Article 5 of the African Charter.

Following the reasoning and decision in the above case, we find that the language of section 130 of the Penal Code Act is dehumanizing. The words “idiots” and “imbeciles” are derogatory and detract from the dignity that should be accorded to all disabled persons under Article 24. We find this is not permissible and justifiable as the language contravenes Articles 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution.

We however find that striking out the section would leave mentally handicapped/disabled women and girls unprotected. Accordingly, and in accordance with Article 274 of the Constitution, we construe section 130 of the Penal Code Act with “such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution” The words “idiot”

and “imbecile” are struck out from section 130 of the Penal Code Act and are replaced with the phrase “woman and girl to be mentally ill or impaired” For avoidance of doubt, the modified section 130 of the Penal Code Act the modified section is set out in full in the disposition.

Prayers for remedies

Counsel for the Petitioners made the following prayers.

- A declaration that of is unconstitutional in as far as it adjudges a person who is not proven guilty as a criminal by referring to him/her as a criminal lunatic contrary to of
- A declaration that of is unconstitutional in as far as it violates the right to liberty and freedom from discrimination of the persons with mental illnesses contrary to Article 23 of the Constitution.
- A declaration that of as amended is unconstitutional in so far as it is contrary and violates the right to dignity guaranteed under of .

'(d) A declaration that section 130 of the Penal Code Act violates the right to freedom from discrimination under Article 21 of the Constitution.

- An order that the provisions of and of and of (as amended) be struck out for being in contravention of

Articles 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution and the Convention on the Rights of Persons with disabilities.

- Any other or further declaration that this Honorable Court may deem fit to grant.

### Disposition

In light of the contraventions of the Constitution that we have found; we proceed to make the following declarations and orders;

1. Section 45(5) of the Trial on Indictments Act is unconstitutional in as far as it adjudges a person who is not proven guilty as a criminal by referring to him/her as a “criminal lunatic” contrary to Article 28(3) (a) of the Constitution.
2. Section 82(6)the Trial on Indictments ActArticle 274the Constitution
3. The trial Court is to order for the detention of such a person for a specific period, for purposes of care or treatment of that person by

a qualified psychiatrist or other qualified medical officer, in accordance with Article 23(1) of the Constitution.

- The period of detention is to be specified in the order of detention and is to be periodically reviewed by Court to ascertain the mental status of the detained person based on medical evidence from a psychiatrist or other qualified medical officer.
- When the court is satisfied that such a detained person is mentally fit and is no longer a danger to him/herself and/or to the community, it may order for his/her release.
- The words “idiot” and “imbecile” that appear in Section 130the Penal Code Act
- , and (3), 23, 24 and 35 of the Constitution by reason of their being derogatory, dehumanizing and degrading. They are accordingly struck out from The is modified in accordance with to read as follows:

Any person who, knowing a woman or girl to be mentally ill or mentally impaired, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was mentally disabled or mentally handicapped, commits a felony and is liable to imprisonment for fourteen years

1. Section 130 of the Penal Code Act does not violate the right to freedom from discrimination under Article 21 of the Constitution.
2. The State is hereby directed, as a matter of urgency;
3. To Review the status of persons with mental disabilities so that they are removed from jails and prisons and are instead taken for care and treatment in appropriate places.
4. To review and amend the and the with a view to providing clarity on how people with mental disabilities amounting to insanity should be handled

through the criminal justice system, in accordance with and in compliance with the Constitution and this judgment.

This being a matter of public importance, and the State having conceded to the violations of alleged by the Petitioner, we make no order as to costs. It is so ordered.

### **Special Needs Trust**

This is a supplemental fund given to a person with a disability that does not jeopardise any government support payments<sup>65</sup>.

A Trust is an arrangement whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries.

A special needs trust is a legal arrangement and fiduciary relationship that allows a physically or mentally disabled or chronically ill person to receive income without reducing their eligibility for the public assistance disability benefits provided by Social Security, this is mainly in Western Countries with a developed understanding of the rights of people with special needs.

In Uganda the legislators are yet to come up with a law on special needs trust and also to allocate when, how, who can hold trust for a person with special needs.

In the general meaning, A special needs trust is a legal arrangement that provides access to funding to someone who is physically or mentally disabled or chronically ill.

Special needs trusts are another useful option for people who receive disability benefits and want to protect and plan for

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<sup>65</sup> The Law Dictionary, *Free Online Legal Dictionary • Featuring Black's Law Dictionary, 2nd Ed*



their financial future. These trusts are designed to 1) provide for people with disabilities by giving them a source of funds that won't count against their eligibility for benefits and 2) name a trustee and a backup trustee to manage the trust for the benefit of the person with disabilities. These types of trusts are subject to strict federal rules, and you'll need a lawyer to set one up.

Can those with Special needs hold trust?

### **Discretionary trusts for children with special needs**

As parents of children with special needs you provide care for a child who may sometimes need additional assistance because of a disability or the inability to do some tasks on their own. You provide a significant and important role that may sometimes feel as though it is overlooked.

Some carers don't consider themselves to be carers because they see themselves as simply playing their part as a supportive mother, father, sibling or friend. In some cases, being a carer can mean giving up other activities or responsibilities, including other work opportunities, which could have a significant impact on household finances.

Some carers may have concerns as to how they can support their child when they can no longer provide the care themselves due to age or ill-health, or after they have passed away. How can you best support your child's independence, health and wellbeing after you have gone? Your child's capabilities and interests may change over time but maintaining their independence, health and wellbeing will always be important.

You might be the main financial provider for your child. You may be considering how best to provide and care for your child after you pass away. If you pass away without making specific arrangements, what will happen to your child? They might inherit from you under your Will – if they did, would they have the capacity to manage it, and their daily life, without assistance?

If the answer is no, consideration should be given to setting up a discretionary trust for your child's benefit. Many people when they hear of 'trusts' think that they are only available to, or used by wealthy people. That in fact is not true. Trusts are commonly written into the Wills of parents of young children to make provision for the children in the event of the parent's common sudden deaths, such as a car accident. They are also commonly set up by parents of children with special needs to maintain their child's future quality of life when they are no longer around.

## **Benefits of a Special Needs Trust.**

Establishing a special needs trust can have benefits for both parties. The beneficiary receives needed financial support without putting their eligibility for income-restricted programs or services in jeopardy. The person or party that contributes to the trust is reassured that the proceeds will go to expenses they stipulate.

Legal Action for People with Disabilities V Attorney General Anor<sup>66</sup>(20 May 2014);

Legal Action for People with Disabilities v Attorney General Anor<sup>67</sup>

Legal Action for Persons with Disabilities filed this Misc Cause by way of Notice of Motion under Articles 50(1), (2) & 32(1) of the 1995 Constitution of the Republic of Uganda, O. 48 r1 and O 52 rr 1, 2, 3 of the Civil Procedure Rules and the provisions of the Persons with Disabilities Act 2006. The respondents are Attorney General, Kampala Capital city Authority and Makerere University.

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<sup>66</sup> (Miscellaneous Cause 146 of 2011) [2014] UGHCCD 76

<sup>67</sup> (Miscellaneous Cause 146 of 2011) [2014] UGHCCD 76

The applicant is represented by Ms Galisonga, Kasasa & Nassali Co. Advocates while the 2<sup>nd</sup> respondent is represented by its Legal Department. The 3<sup>rd</sup> respondent is represented by M/s Katera & Kagumire Advocates.

The orders sought by the applicants are as follows:

that:

- a. A declaration be made that the failure by the respondents to make their premises and buildings easily accessible by Persons with Disabilities (PWD) violates the fundamental rights of persons with disability to have access to a barrier free physical environment.
- b. An order that the respondents jointly and severally, promptly do enforce the provisions of the law on PWDs relating to access to a barrier free physical environment.
- c. An order that the respondents do pay the applicants the costs of this application.

The detailed grounds of this application are set out in the affidavit in support deponed to by one Laura Kanushu and are that:

- i. The Constitution of the Republic of Uganda guaranteed affirmative action in favour of

marginalised groups including persons with disabilities (PWDs) as well as the right to respect human dignity and enjoins the government and society to take appropriate measures to ensure that persons with disabilities realise their mental and physical potential.

- ii. The parliament of the Republic of Uganda enacted a law; The Persons with Disabilities Act 2006 to provide for a comprehensive legal protection for persons with Disabilities and to make provisions for elimination of all forms of discrimination against persons with disabilities towards equalisation of opportunities and for related matters.
- iii. The said Act was intended *inter alia* to provide for easy access and exit by PWDs to and from the premises, public transport and public and private buildings and enjoined all public or private individuals and institutions to provide easy access to such buildings and to provide suitable facilities to PWDs.
- iv. Despite the requirements of the above stated law, several owners of private and public buildings including the respondents have not complied with the provisions of the Act and the 2<sup>nd</sup> respondent has continued to approve of buildings plans for new

buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.

- v. Government bodies and departments such as the Ministry of Gender Labour and Social Development, the High Court of Uganda at Kampala are operating in premises that cannot be easily accessed by PWDs or that do not have suitable facilities for PWDs thus depriving them access to such premises and buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.
- vi. As a result, PWDs still do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to such public and private buildings, places, public transport and other services that require physical movement.
- vii. The Government of Uganda is responsible for the predicament of the persons with disabilities in as far as it has failed to enforce the Persons with Disabilities Act but also has left some of its departments such as the Ministry of Labour Gender and Social Development to operate in a building which does not have suitable facilities for PWDs.

Another three supplementary affidavits were deponed by one Kwesiga Phyllis, Angela T. Baraba and Buwembo Mulshid respectively. The two affidavits of Angella Baraba and Buwembo echoed the main affidavit in support.

Angell T. Baraba deponed that she got a contractual job with the Faculty of Veterinary Medicine Makerere University as a project assistant but faced challenges in terms of physical accessibility to her office because of rooms and toilets which were inaccessible. That during her studies at Kyambogo University she faces a lot of difficulties to access lecture rooms. That most University buildings had steep steps. That as a PWD she has experienced a lot of difficulties in movement because most buildings have no ramps or lifts to ease movement.

In his supplementary affidavit Buwembo Mulshid reiterated the shortcomings outlined in the affidavit in support emphasising that he has experienced a lot of difficulties in movement. During his University education he reallocated to Makerere University from Mbarara University of Science and Technology because of inaccessible buildings but found the situation not any better. That because of this he performed poorly because he used to arrive late for lectures. That the main building at Makerere has narrow steps with no bars to cling on thus making it difficult to access.

In general, the deponent avers that PWDs do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to public and private buildings places, public transport and other services that require physical movement.

Kwesiga Phyllis an architect and CEO of KK consulting Architects who was instructed by the applicants to make a report on how buildings in KCCA and other areas can be modified for ease of accessibility to PWDs swore a supplementary affidavit saying modification is possible to those old buildings. According to him the following alterations can be made.

- a. Introduction of exterior gently inclined access ramp along the building side leading to the front entry/exit as at parliament.
- b. Provision of designated parking slots for the less able in close proximity to such an access.
- c. Provision of landings along that ramp at a maximum of 10 metres as specified in the standards set by (UNADP?)
- d. Provision of tactile markings at the start and end of each staircase and landing both with colour and texture alteration.



- e. Provision of tactile markings close to any entry or exit major (for use by the blind).
- f. Provision of appropriate hand rails along inclined ingress or egress points but suited to use by both adults and children.
- g. Provision of appropriate grab bars floor textures, and specially set aside washroom, inclusive of appropriate location of light fittings, mirrors, wash hand basins to suit for example someone crawling or in a wheel chair.
- h. Adjustment of doorways into major use areas to allow for wheel chairs.

That the above alterations should take into account cost implications, technical expertise and strength of the building structure that is being altered.

In his affidavit in reply deponed by one Joseph Buwembo, the Ag. Director of Physical Planning KCCA, the 2<sup>nd</sup> respondent denied the existence of Kampala City Council Authority because he is director of Kampala Capital City Authority. That the reason KCCA was established was to give Kampala City a special status and involve the Central Government in the day to day management of the city and to redress the short comings of its predecessor Kampala City Council (KCC).

That because of the mismanagement of affairs at KCCA physical planning laws among others were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, with the establishment of KCCA, physical planning laws and regulations are being enforced and in case of any breach of the laws and regulations the authority has taken action against persons in breach. Without elaborating the deponent swore that this application is bad in law and he is advised accordingly.

The University Secretary of the 3<sup>rd</sup> respondent Muhwezi Kahundha David swore the affidavit in reply on its behalf. He deponed that the 3<sup>rd</sup> respondent has limited revenue to utilize to accommodate a multitude of students seeking for Education facilities and restructuring the existing buildings to accommodate the disabled students in compliance with the said Act. That nevertheless, despite the limited resources, the 3<sup>rd</sup> respondent has implemented and carried out measures to enforce the provisions of the constitution and the Act by:

- a. Setting up an adhoc committee of council to address issues relating to students and staff who are disabled and to design a policy on people with disabilities.
- b. Employing student guides and helpers to assist people with disabilities to have access to a barrier free physical environment at the University premises.

- c. That the 3<sup>rd</sup> respondent pays the student guides a monthly salary of 70,000= plus meals, accommodation and medical care.
- d. The disabled students are allowed to choose their preferred halls of residence which may be nearest to their respective colleges where they study.
- e. The 3<sup>rd</sup> respondent allocates disabled male students rooms situated on the ground floor of Mitchell Hall Block D for easy accessibility. These rooms are closer to the bathrooms and toilets.
- f. Disabled students have specially designed facilities for their welfare. They have special teaching material methods and materials in the Main Library such as special computers used by the blind persons.
- g. The Main Library also has ramps and special rooms designed for disabled students.

The 3<sup>rd</sup> respondent's Secretary further deponed that upon admission of the disabled persons, the 3<sup>rd</sup> respondent has made alternative provision to the persons with disabilities who may not be able to attend lectures or examinations on a given day and time of the week by:-

- a. Offering transport facilities from the main gate to their respective destinations inside the 3<sup>rd</sup> respondent's premises.
- b. Examining and certifying them.
- c. Affirmative action where as admission policy, people with disabilities who score two Principles Passes are admitted on Government sponsorship.
- d. Offering an opportunity at a time of admission to change to any course suitable for them.
- e. Adjusting unfavourable examination time tables.

