

THE RIGHTS OF PERSONS WITH DISABILITIES IN UGANDA

AN ASSESSMENT OF SELECTED NATIONAL LAWS
IN RELATION TO THE CONVENTION ON
THE RIGHTS OF PERSONS WITH DISABILITIES



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FOREWORD

The Universal Declaration for Human Rights (UDHR), which the entire World is celebrating this year the 70th anniversary, provides in Article 1 that: “All human beings are born free and equal in dignity and rights”. The UDHR hence sets out key principles of non-discrimination and equality. Decades after the adoption of the UDHR, the 2030 Agenda on Sustainable Development pursues one key overarching aspiration: to leave no one behind. Yet, in all parts of the world, Persons with Disabilities are often among those furthest left behind.

The UN Office of the High Commissioner for Human Rights (OHCHR) in Uganda commends the efforts of the Ugandan Government in ensuring that Persons with Disabilities are not left behind, that their rights are respected, protected and promoted. In fact, relevant provisions of the Constitution of Uganda and numerous laws seek to translate this commitment into reality, including through affirmative actions.

In 2008, the Government of the Republic of Uganda ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. In 2016, the Committee on the Rights of Persons with Disabilities considered the initial report of Uganda and recommended, among others, that Uganda harmonize definitions of disability in various laws and policies, review all legislation and bring it into line with the Convention.

It is against this background that OHCHR supported the Equal Opportunities Commission (EOC) to engage a consultant to assess compliance of selected national laws with the CRPD. This assessment report provides a baseline to guide legislative and policy reforms, and it is hoped it will be seen as a valuable tool to enhance the efforts of the Government of the Republic of Uganda in this area.

OHCHR sincerely values the collaboration with and commitment by the EOC and other partners, including the National Council of Disability (NDC) and the Uganda Human Rights Commission (UHRC), in actively promoting principles of non-discrimination and equality for all and thus, contributing in making the human rights of persons with disabilities a reality in Uganda.



Robert Kotchani
Country Representative
Office of the United Nations High Commissioner for Human Rights (OHCHR)

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Since its establishment, the Equal Opportunities Commission has made significant strides in redressing imbalances and promoting equal opportunities for all. This has been made possible mainly by the support of the Government of the Republic of Uganda. We would therefore like to acknowledge His Excellency the President of the Republic of Uganda, the Ministry of Gender, Labor and Social Development, the Ministry of Finance Planning and Economic Development, other MDAs, as well as all other stakeholders for their continued commitment to the work of the Commission.

The Commission in a special way appreciates the Office of the High Commissioner for Human Rights (UN Human Rights) which supported the development and production of this report. We are very grateful for your continued support not only towards this work but also towards other programmes and activities of the Commission.

In the same vein, we are very grateful for the technical and financial support from other development partners, i.e. UN Women, Democratic Governance Facility (DGF) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

The Commission is grateful to all persons and organisations that provided useful information and accepted to be interviewed in the course of coming up with this report. Your input is very much appreciated.

Finally, the Commission appreciates its Members and the technical staff who have always worked tirelessly to realize the vision of the Equal Opportunities Commission- to have a just and fair society where all persons have equal opportunity to participate and benefit in all spheres of political, economic, social and cultural life.

For God and My Country!



Sylvia