The Secretary further depones that the office of the Dean of students of the 3<sup>rd</sup> respondent has been shifted to the senate building on the first level which is easily accessible by disabled persons. That all new buildings constructed have to adopt a policy in conformity with the provisions of People with Disabilities Act. Several new buildings are now compliant including: -

1. The senate building.
2. The School of Computing and Information Technology.
3. School of Engineering
4. The Gender Studies Department.

5. The Main Library
6. The School of Food and Science Technology.

According to the deponent despite limited resources, the 3<sup>rd</sup> respondent is in the process of adjusting existing buildings prior to commencement of the Act. That although taxis and motor cycles are prohibited from operating within the University, disabled students are allowed to use motor cycles. The policy is intended to safe guard the 3<sup>rd</sup> respondent's community and maintain a safe and secure environment conducive to the 3<sup>rd</sup> respondent's staff and students' progress.

Finally, that the 3<sup>rd</sup> respondent has accorded preferential treatment to disabled persons by issuing clearance letters to enable them use public transport on the 3<sup>rd</sup> respondent's premises.

At the scheduling conference, the following issue were agreed Upon: -

1. Whether the respondents are violating the fundamental rights of persons with disabilities to have access to a barrier free physical environment.
2. What remedies are available.

Each of the respective counsel were allowed to file written submissions in support of their respective cases. Conspicuously the Attorney General neither filed an affidavit in reply nor written submissions.

I will start with resolving issue one.

In its submissions, the applicant says that sufficient evidence has been adduced to show that the respondent is jointly and severely violating the rights of people with disabilities to a Barrier free Physical Environment under Articles 32(1), 35(1) and Section 19 and 20 of the Persons with Disabilities Act 2006.

Learned counsel for the second respondent attributed failure to comply with the law to the mismanagement by the predecessor Kampala City Council.

That physical planning laws were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, remedial measures have been instituted to ensure that all structures in the Capital City Area conform to the physical planning laws. That affirmative action which is enshrined in the 1995 Constitution and the PWD Act should be implemented gradually because immediate implementation of the mandatory provisions of the said law would lead to undesirable outcomes and

disruption of activity and access to the buildings complained of.

In their submissions, learned counsel for the 3<sup>rd</sup> respondent maintained that the latter has not violated the fundamental rights of persons with disability as enshrined in the constitution.

After a careful consideration of this application and the affidavit evidence as well as the submissions by respective counsel, all parties hereto acknowledge that prior to the promulgation of the 1995 Constitution and enactment of Persons with Disabilities Act, several structures were put in place without due regard to the needs of people with disabilities. Both the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have however provided evidence to show that steps are being taken to remedy the situation by gradually implementing the Act and restructuring accessibility to their respective structures/premises. For example, KCCA has vowed to strictly enforce the law and ensure that all structures in the Capital City area conform to the planning laws through regulations and in the worst scenario by demolishing of offending structures. The 3<sup>rd</sup> respondent has also demonstrated in its evidence that she has taken steps to comply with the constitution and the PWD Act. The actions taken are enumerated in the affidavit in support. I will single out a requirement that all new buildings constructed on the 3<sup>rd</sup> respondent's premises should adopt a policy in

conformity with the provisions of the Act. (See list above). This is in compliance with S. 19 which provides for access to premises to persons with disabilities and S. 20 of the Act which provides for duty to provide access to buildings.

I am in agreement with learned counsel for the 3<sup>rd</sup> respondent that by taking the above steps the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have promoted and upheld the rights of people with disabilities as provided under Article 35(1) as well as promoting affirmative action in favour of marginalized group as provided under Article 32 of the Constitution.

As correctly pointed out by learned counsel for the 3<sup>rd</sup> respondent, it has a duty to consider and weigh the competing provisions of the constitutional rights i. e the right to education and the national objectives and directive principles of state policy against the rights of persons with disabilities and affirmative action in favour of marginalized groups.

Evidence of competing interest is clearly brought out in the 3<sup>rd</sup> respondent's affidavit in reply that is to say affording all persons with fundamental rights to education and equal opportunity to attain the highest educational standards possible.

I will take particular note that both the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have limited resources to immediately provide what is required by the applicants. Therefore, restructuring



the existing buildings to accommodate the disabled people or students requires a lot of funds which is not readily available. For the 3<sup>rd</sup> respondent, utilizing its scarce resources on the existing structures may substantially increase the cost of education making it impossible for all citizens to attain the highest educational standards. Many poor students will be prejudiced.

Whereas people with disabilities go through numerous challenges, while attending the 3<sup>rd</sup> respondent and or working in Kampala, this should be attributed to the old structures which never made sufficient provisions for such people. These structures came into existence before the promulgation of 1995 Constitution and enactment of the Persons with Disabilities Act, a time when affirmative action was not a policy of government. Both the disabled and none disabled citizens must equally enjoy their rights. But relying on the accommodation principle, even where the fundamental human right in question is not absolute, the respondent has a duty to demonstrate that it has put in place reasonable measures to enable the complainants enjoy their constitutional rights. Any limitations to the enjoyment of fundamental rights should be none substantial. It should be acceptable and demonstrably justified in a free and democratic society. See: Demanche Sharon and 2 others Vs Makarere University S C Constitutional Appeal No.2 of 2004.

Just like it was held by Katureebe JSC in that case, in the instant case the applicants seem to imply that their own right must be enjoyed irrespective of the negative effects that it may have on public interest, the costs to the respondents and the overall costs to other (students) or people. The applicants ought to know that the enjoyment of their rights is not absolute. It has to take in to account the rights of others as well as public interest.

In the instant case the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have taken measures to accommodate the applicants' special concerns. Therefore, the adverse effects on the rights and freedoms of the applicants were reduced. The applicants' rights and freedoms were affected by the poor policies of the people in charge long before. Remedying these failures must take in to account the interests of others. Further to this, the respondents have put in place the numerated measures as indicated in their respective evidence to accommodate the applicants and make access to some buildings and make the University education accessible to them. These measures include:

- Setting up an adhoc committee of counsel to address all issues relating to students and staff who are disabled and design policy on persons with disabilities.

- Employing student guides and helpers to assist the disabled persons access free physical environment at the 3<sup>rd</sup> respondent's premises. These people are paid 70,000= pm and are fed, accommodated and given medical care.
- Allowing disabled students to choose their preferred halls of residence which may be nearest to their respective colleges where they study.
- Allocating ground floor rooms on block D Mitchell Hall for easy accessibility and closeness to bathroom/toilets to shorten the distance to the facilities.
- Designing facilities for the disabled students' welfare such as special teaching methods and material in the library including computers used by the blind persons.
- Erecting ramps and special rooms for disabled students.
- Shifting the office of Dean of Students to the Senate building on the first level which is easily accessible by the disabled persons.

There is evidence on record that the 3<sup>rd</sup> respondent has extended reasonable accommodation to students with disabilities by: -

- Offering transport from the main gate to their respective destinations in the University.
- Examining and certifying the disabled.
- As an admission policy, persons with disabilities who score two principle passes are admitted on government sponsorship.
- The disabled students are offered an opportunity at the time of admission to change to any course which is suitable for them.
- If unable to sit for an examination, the disabled are encouraged to inform the relevant authorities to adjust and reallocate them to the examination room convenient and easily accessible.

These averments by the respondents were not controverted implying that even Buwembo Mulshid is or was entitled to the said services.

As regards the 2<sup>nd</sup> respondent, it is putting in place control measures to ensure that building in the city is compliant. Given that most buildings complained of were constructed in 50<sup>s</sup> through to the late 80. Therefore, as recommended by

Kwesiga Phyllis the architect, alteration should consider facts like the cost implications, technical expertise and strength of building structures that are to be altered. Therefore, the alteration has to be gradual.

I am therefore satisfied that the respondents but especially the 3<sup>rd</sup> respondent are alive to the concerns of the students with disabilities and did not fail or refuse to respect, uphold or promote the rights of those students. There is evidence that the 3<sup>rd</sup> respondent is an equal opportunity institution for all persons. It has not violated the fundamental rights of the applicants to have access to a barrier free physical environment. Any limitations imposed upon the rights of persons with disabilities are justifiable in the existing circumstances. The respondents will be encouraged to continue complying with the requirements of the Act and ensure continued modification of the old buildings and ensure that plans for new buildings take into account the right to easy access to them before they are approved.

Regarding remedies, I am unable to grant a declaration sought because the respondents have taken steps to make their premises and buildings accessible by people with disabilities.

Court cannot order prompt enforcement of the provisions of the law because of the hardship it involves, but shall encourage whoever is responsible and the respondents in

particular to ensure continued compliance with the law as required.

### Disability harassment

Disability harassment can include negative or offensive remarks or jokes about a person's disability or need for a workplace change, and other verbal or physical conduct based on a person's disability.

## **War and Disability**

In many parts of the world, wars are majorly a sole cause of disability ranging from the innocent civilians who become victims of bullets, rebel attacks, atomic bombs and injured soldiers who in most cases come back home to wander on streets. The wars also cause injuries such as blindness and the loss of limbs from landmines and mutilations. International donors have worked to address the needs of many vulnerable group.

An example of such was can clearly be seen in an attack on Nagasaki and Hiroshima. The atomic bombings of Hiroshima and Nagasaki were the detonation of two atomic bombs over the Japanese cities of Hiroshima and Nagasaki on 6 and 9 August 1945 by the United States. Over 70,000 were

injured during the attack on Hiroshima which left them disabled.

### **People with special needs as competent witnesses.**

Many countries have incorporated procedures to credit witnesses who are considered to be of special needs. They have enacted a comprehensive law requiring accommodations for persons with disabilities in the justice system.

The courts have thus held that testimony of witnesses with mental and cognitive disabilities will be determined through questions of weight and credibility rather than of competence.

The procedure of Court to determine whether a person with special needs is competent is when Court decides to conduct a “voir dire” literally phrased as a trial with in a trial.

So many cases have come up to uphold such principle. The court is authorized to exempt a witness with a cognitive or mental disability from being cautioned (the equivalent of giving an oath), before testifying, if persuaded that the witness does not understand the general obligation to tell the truth. It has now been acknowledged that there exists a

difference between the ability to understand the abstract concept of telling the truth, and the ability to tell the truth in a particular matter;

The leading rule relating to the credibility of witnesses with cognitive disabilities was handed down in the *Barda* (1986) case. In *Barda* a "triple test" was established: for the court to accept testimony of a witness with a mental or cognitive disability, the testimony must pass all following criteria: a.) the unmediated general impression of the court which hears the witness about her condition and ability to testify in a credible manner, taking into account expert testimony about the disability; b.) the internal logic of the testimony, i.e., "truth signs" that originate from the testimony itself; and c.) supplementary support to the testimony through external evidence.

To begin with, as explained above, the requirement that a witness will "understand the meaning of truth telling" might exclude witnesses who can indeed tell the truth in a particular case, but do not always understand the abstract duty to tell the truth. Second, the condition set in *Jabari* (1995) for accepting testimony, under which the disability did not, in fact, hinder the witness's capability to testify may mean very little if not accommodated properly — for example, by use of substitute communication devices, or by changing the setting in which the testimony is heard. Third, the first and second criteria established in *Barda* stand in contrast to the notion



that the quality and credibility of the testimony is contingent upon the manner in which it is produced.

In the Matter of Moe<sup>68</sup>, the facts of the case The ward is a mentally retarded woman born on August 6, 1956. Her emotional, intellectual, and developmental age, however, does not conform to her chronological age, and she currently functions at the level of a four-year-old. In the view of professionals in the health care field it would be in the best interest of the ward to have an abdominal tubal ligation. Medical practitioners in the Commonwealth refuse to perform the abdominal tubal ligation procedure without a court order. The issues presented seem to us to involve whether an incompetent person is to be given the same rights as those vested in a competent person, and, if so, how and by what means. We find more persuasive the view expressed in most recent decisions that a court of general jurisdiction which has powers of equity over incompetents and their guardians, such as the Probate Court, has the power to hear and adjudicate petitions such as the one in the case at bar. In utilizing the doctrine of substituted judgment, this court seeks to maintain the integrity of the incompetent person by giving the individual a forum in which his or her rights may be exercised. The court dons "the mental mantle of the

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<sup>68</sup> 5 Mass. 555 (1982) 432 N.E.2d 712 IN THE MATTER OF MARY MOE. Supreme Judicial Court of Massachusetts, Worcester

incompetent" and substitutes itself as nearly as possible for the individual in the decision-making process.").

In 1971 case of *Richardson v. Perales*<sup>69</sup>, it was a case heard by the United States Supreme Court to determine and delineate several questions concerning administrative procedure in Social Security disability cases. In the case the Supreme Court ruled that: 1.) Written reports submitted by physicians in the treatment and evaluation of patients are admissible, and should be considered substantial evidence in disability hearings under the Social Security Act, even though by their nature, they are ‘hearsay.’ 2.) Hearsay evidence is admissible up to the point of relevancy in such hearings. 3.) Subpoena of witnesses is within the jurisdiction and allowable under the rules of procedure in Social Security disability hearings. 4.) Reliance on “stacked hearsay” – where written records are reviewed by others who have not examined the patient, but issue reports based on their review, which then are followed by more generation of reports by individuals who have reviewed the record – should be discouraged. 5.) It is within the jurisdiction of administrative law judges to hire outside case consultants or advisors to review the issues of the case and offer reports and testimony in the furtherance of resolution. This is a practice that is advisable, in particular in those cases where the medical records and testimony are

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<sup>69</sup> 402 U.S. 389 (1971)

conflicting, or the medical issues are not clear. 6.) The Social Security Act is to be interpreted liberally in favor of the claimant. 7.) Social Security disability is different from welfare entitlements and does not require the same level of due process protections under the Fourteenth Amendment of the United States Constitution.

### **Is sterilization of a mentally retarded person legal?**

In 1983 – The Indiana Supreme Court authorized for the sterilization of a mentally retarded twelve-year-old girl who engaged in self-destructive behavior such as pulling her hair, biting herself, banging her head, ripping her skin with her fingernails, and resisting the "restraints in order to hurt her own body."<sup>70</sup> The patient's parents and her doctors were both in agreement that a hysterectomy was necessary in order to prevent "hemorrhaging and infection, and possibly death" because the patient's excitement with her own blood may cause her "to induce bleeding by poking into her vagina or abdomen in an attempt to keep the blood flowing" once she develops her menstruation cycle<sup>71</sup>. The Court held that a

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<sup>70</sup> P.S. by Harbin v. W.S., 452 N.E.2d 969 (Ind. 1983) ("She felt that due to the pattern that P.S. has shown so far it is very reasonable to feel that P.S. might try to induce bleeding by poking into her vagina or abdomen in an attempt to keep the blood flowing. This, of course, would result in hemorrhaging and infection, and possibly death.").

<sup>71</sup> Ibid 57

specific Indiana statute authorizing sterilization was not necessary in order to authorize the sterilization, the juvenile court had the authority to authorize sterilizations if there was clear and convincing evidence that the medical procedure was necessary, and in this case there was overwhelming evidence that the sterilization was medically necessary

## **People with special needs in sports.**

### **Uganda at the Deaflympics**

Uganda competed at one edition of the Deaflympics: the 1997 Summer Deaflympics held in Copenhagen, Denmark. The country sent a delegation of twelve athletes (eleven men and one woman) and did not win any medals. The Deaflympics also known as Deaflympiad (previously called World Games for the Deaf, and International Games for the Deaf) are a periodic series of multi-sport events sanctioned by the International Olympic Committee (IOC) at which Deaf athletes compete at an elite level. Unlike the athletes in other IOC-sanctioned events (the Olympics, the Paralympics, and the Special Olympics), athletes cannot be guided by sounds (such as starting pistols, bullhorn commands or referee

whistles)<sup>72</sup>. Bashir Ramathan is a Ugandan boxer who has been blind since the age of 17<sup>73</sup>,



In his words he proclaimed that “They have to learn from me that blind also can play boxing,” said Ramathan. “That’s why I wanted to show them. They know we can play all games, but boxing is what is making them surprised. ‘Boxer? Blind? You are lying. How can that man play?’”

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<sup>72</sup> International Committee of Sports for the Deaf – News Archived 23 September 2015 at the Wayback Machine. Deaflympics.com.

<sup>73</sup> “A Blind Boxer Inspires Uganda”. The New York Times. 16 August 2008.

But most of his sparring partners are simply blindfolded. Bashir explains that he has his own strategies, and can often win such fights.

He uses his senses, Mostly the ears. He hears the footmarks, and deliberately makes a move. There's not many blind boxers who can take up his challenge, so he's very courageous. He challenges anybody. He puts up a good fight.

Other individuals include Margaret Baba Diri a member of the Parliamentary Committee on Education and Sports, through legislation with her involvement there has been better legislation on sports.

## **The African Union Policy Framework for the Sustainable Development of Sport in Africa**

(2008-2018) defines "Sports" as a physical activity that is governed by set of rules or customs involving specific administration, governing body, organization and an historical background and often engaged in competitively. The National Council of Sports (NCS) is a statutory organ whose establishment, status and powers are enshrined under the National Council of Sports Act of 1964.

## **Criminal charges of persons with special needs in uganda**

In the case of Uganda v Tesimana Rosemary<sup>74</sup>

This case demonstrates the ills in our criminal justice system that ought not to be tolerated in any civilised system of administration of justice. The accused, Tesimana Rosemary, was for the last nine years and three months or so, lost in the system! She did not re-surface, at least to the existence of the courts until a letter dated 8th June 1999, whose contents I reproduce below was written to the Chief Magistrate by the Officer in charge of Masaka Government Prison.

She was admitted to prison, Since her admission, she showed some signs of mentally unsound person and the O/C then requested her medical examination through the Chief Magistrate, she was transferred thereafter to Butabika Mental Hospital where she was since then. She was sent back after her medical treatment and seems sound to stand trial. The prosecution wrote a letter therefore to request the judge take the necessary action on her as the period is seemingly too long.” The letter was not accompanied by any medical report whatsoever!

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<sup>74</sup>(MSK-00-CR-CV 13 of 1999) [1999]

The matter came before the Judge by way of revisional jurisdiction, having been placed by the Chief Magistrate, Masaka Magisterial Area. The brief facts of this case are that the accused was charged with murder of Gataro Paul, who I understood from the bar was her husband, on the 20th February 1991. She was arraigned before a magistrate's court on the 1st March 1991. On that day the court noted she was of unsound mind.

This file was placed before me in exercise of the High Court's supervisory powers over proceedings in Magistrates Courts under Section 19 of the Judicature Statute. When the matter came for hearing the Resident Senior State Attorney, Mr. Simon Khaukha, who appeared for the state, explained that this matter took this long because no information was passed back to the prosecution from prisons. After perusing the police file, he was of the view that although there was enough evidence to prosecute the accused, it would appear that at the time the accused is alleged to have committed the offence she was mentally unsound, and had a history of an unsound mind. Mr. Simon Khauka applied for an adjournment to enable him initiate a withdrawal of the charges against the accused.

The accused was unrepresented at these proceedings, just as she was unrepresented in the proceedings in the lower court. When it came to her turn she said she had nothing to say. Asked by if she should be released, she responded, " I



forgot where I came from." Asked what the Court should do for her, she replied, " I don't know."

The court declined to grant the application for adjournment. Exercising the inherent jurisdiction of the court, and in accordance with section 19(2) of the Judicature Statute , it ordered a stay of the prosecution of the charges against the accused. I dismissed the charges against her and discharged her forthwith.

The rationale for Courts' decision stated that:

The first matter dealt with by court was perhaps the way the accused was dealt with by the court on realisation that she was a person of unsound mind. On 1st March 1991, when the accused first appeared on the present charges before the magistrates' court, the court noted that she appeared to be a person of unsound mind. It ordered that she be taken to hospital for examination. She was subsequently taken and did not return until eight years later, albeit without a report!

The court averred that Part X11 of the Magistrates Courts Act provide the procedure for dealing with cases of insanity or other incapacity of an accused person. It specifies two areas in which it is applicable under Section 111(1) of the Magistrates Courts Act . These are either "in the course of a trial" or "preliminary proceedings"

Section 111(1) provides, "When in the course of a trial or preliminary proceedings a magistrate's court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness." Subsections (2), (3), (4) & (5) of Section 111 then deal with what orders the court is to make during and after its inquiry. Statute No. 6 of 1990, The Magistrates Courts (Amendment) Statute, repealed part XV of the Magistrates Courts Act, terminating the holding of preliminary proceedings in magistrates courts for offences triable in the High Court.

A magistrates court would have authority under section 111 of the Magistrates Courts Act as amended by the Statute No. 6 of 1990, to inquire into cases of insanity or other incapacity which are undergoing trial in its court only. It is no longer authorised to inquire in the same in respect of preliminary proceedings, which, as known under Section 111, have been abolished.

In any case, even if the magistrates court had authority to inquire into the unsoundness of mind of the accused in preliminary proceedings, it is unlikely that this would include matters of this nature where the proceedings had not yet moved into the realm of preliminary proceedings. Under section 241 of the Magistrates Courts Act, "Preliminary Proceedings are defined as the "proceedings under Part XV of this Act." Proceedings under that part were

proceedings related to the committal of an accused to the High Court for trial. Apparently such proceedings did not include the initial appearance of an accused charged with a capital offence before a magistrates court. Such appearance was governed by Section 162 of the Magistrates Courts Act, outside Part XV of the Act.

Court further put it forward that the attitude and actions of the magistrate's court when the accused was first arraigned before it on the current charges. The resultant injustice of being lost in the criminal justice system demonstrates that there is a lacuna in the written law.

It may be that this lacuna may be addressed by legislative action by way of law reform. The attention of the Minister of Justice, the Attorney General and the Law Reform Commission will be drawn to this anomaly. In the meantime, is a magistrate court faced with the same situation powerless to hold an inquiry into the soundness of the mind or other incapacity, if there is reason to believe that the accused is of an unsound mind? I think not and the following are my reasons.

The general jurisdiction of magistrates courts is set out by Section 8 of the Magistrates Courts Act. It states, "The jurisdiction of a magistrates court shall, subject to the provisions of this Act and of any other written law limiting or otherwise relating to the jurisdiction of that court or of the

presiding magistrate, be exercised in conformity with the law with which the High Court is required to conform in exercising its jurisdiction by the Judicature Act, 1967."

The Judicature Act, 1967 was repealed by the Judicature Statute No. 13 of 1996. Section 16 deals with the jurisdiction of the High Court. Section 16(2) reads in part, "Subject to the provisions of the Constitution and of this Statute, the jurisdiction of the High Court shall be exercised- (a), (b), (c) where no express law or rule is applicable to any in issue before the High Court, in conformity with the principles of justice, equity and good conscience."

As there is no "express law or rule" to deal with this particular lacuna in the law, Magistrates Courts and the High Court can apply "the principles of justice, equity and good conscience" to fill this lacuna. It may be that the magistrate's court in ordering the accused to be taken for medical examination was acting in conformity with the principles of justice, equity and good conscience. There is no evidence however on the file to show that this order was complied with. No examination report by a qualified medical practitioner was produced to court up to now, some eight years later! Perhaps principles of justice, equity and good conscience would require that an order for provision of medical treatment should have been made. It is clear to me, in terms of the principles of justice, equity and good conscience, that it was important to establish as soon as

possible whether the accused was a person of unsound mind or not to determine the best course of action to be taken by the Director of Public Prosecutions as envisaged originally in matters under trial or preliminary proceedings before a magistrates court under Section 111(2), (3), (4) & (5). And in cases before the High Court, the procedure is set out in sections 43 to 45 of the Trial on Indictments Decree.

The procedure before the High Court and the magistrates courts is virtually the same. The court inquires if the accused is of unsound mind. If it forms the opinion that the accused is of unsound mind it may either release the accused on bail, if it is seized with the authority to do so. In case it is not, it then remands the accused in a safe custody and shall transmit the record or a certified copy thereof to the Minister. The Minister is authorised to order the detention of the accused in a mental hospital or such other suitable place. The Medical Officer in Charge of such institution is required to certify to the Director of Public Prosecutions as to whether the accused is capable of making his defence or not. On receipt of that certificate, the Director of Public Prosecutions makes up his mind whether to prosecute or not and informs court accordingly. Thereafter the original criminal proceedings may resume or the investigation into unsoundness of mind may continue.

The foregoing procedure ensures that the court does not lose sight of the accused and the proceedings against him.

At the same time it seeks to secure the rights of an accused for a fair trial. The absence of a similar procedure in the instant case resulted in the accused being lost in the system and after nine years it is not clear what happened to the accused during this period! It is far from clear at the time she reappeared whether she was fit to conduct a defence from the point of view of her mental condition. I would suggest that Magistrates' Courts faced with a similar situation as the present one, ought to follow the procedure set out in Sections 111, 112 and 113 of the Magistrates Courts Act, as a necessity, based on the principles of justice, equity and good conscience, in absence of any other prescribed procedure.

I now turn to the issue of the nine-year delay in this case before committal for trial of the accused person. Does this delay amount to an abuse of the process of court to warrant a stay of prosecution in terms of Section 19 (2) of the Judicature Statute? In *Uganda v Shabahuria Matia Criminal Revisional Cause No. msk-00-cr-0005 of 1999* (unreported) I examined the genesis and function of the provisions of Section 19(2) of the Judicature Statute. The section provides, " With regard to its own procedures and those of the magistrates courts, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecution as may be necessary for achieving the ends of justice."

I stated in *Uganda v Shabahuria Matia*, " It appears that the restatement of the existence of this inherent power of the courts in Section 19(2) of the Judicature Statute is intended to draw the attention of the Courts to the fact that this power ought to be used in appropriate cases to deal with delay in the courts which is now known to have reached scandalous proportions." This appears to be one such case!

In determining whether delay of the prosecution of the case was such that it required court to order a stay of prosecution, I suggested, in *Uganda v Shabahuria Matia* (supra), that the following factors ought to be taken into account: (1) The length of the delay; (2) The reasons for the delay including (a) inherent time requirements of the case, (b) actions of the accused, (c) actions of the State,(d) limits on institutional resources or systematic delays, and (e) other reasons for the delay; (3) prejudice to the accused.

The delay in the instant case is eight years. The accused was lost in the criminal justice system. For over nine years she did not appear in court. Ostensibly she was in Butabika Hospital for treatment for this period. But no report has been produced to show that she underwent treatment for her condition of being mentally unsound. The length of the delay in this case is such as to warrant an inquiry into the reasons for the delay with a view to determining whether the delay in this case was oppressive to the accused to amount to an abuse of the process of court.

In considering the reasons for the delay this will include, inherent time requirements of the case, the actions of the accused, the actions of the state, limits on institutional resources or systematic delays and any other possible for reasons for the delay. In an ordinary case triable by the High Court, the Platt Report suggested that five months and at the most six months was sufficient time in which the state ought to have committed the accused for trial to the High Court.

"As we have said, once the remand reaches five months, we recommend that the Chief Magistrate steps in to ascertain why committal to the High Court has been delayed. The State Attorney should be able to explain within a month, the cause of the delay and when he estimates that the accused will be committed for trial. If there is no excuse at all, the matter must be reported to the Chief Justice via the Chief Registrar, who will usually contact the Director of Public Prosecutions. If there is indeed no case, no doubt the case will be withdrawn." [See Page 36 of the Platt Report]

I take it, following the views expressed above in the Platt Report that the inherent time requirements necessary to process the case from the arrest of an accused person, arraignment before a magistrate, completion of investigations, seeking opinion of Director of Public Prosecutions, and committal to High Court would, in an ordinary case, require no more than six months. It can not be said in the present case that the accused in any way



contributed to the delay in this case. She was wholly at the mercy of the criminal justice system.

In considering actions of the state it should include omissions of the state in moving the case forward. It is the duty of the state to ensure that the trial of an accused progresses speedily without delay. This is in order to ensure that accused persons charged with offences are tried and dealt with promptly according to law. Those found guilty would receive a just dessert and those innocent would be cleared of the charges against them. This is in the public interest. Society expects it to be so in light of the values and aspirations in our Constitution. At the same time the accused is entitled to be tried speedily in accordance with Article 28(1) of the Constitution.

In the instant case the state is guilty of the most gross inaction. For over nine years no action was taken by the state to move this case to disposition. The only reason advanced by the learned Resident Senior State Attorney was that the prosecution was not kept informed, presumably by the prison authorities, of the whereabouts of the accused. There is no evidence that the prosecution attempted to take any action whatsoever. From the address of learned counsel for the state, it was clear on the police file that at the time the accused is alleged to have committed the offence, she was of unsound mind. To have just dumped her into court and forget her existence was a dereliction of duty on the part of

the prosecution. At the earliest opportunity the matter ought to have been communicated to the Director of Public Prosecutions with a view to forming a decision as to whether a prosecution ought to continue or not.

I now turn to the question of systematic delays or limits on institutional resources. This factor would come into play if the case was ready for trial but the court could not avail a trial date due to the pressure of work. It may be that it is not a question of pressure of work but there are no funds to finance a trial or retain counsel for the accused. Whereas delay due to pressure of work may be a factor to justify delay for a period in terms of limits on institutional resources, this can only be for a limited period, as there is a duty upon the state to organise its resources in such a manner that the rights of an accused are not rendered nugatory. Similarly, absence of funds for financing trial sessions including retention of counsel in cases where an accused is entitled to counsel at the expense of the state, can not form a justifiable excuse for delay indefinitely. Anyhow, in this particular case, it is safe to say that no portion of the delay was justified by the limits on institutional resources, as the case has never been ready for trial in the last nine years.

It could be suggested that the uncertainty of the law in this area may have contributed to the delay, as the various actors did not know what to do in the circumstances of this case. In the first place this was of course not raised at all by

the state as a possible reason for the delay. Secondly, if it were to be so, the state would have sought guidance from the Director of Public Prosecution or from the Courts as to the next step. This was not done. I do not find that there was any other possible reason for delay in this case, other than gross inaction on the part of the state.

I turn to the question of prejudice occasioned by the delay of the proceedings against the accused. I think this was monumental both presumptive and real. The accused's ability to defend herself, including recalling exactly what occurred is likely to have been affected. She no longer had an idea where her home was. Neither did she have an idea where to go after her possible release from prison. If she desired to call any witnesses for her defense, it is possible that these were not traceable. They may have died or moved away from the places the accused knew. The accused was kept in pre-trial custody for nine years and three months without a trial, rendering both the presumption of innocence, and the right to a fair and speedy hearing of no value or meaning to her.

In 1997 Uganda acceded to the International Covenant on Civil and Political Rights and its first protocol. This renders the jurisprudence of the human rights committee set up thereunder of persuasive value to our courts in considering matters that may have been considered by the Committee. In *Lubuto v Zambia* the author was arrested in February 1980 and charged with the offence of

aggravated robbery. On 4th August 1983 the author was convicted of the offence and sentenced to suffer death. He appealed to the Supreme Court and his appeal was dismissed in February 1988. The Committee found that the author's complaint raised, among other issues, whether Article 14, paragraph 3(c) dealing with a trial without delay had been complied with.

In paragraph of 7.3 of the Committee's decision it states, "The Committee has noted the State party's explanations concerning the delay in the trial proceedings against the author. The Committee acknowledges the difficult economic situation of the State party, but wishes to emphasize that the rights set forth in the covenant constitute minimum standards, which all States parties have agreed to observe. Article 14, paragraph 3 (c), states that all the accused shall be entitled to be tried without delay, and this requirement applies equally to the right of review of conviction and sentence guaranteed by article 14, paragraph 5. The Committee considers that the period of eight years between the author's arrest in February 1980 and the final decision of the Supreme Court, dismissing his appeal, in February 1988, is incompatible with the requirements of article 14, paragraph 3 (c)."

In our constitution the wording is somewhat different. But the import is the same. Article 28 (1) provides, "In the determination of civil rights and obligations or any

criminal charge, a person shall be entitled to a fair, speedy and fair hearing before an independent and impartial court or tribunal established by law." The time starts to run once a criminal charge is laid.

In *Uganda v Shabahuria Matia* (supra) I found a period of three and half years without committing an accused for trial, without an explanation for the delay by the state, as oppressive, amounting to an abuse of the process of the court warranting the extreme remedy of ordering a stay of prosecution. The instant case is worse. There is no explanation for the delay of nine years and three months without committing the accused for trial. A period of eight years between the first arraignment of an accused before court and the completion of the proceedings including appeal to the court of last resort, in *Lubuto v Zambia* (supra) was found to have infringed the accused's right to trial without delay under the International Covenant for Civil and Political Rights. How much more so here where the case is not ready for trial for the last nine years without any convincing explanation for the delay!

I am satisfied that the delay in bringing the charges against the accused to trial in this case was so oppressive as to amount to an abuse of court process. At the same time it was a clear case of an infringement of the accused's right to a fair and speedy hearing. For those reasons I declined to accept the application by the state for an adjournment, and instead

dismissed the charges, discharged the accused and ordered a stay of prosecution.

Before I take leave of this case, I must say the courts can not escape blame for this unhappy state of affairs in the criminal justice system, which has no remorse for caging up people in penal institutions for unjustifiable periods of time. It would appear that the magistrates courts to which accused persons are first produced before committal regard themselves as no more than an assembly line or conveyor belt, ran by the prosecution. For years on end, the court is content to record endlessly adjournments of the case for as long as the prosecution so requests. No inquiry or rather serious inquiry is made of the prosecution as to the state of investigations, and what steps the prosecution is taking towards the progress of the case. In the end the proceedings before it amount to an abuse of process of the court in so far as they become oppressive to the accused persons. In such a case I have expressed the view before [See *Shabahuria Matia v Uganda*, (supra)] and I repeat it now, that the courts can not be powerless to prevent an abuse of the process of court. All courts have inherent jurisdiction to prevent abuse of process of court including, where necessary, a power to dismiss the charges pending against an accused.

Even though a Magistrates court has no jurisdiction to try capital charges, accused persons on such charges are brought before it to ensure that, among other things, the

accused's rights are protected. The courts must be vigilant in doing so by consistently requiring the prosecution to provide information as to the state of investigations. The magistrate may order the prosecution to take certain action essential for the progress of the case by some date. And where it is evident that the prosecution is not living up to its obligations, the magistrate can send the file for revision to the High Court. Routine adjournments must come to an end.

In *Uganda v Shabahuria Matia I* drew the attention of the Minister for Justice together with the Attorney General to the need for law reform along the lines of Decree 11 of 1972 in order to stem injustice arising out of delayed action on the part of the state to commit for trial or otherwise deal with accused persons facing charges before the courts. This decree provided for dismissal of capital charges if an accused had not been committed for trial within fifteen months and a lesser period for non capital charges where no trial had taken place. This statutory scheme of providing limited periods for taking of certain actions has been adopted in the Children's Statute. See Section 100 of the Children's Statute.

A statutory scheme may provide the most efficient method of dealing with cases of this nature. The present case illustrates the gross injustice that arises out of inaction of the players in the criminal justice system. In light of these remarks and my earlier remarks in paragraphs 13, 14 and 15 above, I direct the Registrar of this Court to avail to the Minister for

Justice and Constitutional Affairs, the Attorney General and the Chairman, Law Reform Commission copies of this ruling.

### **Recommendations.**

- The state should increase awareness in the public about treating people with disability equally in line with Article 8 of the Convention on the Rights of Persons with Disabilities which Uganda is a party. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; this must also include awareness of the capabilities and contributions of persons with disabilities, therefore the achievements of people like Counsel Florence Ndagire shouldn't be kept in the dark.
- The state should pass strict laws on to private owners of building to be made accessible to persons with disabilities. To enable persons with disabilities to live independently and participate fully in all aspects of life, access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including



information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

- Sign Language be introduced in Teacher Training Colleges as part of the regular Curriculum;
- Data collection, data management system to be in place in order to ease the flow of information and to help ascertain the needs of special needs education per district so that all children with disability needs are catered for accordingly since their needs vary according to disability category, gender and family background.
- Government and Civil Society Organizations should collaborate to uplift the plight of Children with Disabilities through Special Needs Education, the collaboration will help to reduce duplication of services, planning and budgeting for the needs of Children with Disabilities
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### **Admissibility of evidence**

The admissibility of an out-of-court statement without in-person testimony of the disabled witness is allowed if the

court believes — based upon expert opinion — that testifying might harm her, or if she cannot testify because of her disability. Such statements are termed as Hear-say which tend to be not admissible. In these circumstances, the court must be persuaded that the harm to the witness or the default in the testimony cannot be mitigated or overcome by use of alternative measures (such as in camera testimony, testimony behind a screen, or out of court). However, the court cannot base a conviction upon an external statement alone without corroborating evidence

How the Law Protects Person of Special Needs Victims against Sex Predators.

Defilement of the Feeble-minded.

Under the Penal Code Act<sup>75</sup>, Section 129 provides for the offence of Defilement of persons under eighteen years of age. It provides that Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

This offence can be aggravated in several ways among which include those under 129(4) (d) which provides that where the victim of the offence is a person with a disability.

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<sup>75</sup> Cap 120, Laws of Uganda

It goes further to provide under subsection (5) that Any person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.

To avoid inconsistencies and doubts, the Act gives the literal meaning of disability which means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation; as per the Penal Code Act, Cap 120.

Comment on the Sexual offence bill.

Section 130 of the Penal Code Act provides for Defilement of idiots or imbeciles and states the punishment thereafter.

The bill.

A person who performs a sexual act with a person incapable of giving consent to a sexual act commits an offence and is liable upon conviction to imprisonment for life.

(2) A person is incapable of giving consent if he or she;

a) Lacks the capacity to choose whether to agree to the sexual act or

b) Is unable to communicate such a choice to another person

(3) A person who attempts to perform a sexual act with a person incapable of giving consent to a sexual act commits an

offence and is liable on conviction to imprisonment for a term not below a period of three years.

### Comment

This is replacing section 130 of the Penal Code Act, which guides on defilement of idiots or imbeciles. The removal of 'idiots' or 'imbeciles' is justified as they are derogatory terms that also were not well defined. However, this definition might be too broad to provide clarity for someone to prosecute in a case where consent cannot be given.

Additionally, although consent is a core principle of making laws related to sexual offences truly gender-equal it is not an easily transferable concept.

Consent is supposedly defined as a person's agency and control in sexual encounters to decline or accept the other party's proposal. However, the reality is that rape laws largely translate consent according to the relationship between the two parties. It is known that women fall into different categories of consent depending on her relationship to the alleged man and his desire for her. Therefore rape laws need to be very explicit on what consent is. Rape laws have to clarify that the principle of consent is regardless of the relationship that exists. not based

on her expressed agreement in talk or comportment to the sexual act

Section 130 of the current law<sup>76</sup> clearly states that Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, commits a felony and is liable to imprisonment for fourteen years.

In the case of *Uganda v Iyapete David*<sup>77</sup> This is a ruling under section 73 of the Trial on Indictments Act, Cap. 23, on whether or not at the close of the prosecution case, there is sufficient evidence that the accused committed the offence. Briefly, the accused was, on 29/01/2009 indicted on the offence of defilement contrary to section 130 of the Penal Code Act. It was alleged that the accused on 18.9.2007 at Opadoi village in Pallisa district had unlawful sexual intercourse with Isukali Sarah who is an imbecile under the age of 18 years. He denied the charge. Hearing of evidence commenced on 12.02.2009 and prosecution called a total of five witnesses. At the close of the prosecution case counsel

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<sup>76</sup> Penal Code Act, Cap 120, laws of Uganda.

<sup>77</sup> (HCT-04-CR-SC 53 of 2008) [2009]

for both parties did not make any submissions but left court to make the requisite finding on whether there was sufficient evidence that the accused committed the offence.

Court found contradictions to the evidence so grave and failed to commit the accused.

I do believe the standard proof as per the law and precedent is beyond reasonable doubt, the<sup>3</sup> law should lower such standard in instances of sexual offences with persons of special needs. The reason is because as a matter of evidence in criminal law, the victim is always a first witness to make put the accused at a scene of crime before even the prosecution can do so. However, this is not a case with cases of persons with special needs since most of them may not be competent witnesses.

There are many cases that fall in the whelm of the iyapete David case (supra) and court has dismissed them on the same grounds.

In the case of *Uganda v Lomerimoe*<sup>78</sup> The accused was charged with one count of Aggravated Defilement c/s 129 (3) and (4) (d) of the *Penal Code Act*. It is alleged that the accused on the 28<sup>th</sup> day of August 2014 at Kapilanbar West, Kaabong

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<sup>78</sup> (Criminal Session 86 of 2015) [2017] UGHCCRD 131

District, had unlawful sexual intercourse with Napwon Mary, a girl under the age of 18 years who is an imbecile.

The facts as narrated by the prosecution witnesses were briefly that on that fateful evening, Napwon Mary, an imbecile, went missing and her brother, got concerned for it was getting dark and she had not returned home. He went out to search for her. As he passed by the house of the accused, he heard voices coming from inside the house. He recognised one voice as that of his sister and the other as that of the accused. His sister was telling the accused not to hold her skirt. He pushed the door open and found his sister naked and the accused half naked; without a shirt and his pair of trousers lowered to around his knees. They were lying on a mattress that had been placed on the floor. When Awala Angelo gained entry into the house, the two got up and sat on the mattress. He suspected that the accused had just defiled his sister. He went back home and briefed his brother. Together they returned to the scene and found the accused and their sister still seated on the mattress. they attempted to arrest the accused but his relatives intervened violently and stopped them from taking him to the police. They proceeded to the police with their sister and reported the case. Together with three policemen they returned to the scene and found the accused had shifted to another house within the same homestead. The accused was arrested. In his defence he denied having had sexual intercourse with the accused and

stated that he was being falsely accused who had killed his brother and had suddenly gone missing.

Unlike in the case of David (*supra*), court disregarded the inconsistencies and based on the evidence which placed the accused on the scene of crime, thereby convicted.

Is there a defense of consent in sexual intercourse with persons of special needs?

The high court of Malawi In the case of *Kanyinji v R*<sup>79</sup> court held that There can be no defence of consent available on a charge of defilement of an imbecile or an idiot for the policy of the offence is to protect mentally deranged girls or women.

The same was laid in *Republic v Peter Jasi*, Confirmation case No. 1026 of 1994; by the same court of Malawi. the prisoner who had been sentenced by the lower court to 18 months imprisonment with hard labour had his sentence enhanced to 30 months imprisonment with hard labour for defilement of an imbecile. The facts of that case interesting. The defendant and the family of the complainant were neighbours and the defendant used to visit the house of the complainant often. One evening, at around 8.00 O'clock he went to the house of the complainant as he returned from a

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<sup>79</sup>(116 of 2008) [2008] MWHC 213



drinking spree. The mother of the imbecile or idiot went into the house to prepare a bed leaving the imbecile and the defendant outside. When she returned she found both missing. She called out for the imbecile without a response. In the immediate search that followed the defendant was found on top of the imbecile making love in a bathroom. The defendant was completely naked. He clung to the imbecile such that it had to take two people to separate him from the imbecile. He was taken to his wife in his birthday suit. He said he could not remember a thing as he was drunk. Chimasula Phiri, J. as he then was observed that the facts of the case presented a sad picture of a mentally deranged young girl who instead of getting sympathy got exploited by a selfish family man. The judge also observed that the risk which the imbecile was exposed to included sexually transmitted diseases and unwanted pregnancy.

Engaging in a sexual Activity in front of a person with disability.

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice may not literally be in our laws (Ugandan Laws) but you'll note that the western jurisdictions have embraced it and included this offence in their penal laws.

One may argue that it can go under child pornography or any critical interpretation of sexual offences, as lawyer you should have it in your mind the maxim of law nullum crimen, nulla poena sine lege.

Passages of people with special needs on buildings.

Frequently we hear members in our societies complaining of buildings that lack special passages for those with disabilities, you will note that some buildings have staircases that by all means do no favour a person with special needs using a walking stick.

This when the law comes in to check on the operators of these buildings.

In the case of Legal Action for People with Disabilities v Attorney General Anor<sup>80</sup>. Legal Action for Persons with Disabilities filed this Misc Cause by way of Notice of Motion under Articles 50(1), (2) & 32(1) of the 1995 Constitution of the Republic of Uganda, O. 48 r1 and O 52 rr 1, 2, 3 of the Civil Procedure Rules and the provisions of the Persons with Disabilities Act 2006. The respondents are Attorney General, Kampala Capital city Authority and Makerere University.

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<sup>80</sup> (Miscellaneous Cause 146 of 2011) [2014] UGHCCD 76

The applicant is represented by Ms Galisonga, Kasasa & Nassali Co. Advocates while the 2<sup>nd</sup> respondent is represented by its Legal Department. The 3<sup>rd</sup> respondent is represented by M/s Katera & Kagumire Advocates.

The orders sought by the applicants are as follows:

that:

- a. A declaration be made that the failure by the respondents to make their premises and buildings easily accessible by Persons with Disabilities (PWD) violates the fundamental rights of persons with disability to have access to a barrier free physical environment.
- b. An order that the respondents jointly and severally, promptly do enforce the provisions of the law on PWDs relating to access to a barrier free physical environment.
- c. An order that the respondents do pay the applicants the costs of this application.

The detailed grounds of this application are set out in the affidavit in support deposed to by one Laura Kanushu and are that:

- i. The Constitution of the Republic of Uganda guaranteed affirmative action in favour of marginalised groups including persons with disabilities (PWDs) as well as the right to respect human dignity and enjoins the government and society to take appropriate measures to ensure that persons with disabilities realise their mental and physical potential.
- ii. The parliament of the Republic of Uganda enacted a law; The Persons with Disabilities Act 2006 to provide for a comprehensive legal protection for persons with Disabilities and to make provisions for elimination of all forms of discrimination against persons with disabilities towards equalisation of opportunities and for related matters.
- iii. The said Act was intended *inter alia* to provide for easy access and exit by PWDs to and from the premises, public transport and public and private buildings and enjoined all public or private individuals and institutions to provide easy access to such buildings and to provide suitable facilities to PWDs.
- iv. Despite the requirements of the above stated law, several owners of private and public buildings including the respondents have not complied with

the provisions of the Act and the 2<sup>nd</sup> respondent has continued to approve of buildings plans for new buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.

- v. Government bodies and departments such as the Ministry of Gender Labour and Social Development, the High Court of Uganda at Kampala are operating in premises that cannot be easily accessed by PWDs or that do not have suitable facilities for PWDs thus depriving them access to such premises and buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.
- vi. As a result, PWDs still do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to such public and private buildings, places, public transport and other services that require physical movement.
- vii. The Government of Uganda is responsible for the predicament of the persons with disabilities in as far as it has failed to enforce the Persons with Disabilities Act but also has left some of its departments such as the Ministry of Labour Gender and Social

Development to operate in a building which does not have suitable facilities for PWDs.

Another three supplementary affidavits were deponed by one Kwesiga Phyllis, Angela T. Baraba and Buwembo Mulshid respectively. The two affidavits of Angella Baraba and Buwembo echoed the main affidavit in support.

Angell T. Baraba deponed that she got a contractual job with the Faculty of Veterinary Medicine Makerere University as a project assistant but faced challenges in terms of physical accessibility to her office because of rooms and toilets which were inaccessible. That during her studies at Kyambogo University she faces a lot of difficulties to access lecture rooms. That most University buildings had steep steps. That as a PWD she has experienced a lot of difficulties in movement because most buildings have no ramps or lifts to ease movement.

In his supplementary affidavit Buwembo Mulshid reiterated the shortcomings outlined in the affidavit in support emphasising that he has experienced a lot of difficulties in movement. During his University education he reallocated to Makerere University from Mbarara University of Science and Technology because of inaccessible buildings but found the situation not any better. That because of this he performed poorly because he used to arrive late for lectures. That the

main building at Makerere has narrow steps with no bars to cling on thus making it difficult to access.

In general, the deponent avers that PWDs do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to public and private buildings places, public transport and other services that require physical movement.

Kwesiga Phyllis an architect and CEO of KK consulting Architects who was instructed by the applicants to make a report on how buildings in KCCA and other areas can be modified for ease of accessibility to PWDs swore a supplementary affidavit saying modification is possible to those old buildings. According to him the following alterations can be made.

- a. Introduction of exterior gently inclined access ramp along the building side leading to the front entry/exit as at parliament.
- b. Provision of designated parking slots for the less able in close proximity to such an access.
- c. Provision of landings along that ramp at a maximum of 10 metres as specified in the standards set by (UNADP?)

- d. Provision of tactile markings at the start and end of each staircase and landing both with colour and texture alteration.
- e. Provision of tactile markings close to any entry or exit major (for use by the blind).
- f. Provision of appropriate hand rails along inclined ingress or egress points but suited to use by both adults and children.
- g. Provision of appropriate grab bars floor textures, and specially set aside washroom, inclusive of appropriate location of light fittings, mirrors, wash hand basins to suit for example someone crawling or in a wheel chair.
- h. Adjustment of doorways into major use areas to allow for wheel chairs.

That the above alterations should take into account cost implications, technical expertise and strength of the building structure that is being altered.

In his affidavit in reply deponed by one Joseph Buwembo, the Ag. Director of Physical Planning KCCA, the 2<sup>nd</sup> respondent denied the existence of Kampala City Council Authority because he is director of Kampala Capital City Authority. That the reason KCCA was established was to



give Kampala City a special status and involve the Central Government in the day to day management of the city and to redress the short comings of its predecessor Kampala City Council (KCC).

That because of the mismanagement of affairs at KCCA physical planning laws among others were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, with the establishment of KCCA, physical planning laws and regulations are being enforced and in case of any breach of the laws and regulations the authority has taken action against persons in breach. Without elaborating the deponent swore that this application is bad in law and he is advised accordingly.

The University Secretary of the 3<sup>rd</sup> respondent Muhwezi Kahundha David swore the affidavit in reply on its behalf. He deponed that the 3<sup>rd</sup> respondent has limited revenue to utilize to accommodate a multitude of students seeking for Education facilities and restructuring the existing buildings to accommodate the disabled students in compliance with the said Act. That nevertheless, despite the limited resources, the 3<sup>rd</sup> respondent has implemented and carried out measures to enforce the provisions of the constitution and the Act by:-

- a. Setting up an adhoc committee of council to address issues relating to students and staff who are disabled and to design a policy on people with disabilities.
- b. Employing student guides and helpers to assist people with disabilities to have access to a barrier free physical environment at the University premises.
- c. That the 3<sup>rd</sup> respondent pays the student guides a monthly salary of 70,000= plus meals, accommodation and medical care.
- d. The disabled students are allowed to choose their preferred halls of residence which may be nearest to their respective colleges where they study.
- e. The 3<sup>rd</sup> respondent allocates disabled male students rooms situated on the ground floor of Mitchell Hall Block D for easy accessibility. These rooms are closer to the bathrooms and toilets.
- f. Disabled students have specially designed facilities for their welfare. They have special teaching material methods and materials in the Main Library such as special computers used by the blind persons.
- g. The Main Library also has ramps and special rooms designed for disabled students.

The 3<sup>rd</sup> respondent's Secretary further deponed that upon admission of the disabled persons, the 3<sup>rd</sup> respondent has made alternative provision to the persons with disabilities who may not be able to attend lectures or examinations on a given day and time of the week by:-

- a. Offering transport facilities from the main gate to their respective destinations inside the 3<sup>rd</sup> respondent's premises.
- b. Examining and certifying them.
- c. Affirmative action where as admission policy, people with disabilities who score two Principles Passes are admitted on Government sponsorship.
- d. Offering an opportunity at a time of admission to change to any course suitable for them.
- e. Adjusting unfavourable examination time tables.

The Secretary further depones that the office of the Dean of students of the 3<sup>rd</sup> respondent has been shifted to the senate building on the first level which is easily accessible by disabled persons. That all new buildings constructed have to adopt a policy in conformity with the provisions of People with Disabilities Act. Several new buildings are now compliant including:-

1. The senate building.

2. The School of Computing and Information Technology.
3. School of Engineering
4. The Gender Studies Department.
5. The Main Library
6. The School of Food and Science Technology.

According to the deponent despite limited resources, the 3<sup>rd</sup> respondent is in the process of adjusting existing buildings prior to commencement of the Act. That although taxis and motor cycles are prohibited from operating within the University, disabled students are allowed to use motor cycles. The policy is intended to safe guard the 3<sup>rd</sup> respondent's community and maintain a safe and secure environment conducive to the 3<sup>rd</sup> respondent's staff and students' progress.

Finally that the 3<sup>rd</sup> respondent has accorded preferential treatment to disabled persons by issuing clearance letters to enable them use public transport on the 3<sup>rd</sup> respondent's premises.

At the scheduling conference, the following issue were agreed upon:-

1. Whether the respondents are violating the fundamental rights of persons with disabilities to have access to a barrier free physical environment.
2. What remedies are available.

Each of the respective counsel were allowed to file written submissions in support of their respective cases. Conspicuously the Attorney General neither filed an affidavit in reply nor written submissions.

I will start with resolving issue one.

In its submissions, the applicant says that sufficient evidence has been adduced to show that the respondent is jointly and severely violating the rights of people with disabilities to a Barrier free Physical Environment under Articles 32(1), 35(1) and Section 19 and 20 of the Persons with Disabilities Act 2006.

Learned counsel for the second respondent attributed failure to comply with the law to the mismanagement by the predecessor Kampala City Council.

That physical planning laws were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, remedial measures have been instituted to ensure that all structures in the Capital City

Area conform to the physical planning laws. That affirmative action which is enshrined in the 1995 Constitution and the PWD Act should be implemented gradually because immediate implementation of the mandatory provisions of the said law would lead to undesirable outcomes and disruption of activity and access to the buildings complained of.

In their submissions, learned counsel for the 3<sup>rd</sup> respondent maintained that the latter has not violated the fundamental rights of persons with disability as enshrined in the constitution.

After a careful consideration of this application and the affidavit evidence as well as the submissions by respective counsel, all parties hereto acknowledge that prior to the promulgation of the 1995 Constitution and enactment of Persons with Disabilities Act, several structures were put in place without due regard to the needs of people with disabilities. Both the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have however provided evidence to show that steps are being taken to remedy the situation by gradually implementing the Act and restructuring accessibility to their respective structures/premises. For example, KCCA has vowed to strictly enforce the law and ensure that all structures in the Capital City area conform to the planning laws through regulations and in the worst scenario by demolishing of offending structures. The 3<sup>rd</sup> respondent has also

demonstrated in its evidence that she has taken steps to comply with the constitution and the PWD Act. The actions taken are enumerated in the affidavit in support. I will single out a requirement that all new buildings constructed on the 3<sup>rd</sup> respondent's premises should adopt a policy in conformity with the provisions of the Act. (See list above). This is in compliance with S. 19 which provides for access to premises to persons with disabilities and S. 20 of the Act which provides for duty to provide access to buildings.

I am in agreement with learned counsel for the 3<sup>rd</sup> respondent that by taking the above steps the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have promoted and upheld the rights of people with disabilities as provided under Article 35(1) as well as promoting affirmative action in favour of marginalized group as provided under Article 32 of the Constitution.

As correctly pointed out by learned counsel for the 3<sup>rd</sup> respondent, it has a duty to consider and weigh the competing provisions of the constitutional rights i. e the right to education and the national objectives and directive principles of state policy against the rights of persons with disabilities and affirmative action in favour of marginalized groups.

Evidence of competing interest is clearly brought out in the 3<sup>rd</sup> respondent's affidavit in reply that is to say affording all persons with fundamental rights to education and equal

opportunity to attain the highest educational standards possible.

I will take particular note that both the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have limited resources to immediately provide what is required by the applicants. Therefore restructuring the existing buildings to accommodate the disabled people or students requires a lot of funds which is not readily available. For the 3<sup>rd</sup> respondent, utilizing its scarce resources on the existing structures may substantially increase the cost of education making it impossible for all citizens to attain the highest educational standards. Many poor students will be prejudiced.

Whereas people with disabilities go through numerous challenges, while attending the 3<sup>rd</sup> respondent and or working in Kampala, this should be attributed to the old structures which never made sufficient provisions for such people. These structures came into existence before the promulgation of 1995 Constitution and enactment of the Persons with Disabilities Act, a time when affirmative action was not a policy of government. Both the disabled and none disabled citizens must equally enjoy their rights. But relying on the accommodation principle, even where the fundamental human right in question is not absolute, the respondent has a duty to demonstrate that it has put in place reasonable measures to enable the complainants enjoy their constitutional rights. Any limitations to the enjoyment of



fundamental rights should be none substantial. It should be acceptable and demonstrably justified in a free and democratic society. See: Demanche Sharon and 2 others Vs Makarere University S C Constitutional Appeal No.2 of 2004.

Just like it was held by Katureebe JSC in that case, in the instant case the applicants seem to imply that their own right must be enjoyed irrespective of the negative effects that it may have on public interest, the costs to the respondents and the overall costs to other (students) or people. The applicants ought to know that the enjoyment of their rights is not absolute. It has to take in to account the rights of others as well as public interest.

In the instant case the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have taken measures to accommodate the applicants' special concerns. Therefore the adverse effects on the rights and freedoms of the applicants were reduced. The applicants' rights and freedoms were affected by the poor policies of the people in charge long before. Remedying these failures must take in to account the interests of others. Further to this, the respondents have put in place the numerated measures as indicated in their respective evidence to accommodate the applicants and make access to some buildings and make the University education accessible to them. These measures include:

*The Law of those with Special Needs*

- Setting up an adhoc committee of counsel to address all issues relating to students and staff who are disabled and design policy on persons with disabilities.
- Employing student guides and helpers to assist the disabled persons access free physical environment at the 3<sup>rd</sup> respondent's premises. These people are paid 70,000= pm and are fed, accommodated and given medical care.
- Allowing disabled students to choose their preferred halls of residence which may be nearest to their respective colleges where they study.
- Allocating ground floor rooms on block D Mitchell Hall for easy accessibility and closeness to bathroom/toilets to shorten the distance to the facilities.
- Designing facilities for the disabled students' welfare such as special teaching methods and material in the library including computers used by the blind persons.
- Erecting ramps and special rooms for disabled students.

- Shifting the office of Dean of Students to the Senate building on the first level which is easily accessible by the disabled persons.

There is evidence on record that the 3<sup>rd</sup> respondent has extended reasonable accommodation to students with disabilities by:-

- Offering transport from the main gate to their respective destinations in the University.
- Examining and certifying the disabled.
- As an admission policy, persons with disabilities who score two principle passes are admitted on government sponsorship.
- The disabled students are offered an opportunity at the time of admission to change to any course which is suitable for them.
- If unable to sit for an examination, the disabled are encouraged to inform the relevant authorities to adjust and reallocate them to the examination room convenient and easily accessible.

These averments by the respondents were not controverted implying that even Buwembo Mulshid is or was entitled to the said services.

As regards the 2<sup>nd</sup> respondent, it is putting in place control measures to ensure that building in the city is compliant. Given that most buildings complained of were constructed in 50<sup>s</sup> through to the late 80<sup>s</sup>. Therefore as recommended by Kwesiga Phyllis the architect, alteration should consider facts like the cost implications, technical expertise and strength of building structures that are to be altered. Therefore the alteration has to be gradual.

I am therefore satisfied that the respondents but especially the 3<sup>rd</sup> respondent are alive to the concerns of the students with disabilities and did not fail or refuse to respect, uphold or promote the rights of those students. There is evidence that the 3<sup>rd</sup> respondent is an equal opportunity institution for all persons. It has not violated the fundamental rights of the applicants to have access to a barrier free physical environment. Any limitations imposed upon the rights of persons with disabilities are justifiable in the existing circumstances. The respondents will be encouraged to continue complying with the requirements of the Act and ensure continued modification of the old buildings and ensure that plans for new buildings take into account the right to easy access to them before they are approved.

Regarding remedies, I am unable to grant a declaration sought because the respondents have taken steps to make their premises and buildings accessible by people with disabilities.

Court cannot order prompt enforcement of the provisions of the law because of the hardship it involves, but shall encourage whoever is responsible and the respondents in particular to ensure continued compliance with the law as required.

I will consequently dismiss the application with no order as to costs.

Stephen Musota

### **Property owned by people with special needs.**

Under the 1995 Constitution, Article 26 provides for Protection from deprivation of property. It provides that Every person has a right to own property either individually or in association with others. Clause (2) goes ahead to provide that No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for- (i) prompt payment of fair and adequate

compensation. prior to the taking of possession or acquisition of the property; and (ii) a right of access to a court of law by any person who has an interest or right over the property.

**In the case of Kadene & Ors v Abalema United Effort Ltd & Ors**<sup>81</sup> This was an application brought under Sec. 98 of the Civil Procedure Act and Order 1 r3 & 10 of the Civil Procedure Rules for adding the Applicants as necessary parties/Defendants in Civil Suit No. 279/2016. It was before Judge Henry I. Kawesa (as then he was).

The gist of the application is that the Applicants are disabled persons claiming to have been dropped to the home of Joy ‘(Salvation Army)’ - when their parents were killed in the 1986 Bush war.

They claim interest in the suit land as far back as 2002, when they applied for it and the President of Uganda gave it to them in 2005. They formed the Abalema (Disabled) United Effort Ltd. as an Umbrella to front Company of Disabled persons. They allege that in 2005, through the RDC Kampala, the Government allocated them the suit land in

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<sup>81</sup> (Miscellaneous Application 1463 of 2017) [2017] UGHCLD 96

Wandegeya – now Plot 175 Bombo Road – Wandegeya to carry on their activities.

By 2007, the 1<sup>st</sup> and 4<sup>th</sup> Respondent entered deals with them on the land and from then court battles arose between them including the current dispute in Civil Suit No. 279 of 2016.

The Applicants contended that there are several cases involving all the above parties whereby the orders sought for in Civil Suit No. 279 of 2016, would affect them.

The Applicants claimed that unless they are joined as parties, Civil Suit No. 279/2016, they would be prejudiced.

The Respondents in reply by their affidavits show that the Applicants do not have any interests in the suit property and their application is misconceived.

In Court, arguments were made basically supporting the grounds upon which each party seeks Court's decision. For the Applicants, it was argued that there are grounds that warrant their addition especially since all the other Respondents, save the 1<sup>st</sup> Respondent, are not opposed to the application.

However, the 1<sup>st</sup> Respondent's Counsel referred to O.1 r3 of the Civil Procedure Rules to argue that the Plaintiff has no interest in suing the Applicants since they do not have any legal or equitable rights on the land. He argued that it will be

an injustice to compel him to sue the Applicants from whom he has no interest for any of the relief's sought from Court.

In reply, Counsel for the Applicants referred to the Court case ruling annexed as 'E' in Civil Suit No. 289 of 2009, where the relationship between the different Abalema groupings via viz the Respondents and between themselves as Applicants, was discussed.

He also referred to Anex 'C' and 'D' which letters reflected dealings on the suit land by the Applicants, long before the 1<sup>st</sup> Respondent took to have it registered. He pointed at the current confusion as to who are the right Abalema group to maintain and claim rights on this land, hence arguing that the applicants have claims on the land and that it is in the interest of the need to Judiciously determine this case that they should be added as prayed.

The court agreed that O.1 r3 of the Civil Procedure Rules empowers Court to join parties who may have a claim or relief on the subject matter under issue.

It further noted from the annextures attached to this application, notably those referred to as 'C', 'D' and 'E' and concluded that the Applicants cannot be denied a hearing. There is evidence from 'E' to show that the different Abalema groups have had dealings with some of the Respondents on this land with whom they even have other pending cases.



Furthermore, it found out from the pleadings and evidence that the subject matter of Civil Suit No. 279/2016 from which the Misc. Application No. 1463/2017 arises, is one and the same as that which was considered in Civil Suit No. 284 of 2009 which in this matter annexed as 'E'. Court noted that there was need for the two groups of Abalema to sort themselves out before finalising the consent judgment between the Plaintiff ULC and the Abalema United Efforts. This Courts' ruling seems to suggest that, the Applicants, have a right to be party to any reliefs that any other party seeks to enforce in any proceedings involving this suit property, whose ownership is still a matter of dispute in the Courts of Law between these same parties; vide the different suits as noted.

For reasons above, the judge inclined to allow the Applicants to join as co-defendants in the main suit as prayed and the Application was granted.

## **The National Policy on Disability in Uganda**

National Policy On Disability, For further information contact:

Ministry of Gender, Labour and Social Development,

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### **Foreword**

Government through the Ministry of Gender, Labour and Social Development has a mandate to promote and protect the rights of persons with disabilities (PWDs). According to Uganda Population and Housing Census(2002), one in every 25 persons has a disability and hence making it a development concern. Some of the disabilities include difficulty in seeing, hearing, speech, moving and learning. The underlying causes of disability include but not limited to communicable diseases, congenital abnormalities and injuries. The situation has been exacerbated by poverty, illiteracy and varying degrees of negative attitudes.

The Government is mandated to promote and protect the rights of persons with disabilities and the Constitution of the Republic of Uganda stipulates the need to empower and provide equal opportunities to PWDs. Government has focused on provision of health services, community based rehabilitation, vocational training, Universal Primary Education as key measures to empower

PWDs. This policy on disability will contribute to the improvement of the quality of life of People with Disabilities (PWDs) through expanding the scope of interventions. The interventions will necessitate PWDs themselves to participate in designing, managing, monitoring and evaluating initiatives that are meant to improve their well-being. It will also ensure that the central government, local authorities, CSOs, parents and caregivers involve PWDs. Disability issues transcend all sectors. Therefore, the Public sector, Ministries, Local Governments, CSOs, NGOs and other actors should use this policy as a framework to guide planning, resource allocation and implementation of interventions of PWDs. The process of developing this policy has been consultative and participatory involving cross-section of policy makers, implementers and beneficiaries. I would like to extend my appreciation to all, Government Ministries, Local authorities, Private sector, Civil Society Organisations, Communities and persons with disabilities for their contributions to this process. I wish to acknowledge the logistical support of development partners especially the Norwegian Association of the Disabled and International NGOs. I am convinced that the zeal exhibited during the development of this policy will continue into the implementation phase. This policy is an inherent of the Social Development Sector Strategic Investment Plan (SDIP) which is itself a framework for operationalising the Poverty Eradication Action Plan (PEAP). Support and participation

by all stakeholders is critical for successful implementation of this policy. I have no doubt therefore, that the policy address and redress the inequalities that PWDs experience in the society .

For God and my country. Bakoko Bakoru Zoë  
Minister of Gender, Labour and Social Development

## **1.Introduction**

### 1.1.Background

World Health Organisation estimates that approximately 10% of any population is disabled

1 . It also estimates that of the 10% only 5.8% of persons with disabilities need to be provided with services. The United Nations Standard Rules on Equalisation of Opportunities for PWDs (1991) urges all nations to show strong commitment on equalisation of opportunities for Persons with Disabilities (PWDs)

2. The National Policy on Disability in Uganda therefore, aims at promoting equal opportunities for enhanced empowerment, participation and protection of rights of PWDs irrespective of gender, age and type of disability. This is in recognition that PWDs can perform to their full potential given the same conditions and opportunities irrespective of their social, economic and cultural backgrounds. The Policy is to guide and inform the planning

process, resource allocation, implementation, monitoring and evaluation of activities with respect to PWDs concerns at all levels.

## 1.2. Disability in Uganda

Disability is defined as permanent and substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participations

3 . Over the years definitions of categories have changed from the impairments approach to limitation in participation. This policy will focus on the following disabilities;

- i. Difficulty in hearing;
- ii. Difficulty in speaking and conveying messages;
- iii. Difficulty in moving around and using other body parts;
- iv. Difficulty in seeing;
- v. Strange behaviour;
- vi. Epilepsy;
- vii. Difficulty in learning;
- viii. Leprosy;
- ix. Loss of feeling.
- x. Multiple disabilities

( A combination of any of the above disabilities)

1 World Health Organisation, 1991

2 UN Resolution 76/A, 1991

3 National Council on Disability Act 2003

### **1.3 Causes of disability**

The leading causes of disability include congenital or perinatal disturbances (mental-retardation, somatic hereditary defects and non-genetic disorders), communicable diseases (polio, mylites, trachoma, leprosy), non-communicable somatic diseases, functional psychiatric disturbances, alcoholism, drug abuse, wars and civil-strife, trauma, injury and accidents (traffic, occupational and home accidents) and malnutrition.

### **1.4. Situation Analysis**

#### **1.4.1 Demography**

According to the Uganda Population and Housing Census Report (2002), four out of every 25 persons in Uganda are persons with disabilities. The report continues to mention that the prevalence rate in 2002 was higher than 11% obtained from the 1991 Census. The prevalence of disability increased with age from 2% among children aged less than 18 years to as high as 18% among the elderly. The prevalence was not even throughout the country. In the central region, it increased from 1.0% to 3.1%, Eastern region from 1.2% to

3.6%, Western region from 0.9% to 2.9% and Northern region from 1.9% to 4.4%. The prevalence increase was partly attributed to the improvement in the methods of data collection in the census. This increase may further be attributed to improved service delivery in health care better nutrition, sanitation and community based rehabilitation services which have improved on public awareness, change of attitudes leading those with disabilities living longer. At 3.4% annual growth rate, the population of PWDs is estimated to have increased to-date. The most commonly observed disabilities were loss and limited use of limbs 35.3%, spine injuries 22.3%, hearing difficulties 15.1%, seeing difficulties 6.7%, difficulty in speech and conveying messages 3.9%, mental retardation 3.6% mental illness 3.6% and others at 9.6%. The Northern Region has the highest rate incidence of disability rate at 4.4%.5.

#### 1.4.2 The Vulnerability of PWDs

Generally, PWDs are vulnerable by virtue of their impairment and negative societal attitudes arising from fear, ignorance, superstitions, neglect and lack of awareness. As a result, PWDs have inadequate access to services, information, resources as well as limited participation in the socio-economic development process. Consequently, the majority depend on their families and communities for survival.

4 Ministry of Health – Government of Uganda  
5 The 2002 Uganda Population and Housing Census  
Nevertheless, PWDs are often of low priority in society. They receive less education, skills training and medical attention, which reduces their employment opportunities and may even result in secondary disabilities and sometimes early death. Consequently, this discrimination and neglect erodes PWDs self-esteem and confidence to the extent that they cannot voice their needs. The major concerns of PWDs, are poverty, education and skills, employment, conflicts and emergencies, social security, health, HIV/AIDs and accessibility. Gender and age in disability exacerbates their situation in accessing services.

#### 1.4.3 Poverty

Poverty and disability are closely interlinked. Disability is both a cause and consequence of poverty. Disability exposes people to limited livelihood opportunities which consequently lead them into a state of poverty and vulnerability. To implement the Poverty Eradication Action Plan, Government has put in place measures to eradicate poverty which include, Promotion of Investments, Expansion of Markets, Universal Primary Education (UPE), Uganda National Minimum Health Care Package (UNMHCP); Community Mobilisation and Empowerment Programmes; Land Reforms, Road Sector



Reforms, micro finance initiatives and Modernisation of Agriculture. However, the socio-economic situation of most PWDs is still characterised by abject poverty. With 46% of their population living in poverty, PWDs are over represented among the 38% of Ugandan population affected by poverty<sup>82</sup>

#### 1.4.4 Education and skills

Under UPE policy, government provides free education to all children in primary schools. There are 150,559 children with disabilities under this programme, of whom 82,537 are males and 68,022 are females<sup>83</sup>. Approximately 4500 PWDs have been trained in Vocational skills in the Vocational Rehabilitation Institutions since 1967.

The Special Needs Education (SNE), under Ministry of Education and Sports addresses issues of children with learning difficulties. The programmes under Kyambogo University play a key role in training teachers and other professionals in special needs education and rehabilitation. Furthermore, Government put in place a rehabilitation and resettlement scheme that includes

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<sup>82</sup> The SDIP, 2003, Ministry of Gender, Labour and Social Development

<sup>83</sup> Ministry of Education and Sports, Government of Uganda - 2002

vocational rehabilitation services, sheltered workshops that focus on employable skills training and orthopaedic workshops for provision of assistive devices to PWDs.

Despite the above existing programmes, scarcity of appropriate educational, scholastic and instructional materials, inadequate training staff handling concerns of PWDs, outdated and limited skills in vocational rehabilitation centres, inaccessible physical structures at schools, high costs of assistive devices and assistive services such as guides, helpers as well as interpreters are major factors which hinder PWDs education and skills training.

Therefore, poor access to education in childhood means that a high proportion of PWDs remain illiterate and unskilled. Issues relating to PWDs are not well highlighted in education and training curricula at all levels. Furthermore, public education programmes often use languages and images that are not comprehensible to most PWDs. Physical accessibility and affordability to programmes are major to education and skills training limitations that constrain participation of PWDs.

#### 1.4.5 Conflicts and emergencies

Insurgency and civil strife that has been prevailing in some parts of the country has left some people with varying degrees of disability. Urban crime, domestic violence, cattle rustling, terrorism and proliferation of small and light weapons have contributed to increasing disabilities among communities.

During conflicts and emergencies PWDs not only suffer the brunt of the calamity as a direct consequence of their vulnerability, but also are often powerless, excluded and marginalized in accessing emergency assistance. Emergency situations often undermine social patterns that support PWDs.

The Government has endeavoured to address this by supporting efforts to prevent and resolve issues of conflict using peaceful means. Pertinent initiatives include programmes of family tracing and resettlement to re-unite displaced family members. Despite these efforts, Government still lacks strategies, which address the particular needs of PWDs during conflicts and emergencies.

#### **1.4.6 Employment.**

With limited skills characteristic of most PWDs, accessing employment is a major challenge. Most potential employers do not give chance to PWDs to compete for

employment even where they have the necessary qualifications and experience. Consequently, the majority of PWDs are unemployed. In an effort to address the employment problem among PWDs, Government established a vocational training programme to equip PWDs with employable skills. However, these programmes are limited in scope and no longer meet current market employable skills requirements. Government has also started a programme to sensitise employers to recruit qualified and skilled PWDs. Consequently, some of PWDs have got stable employment.

However, absence of a national employment policy has precluded affirmative action for the majority of PWDs who remain unemployed and underemployed.

#### **1.4.7 Social Security**

Most PWDs in Uganda do not have access to regular incomes due to inadequate employment opportunities. Those that earn income are largely in the informal sector. Existing social security schemes such as pension, provident fund and insurance services cover only PWDs in the formal sector. Where informal social security mechanisms exist, they are weak, unstructured,

unsustainable, operate on a voluntary basis and are in any case inaccessible to most PWDs.

#### **1.4.8 Health**

The 2002, Uganda Population and Housing Census results revealed that 35.3% of PWDs had loss or limited use of limbs, 23.3% spinal injuries and 15.1% hearing difficulties. Persons 60 years and above are 1,101,039 of which 18% have chronic diseases associated with old age and disability. Government has put in place the Uganda National Minimum Health Care Package (UNMHC) to ensure that the people of Uganda receive essential services. In addition, Government has put in place primary health care package, regional referral hospitals, built new and upgraded existing health centres and trained medical staff.

Despite the above scenario, high cost of health services and assistive devices, negative attitudes of some health staff, unfriendly infrastructure and equipment designs, and long distances to the health facilities are still challenges. The major concerns of PWDs therefore, remain their inability to access basic health services and assistive devices to enable them lead independent and productive lives.

#### **1.4.9 HIV/AIDS**

The HIV/AIDS pandemic has destabilised the socio-economic fabric of the country by reducing incomes at household level, increasing the number of orphans and straining health services. Persons with Disabilities are sexually active. Because of their vulnerability, they stand a higher risk of contracting as well as transmitting HIV/AIDS. Unfortunately, they are not targeted by most programmes on HIV/AIDS. For instance, PWDs have limited access to information, education, counselling services and ARVs. As a result the impact of HIV/AIDS on PWDs remains unknown.

Government has mobilised resources and put in place the Uganda HIV/AIDS. Partnerships to minimise duplication, maximise learning and enhance peer support to fight HIV/AIDS. It has also put in place programmes focusing on public awareness, community mobilisation and empowerment. Unfortunately, PWDs especially those with hearing and seeing difficulties do not benefit from these interventions. This is partly because information targeting PWDs often lacks instructional materials, which are printed into large prints or braille, or personnel who know sign language for interpretation. Low levels of literacy among PWDs exacerbates this situation.

#### **1.4.10 Gender**

Disabilities affect men and women differently, but impact more on females than males due to social and cultural roles.

Discriminatory cultural practices on property inheritance and property ownership affect the livelihoods of women with disabilities more adversely than men with disabilities. This is compounded by inadequate programmes that focus on women with disabilities during service delivery, which makes it even more difficult for them to improve their livelihoods. Government has put in place affirmative action to benefit all PWDs particularly women and girls. Other steps taken by Government include the land policy, laws on marriage and divorce, inheritance, domestic violence and other forms of violence against women and girls. In spite of the above, lack of public awareness, negative community attitudes, cultural beliefs and lack of programmes on specific concerns of women with disabilities are still challenges.

#### **1.4.11 Accessibility**

In Uganda, PWDs face difficulties in accessing education, health and sports facilities, places of employment, cultural sites and other physical infrastructure. They are denied access to most buildings such as schools, hospitals, courts of laws, stadias. This is due to the fact that many buildings do not

have facilities such as ramps and lifts. The existing lifts do not have talking devices to enable the blind to access information. Roads do not have facilities for PWDs. In most cases, PWDs cannot access information provided by both electronic and print media. Government has put in place mechanisms to improve and enhance access of services through policies, plans and programmes. Unfortunately, PWDs continue to experience physical barriers, inadequate information, rehabilitation and unfriendly services. Limited accessibility to such services has contributed to social exclusion of PWDs.

## **1.5 Legal and Planning Framework**

Uganda has demonstrated its commitment to the promotion and protection of the rights of PWDs through adoption and implementation of national and international policies and legal (well being ) instruments that concern PWDs.

### **1.5.1 National Legal Framework**

The Uganda Constitution (1995) recognises the rights of PWDs and provides the basis for the enactment of laws and development of policies that address their concerns. The Constitution provides for fair representation of marginalized groups on all constitutional and other bodies, recognition of the rights of PWDs



to respect and human dignity, and promotion the development of a sign language for the deaf. Furthermore, it enjoins the country to take affirmative action to redress the imbalances that exist against PWDs. Other laws include:-

i. The Parliamentary Elections Statute of 1996 provides for 5 representatives of PWDs in Parliament, at least one of whom should be a woman and the use of a sign language where applicable;

ii. The Children's Statute of 1996 stipulates early assessment of disabilities among children for appropriate treatment, rehabilitation and education;

iii. The Local Governments Act, of 1997 provides for representation of PWDs (female and male) at all local government levels;

iv. The Uganda Communications Act of 1997 provides for development of techniques and technologies that facilitate accessibility to communications services by PWDs;

v. The Universal Primary Education Act of 1997 commands families with CWDs to give them priority at the time of enrolment;

vi. The Uganda Traffic and Road Safety Act of 1998 stipulates that PWDs shall not be denied driving permits on the basis of their disability etc. by reason of his or her disability;

vii. The UNISE Act of 1998 provides for establishment of the Uganda National Institute of Special Education, training

of teachers for children with special needs as well as special education teachers;

viii. The Land Act of 1998 provides that any transaction on customary land that discriminates on PWDs shall be null and void;

ix. The National Council for Disability Act of 2003 mandates the Council to bring PWDs' issues to the attention of Government, NGOs, private sector and individuals so as to improve the lives of PWDs.

### **1.5.2 National Planning Framework**

This policy is consistent with the Uganda Vision 2025 which is the long-term national development framework in Uganda. Pertinent aspirations of Vision 2025 are that PWDs will have easy access to basic infrastructure and other social amenities. This policy will therefore ensure that technology, information, basic infrastructure and other social facilities are user-friendly to PWDs. The Poverty Eradication Action Plan (PEAP), provides an over arching framework to guide public action to eradicate poverty, spells out priority action areas to support, mobilise and empower vulnerable groups to participate in the economic growth and social development process. This policy will ensure that PWDs fully participate and benefit from the PEAP initiatives.

The Social Development Strategic Investment Plan (SDIP), addresses major challenges of inequality, inequity, exclusion, unemployment and low productivity among the poor and vulnerable. It articulates interventions for promoting their participation and ability to access basic services. In order to achieve this, the SDIP ensures that vulnerable groups are protected from risks and repercussions of livelihood shocks by overcoming constraints that impede the development of their productive capacities. This policy will promote inclusion and participation of PWDs in order to achieve equitable human progress.

### **1.5.3 International Legal Framework**

This policy is consistent with the following:

The Alma Ata Declaration of 1978, which emphasises inclusion of the rehabilitation approach into the primary health care system; The International Labour Organisation Convention No. 159 and Recommendation 168 on vocational rehabilitation and employment of PWDs; The World Programme of Action 1983, which advocates for full participation of PWDs in the development process; The World Declaration on Education for All, 1990; The Vienna World Conference on Human Rights 1993 Resolutions, which stipulate promotion of rights of PWDs; The UN Standard Rules for Equalisation of Opportunities

1993, which guides policy making; The UNESCO Salamanca Framework of Action on Special Needs Education 1994, which emphasises promotion of education and inclusion of all CWDs.

## **2.Principles**

The policy provides the framework for responding to the concerns and needs of PWDs which will be guided by the following principles;

i. Family and community based care:

The family is the basic unit for providing care and support to PWDs. PWDs should benefit from the family and community care and protection. It is therefore, the responsibility of the parents or caregivers to PWDs to provide food, clothing, housing, love, care, education, health and other basic services that promote and protect the rights of PWDs.

ii. Human Right's Based approach

The policy is based on the human rights approach to programming by seeking to minimise stigmatisation and discrimination, which act as a barrier to PWDs and their families in accessing services. Promotion and protection of the rights of PWDs will be upheld at all time by all service providers.

iii. Participation

This will involve full participation and representation of PWDs and their caregivers in planning, implementation, monitoring and evaluation of their programmes at all levels. Every intervention by stakeholders should bring PWDs and their caregivers on board to be able to take informed decisions and influence the environment around them.

iv. Multi-sectoral collaboration:

Disability is a crosscutting concern requiring the concerted effort of all stakeholders. Every stakeholder should undertake the responsibility of mainstreaming disability concerns in the respective sectoral plans. This will involve building and strengthening partnerships and networks with households of PWDs, communities, private sector, CSOs and development partners for sustainable service delivery to PWDs at all levels.v. Capacity building  
Capacity of PWDs, caregivers, communities and service providers shall be enhanced for effective planning, implementation, monitoring and evaluation of development programmes at all levels.

vii) Decentralised service delivery:

The policy will be implemented in the decentralised environment. Decentralised structures at the district and lower levels will be strengthened to ensure quality and sustainable delivery of service to PWDs. Local Government

however, have the primary responsibility for putting in place appropriate interventions.

#### viii) Good Governance

Good Governance is a prerequisite to National Development. This principle will promote effective governance through democratic processes at all levels. It will also encourage co-existence that promotes social inclusion and integration of PWDs among the people of Uganda. It will promote equal opportunities, empowerment, economic prosperity and a health well-educated PWDs who will lead a high quality of life.

### **3. Vision, mission, values, objectives and strategies**

#### 3.1 Vision

The vision of the Policy is a society where PWDs fully participate in all spheres of development.

#### 3.2 Mission

The Mission is to provide a framework for empowerment of PWDs in the development process.

#### 3.3 Values

The core values of this policy are understanding and empowerment of PWDs to enable them lead independent and productive lives.

### 3.4 Objectives

The objectives of this policy are:

- i. To create a conducive environment for participation of PWDs;
- ii. To promote effective friendly service delivery to PWDs and their caregivers;
- iii. To ensure that resources for initiatives that target PWDs and caregivers are mobilised and efficiently utilised;
- iv. To ensure that the capacity of PWDs and their care-givers to access essential services is enhanced; and
- v. To build the capacity of service providers, PWDs and care-givers for effective prevention and management of disabilities

### 3.5 Strategies

This policy will be operationalised through a number of strategies. These are:-

- i. Mobilisation adequate resources to ensure that the policy is implemented;

- ii. Advocating for the strengthening of positive cultural values that foster understanding, care and support for the protection of PWDs;
- iii. Strengthening and empowerment of PWDs and their caregivers;
- iv. Capacity building and enhancing skills development and social support systems so that PWDs participate in and effectively contribute to socio-economic development;
- v. Ensuring participation of PWDs in the planning, implementation, monitoring and evaluation of all relevant initiatives;
- vi. Lobbying all other sectors and stakeholders to appreciate and address the concerns of PWDs;
- vii. Implementing interventions through communities, local authorities, CSOs, the private sector networks and other actors so as to enhance capacity and increase the outreach;
- viii. Developing and promoting PWD cultural activities and sports events to enhance their recreational capabilities and raise public awareness of their abilities;



- ix. Promoting awareness about different impacts of the same disability on male and female PWDs;
- x. Establishing comprehensive databases to generate disaggregated information on disability;
- xi. Developing and implementing media and communications strategy to enhance awareness on PWD issues, including gender concerns;
- xii. Promoting the development of social security for PWDs in the informal sector;
- xiii. Ensuring research, documentation and dissemination of best Practises and experiences for replication and scaling up interventions by all actors, at all levels;

#### **4. Policy priorities**

The priority areas of focus are accessibility, participation, capacity building, awareness raising, prevention and management of disabilities, care and support, socio-economic security, research, communication (sign language, tactile and Braille literacy) and budgeting.

##### **4.1 Accessibility:**

Most PWDs are adversely affected by the conventional design of infrastructure and other facilities. These often act as barriers that hinder their access to and utilisation of these facilities and services. Government shall through this policy, promote user-friendly facilities and infrastructure designs for the benefit of PWDs. Interventions will include:

- i Putting in place laws and by-laws for promoting user friendly facilities and infrastructure for the benefit of the PWDs;
- ii Promoting use of sign language, Braille, tactile among parents and service providers and communities;
- iii Media campaigns on accessibility;
- iv. Provision of assistive devices and services to PWDs.
- v. Building alliances and networks in information, communication and technology.

4.2 Participation of PWDs and Caregivers  
PWDs do not access services because of their exclusion in the design and implementation of interventions. This has greatly contributed to their inadequate participation in the socio-economic development process. Government with other stakeholders will promote full participation of PWDs and caregivers in planning, decision-making, designing and implementing interventions for improved service delivery. Interventions will include:-

- i. Facilitate the availability and utilisation of assistive devices and services to PWDs to make them independent and productive in development activities;
- ii. Promoting representation of PWDs and caregivers in planning, monitoring and evaluation at all levels;
- iii. Supporting the development and strengthening of Disabled Persons Organisations (DPOs) for a stronger voice;
- iv. Creating enabling environment for effective and equal participation of PWDs.

#### 4.3 Capacity Building:

Most PWDs lack knowledge and skills to effectively participate in and benefit from development. Similarly, caregivers and service providers have low capacity to render adequate services. To this end, the policy will ensure that capacity building for all stakeholders is prioritised in all interventions at all levels. Interventions will include:-

- i. Promoting apprenticeships, vocational, functional and lifelong skills training;
- ii. Establishing community based networks to access PWDs to services;

iii. Equipping service providers and communities with appropriate knowledge and skills for effective service delivery;

iv. Promoting micro-finance education and health initiatives that benefit households of PWDs and their caregivers;

#### 4.4 Awareness Raising:

Communities often discriminate against and marginalize PWDs because of negative beliefs, norms and customs. This is mainly due to the limited understanding by the communities of the causes of disabilities as well as of the rights, potentials and abilities of PWDs. Interventions will include:-

i. Promoting and strengthening awareness creation programmes on disability at all levels;

ii Designing and developing appropriate interventions by stakeholders at all levels;

iii Promoting theatre in development;

iv Lobbying for the mainstreaming of disability concerns in sectoral programmes;

v Publicity through the media such as radio, T.V, Newspapers, brochures and posters.

4.5 Prevention and Management of Disabilities  
Congenital and non-congenital factors are responsible for the impairment of PWDs in Uganda .some of these factors can be controlled and managed, if they are identified early enough. This policy will support efforts towards strengthening early identification, prevention and management of disabilities. Government will therefore encourage service providers and communities to participate in early detection, assessment, management, referral for treatment and rehabilitation. Interventions will include:-

- i. Mobilising of resources;
- ii. Promoting information campaigns on prevention and management of disabilities;
- iii. Strengthening community based rehabilitation initiatives;
- iv. Promoting formation of parent and peer counselling support groups;
- v. Promoting translation, transcribing repackaging of user friendly materials in accessible information for PWDs;
- vi. Building and strengthening capacity of service providers;
- Vii Lobbying for the recruitment of appropriate personnel, in health units and retooling of orthopaedic workshops.

#### 4.6 Care and Support

Care and support will include provision of basic, physical and psychosocial needs of PWDs and their caregivers. Psychosocial issues transcend one sector and should be addressed by all sectors. Interventions will include:-

i. Increasing awareness on needs and rights of PWDs;  
ii. Strengthening capacities of families communities and service providers to provide counselling and recreational facilities;

iii. Promoting positive attitudes, cultural values that benefit PWDs;

iv. Promoting community mechanisms to protect PWDs from abuse and neglect;

v. Advocating for the availability and utilisation of affordable assistive devices and appliances.

#### 4.7 Research

There is minimal qualitative and quantitative data and information on PWDs. This is an impediment to effective planning, decision-making and targeting of interventions for the benefit of PWDs. Government will put in place mechanisms to collect, analyse, document and disseminate comprehensive information on PWDs.

Interventions will include:

- i. Promoting research studies in disability areas;
- ii. Capturing data in disability in periodic national surveys and censuses.
- iii. Developing disability-Management Information systems.

#### 4.8 Communication:

The deaf, blind and deaf-blind find it extremely difficult to access services, including information, due to lack of appropriate medium of communication. Interventions will include development and promotion of use of sign language, tactile and Braille literacy.

### **5. Institutional Framework**

Since disability issues are multi-dimensional, implementation of the policy will be multi-sectoral at the national, local government and community levels. In addition to the central government and local authorities, other actors will include parents and other caregivers, CSOs, the community, Disabled Persons Organisations (DPOs) and the private sector.

5.1 Ministry of Gender, Labour and Social Development (MGLSD): The MGLSD is the lead agency and will spearhead the co-ordination of this policy. The Ministry will

develop and disseminate guidelines for operationalising this policy.

5.2 Other Government Ministries, Agencies and Departments: Other Government ministries, departments and agencies will be responsible for effective implementation of the relevant aspects of this policy in their respective sectors within their mandates.

### 5.3 Local Authorities

i. Local authorities will coordinate, supervise and mobilise resources and disseminate information at district and lower levels;

ii. Initiate and implement appropriate interventions;

iii. Monitor interventions of DPOs, other CSOs and the private sector;

iv. Specifically local government should ensure that officers are designated to handle disability issues;

### 5.4 The Private Sector

i. The private sector will design and construct PWD-friendly infrastructure and other social facilities;

ii. Efficiently deliver services targeting PWDs;

iii. Contribute resources for disability interventions.

### 5.5 Disabled Persons Organisations



- i. Disabled persons organisations will strengthen the capacity of their members;
- ii. Promote the dignity and welfare of PWDs;
- iii. Supplement government efforts in delivery of services to its members.

#### 5.6 Other Civil Society Organisations:

- i. Mobilise resources for service delivery;
- ii. Build the capacity of PWDs and caregivers.

#### 5.7 The Community:

The community (local council, clan, traditional, cultural, religious and opinion leaders) will

- i. Identify and strengthen social support networks and mechanisms for PWDs and their families;
- ii. Participate in implementing interventions and link PWDs to service providers;
- iii. Promote understanding, guidance and support, which PWDs need to become fully productive members of the community;
- iv. Identify and address cultural and traditional norms and practices that adversely impact on PWDs.

#### 5.8 Parents and Other Caregivers

Parents and caregivers will still play the primary role of taking care of PWDs. They will therefore identify, provide care and support, and offer psychosocial counselling and guidance.

#### 5.9 Persons with Disabilities

Persons with Disabilities will participate in planning, implementation, monitoring and evaluation of all interventions aimed at improving their welfare.

#### 5.10 National council for disability.

The National Council for Disability will have the role of:-

- i. Resource Mobilisation;
- ii. Coordinating the mainstreaming of the interventions of this policy.
- iii. Advocate for and promote effective service delivery;
- iv. Monitor and evaluate the impact of the policy and its programmes;
- v. Initiate research studies on disability.

### **6. Monitoring and evaluation arrangement**

Monitoring and evaluation functions shall be undertaken at all levels to enhance accountability and effectiveness. This will entail developing and establishing monitoring and evaluating mechanisms which will include the following:-

- i. Developing monitoring indicators for every activity;
- ii. Establishing evaluation structure;
- iii. Producing and disseminating of reports on regular basis;
- iv. Reviewing the policy.

#### 7. Financing the policy

The priority areas of focus of the Policy transcend the realms of one single sector. Each sector will come up with relevant plan of action for interventions within its area of mandate and focus.

#### **List of Abbreviations**

CBR - Community Based Rehabilitation

CBOs - Community Based Organisations

CSOS - Civil Society organisations

CWDs - Children with Disabilities

DPOs - Disabled Persons Organisations

EARS - Educational Assessment and Resource Service

FBOs - Faith Based Organisations

ILO - International Labour Organisation

MP - Member of Parliament

NGOs - Non-Governmental Organisations

NUDIPU - National Union of Disabled Persons of Uganda

PEAP - Poverty Eradication Action Plan

PWDs - Persons with disabilities

SDIP - Social Development Sector Strategic Investment Plan

SNE - Special Needs Education

UPE - Universal Primary Education

UN - United Nations

UNESCO - United Nations Educational Scientific and Cultural Organisation

UNMHCP - Uganda National Minimum Health Care Package

UNISE - Uganda National Institute of Special Education

WHO - World Health Organisation

## **Glossary**

Affirmative Action - Refers to set of public initiatives designed to help eliminate past and present discrimination based on gender, age, disability, race, colour, religion, national origin, or any other reason created by history. In this policy it refers to a positive action favouring PWDs so as to uplift them from their vulnerable situation to a better state.

Assistive devices - Tools that are designed, fabricated or adopted to assist a person with disability in performing a particular task e.g. calipers, wheel chairs, white cane.

Braille - Universal form of writing used by and for the blind. Braille consists of characters made up of raised dots in a six-position matrix on all. The characters are embossed in lines on paper and read by passing fingers lightly on the manuscript.

Community Based Rehabilitation - A strategy within general community development for rehabilitation, equalisation of opportunities and social inclusion of all children and adults with disabilities.

Disability - Permanent and substantial functional limitation of daily activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation.

Discrimination - Treating people in a different, usually bad, manner because of their class, race, disability, gender instead of who they are as individuals.

Impairment - Refers to any loss or abnormality of psychological, physical, neurological or anatomic function or structure.

Referrals - Places where PWDs can be sent for treatment, education, employment, guidance and counselling, vocational skills and legal advice.

Sign language - A medium of communication used by people with hearing difficulties. Social inclusion - Refers to the multiple and the integrated initiatives resulting into people previously excluded, being included into normal exchanges, practices, interventions in the development process.

Support Services - Services given to PWDs in order to empower them to make well informed decisions towards their wellbeing and development.

Tactile - is a language used by people who are deafblind.

In conclusion, the Government has also initiated social protection programmes aimed at improving the wellbeing of vulnerable persons including persons with disabilities, for instance the Special Grant for Persons with Disabilities. Government is committed to mainstreaming disability in development through promoting effective participation, engagement and inclusion of persons with disabilities. However, there are still concerns of violation of rights, discrimination, exclusion and stigmatisation of persons with disabilities in the country

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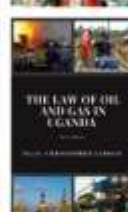
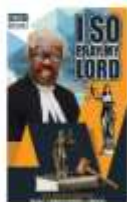


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## About the book:

### What is Special Needs Law?

Although there is no uniform definition of "special needs," the phrase describes individuals with a wide variety of physical or mental conditions who may require legal support. That support may mean they need protection from ne'er-do-wells who would take advantage, it may mean they need access to public benefits, or any number of other types of assistance. Frequently, parents and grandparents are concerned about how their children and grandchildren will be cared for after the parent's or grandparent's death and will want to plan in advance to protect their special needs loved one.

There is no one-size-fits-all way of planning for individuals with special needs. It requires consideration of the child's strengths and weaknesses, his or her abilities and disabilities including whether decision-making support is necessary. The goal is to enhance the child's well-being, giving him or her the best chance for a normal, independent life. Because every child is different, every special needs plan will be different as you plan for him or her and those who will assist your child.

Special needs are the individualized care that a person with a disability - whether physical, mental, behavioral, emotional, or learning difficulties - requires to ensure their safety, access to public amenities, or ability to succeed in certain contexts. This individualized care might include accommodations or services, and persons with special needs are guaranteed this care in certain contexts.

Many public amenities - such as schools, places of employment, transportation services, government programs or services, and commercial facilities, among others - must make reasonable efforts to accommodate a person's special needs. This is due to the Americans with Disabilities Act, which prohibits discrimination against persons with disabilities in many of the areas that are most closely tied to public

Clinical diagnostic and functional development, special needs (or additional needs) refers to individuals who require assistance for disabilities that may be medical, mental, or psychological.

Special needs can range from people with autism, cerebral palsy, Down syndrome, dyslexia, dyscalculia, dyspraxia, dysgraphia, blindness, deafness, ADHD, and cystic fibrosis. They can also include cleft lips and missing limbs. The types of special needs vary in severity, and a student with a special need is classified as being a severe case when the student's IQ is between 20 and 35. These students typically need assistance in school, and have different services provided for them to succeed in a different setting.

Special needs usually refers to special needs within an educational context. This is also referred to as special educational needs (SEN) or special educational needs and disabilities.

The term is seen as a dysphemism by many disability rights advocates and is deprecated by a number of style guides.

Uganda is a signatory to the international agreements/commitments that provide for learners with special needs. One example of such instruments that bind those agreements is the Salamanca Statement and Framework for Action on Special Needs Education (1994).

This instrument emphasizes:

The Right of all children, including those with temporary and permanent needs for educational adjustments to attend school.

The Right of all children to attend school in their home communities in inclusive classes.

The Right of all children to participate in a child-centred education meeting individual needs.

The Right of all children to participate in quality education that is meaningful for everyone.

In consonance with the Government Constitution (1995), Uganda has put in place The Persons with Disability Act (2020) Act 3 Of 2020, National policy on Disability in Uganda and has also ratified the United Nations Convention on the rights of persons with disabilities (2008).

Both instruments demand for access, equity and quality as regards educational services for persons with special learning needs. To meet those requirements, the Ministry of Education & Sports put in place a department responsible for special needs and inclusive education.

The traditional/long-established approach of Special Needs Education was and is still focusing on learners with disabilities specifically. Learning support was and still is provided in special schools and in special classes (Units/Annexes) integrated in the ordinary schools. Learners with barriers (special needs) arising from disability conditions usually require Specialized support services (e.g. Sign language interpreters, Braille transcribers etc.); Specialized teaching methods; Access to resource rooms and use of specialized technology to access curriculum. Summarily, this approach takes care of learners with visible impairments, usually in the severe-profound levels requiring specialized support.

The current approach of Inclusive Education (IE) focuses beyond both the traditional and the transitional practices of special education and integration respectively. The present trend of inclusive education and policy thrust embraces modifications in curricular, teaching methods, teaching/learning resources, medium of communication and adjusting the learning environment to meet individual learning needs. It is learner centred, flexible and adjustable to the individual needs and potential of every child. This approach takes cognizance of and seeks to mitigate factors that form barriers to children's participation in learning and development. It is meant to widen opportunity for ALL Children to interact, play, learn, experience the feeling of belonging and develop in accordance with their potentials and difficulties; thereby obtaining good quality of life within their respective environments. It is all about changing attitudes, behaviour, teaching methods, curriculum, environment and allocation of human, material and financial resources to meet the educational needs of all learners.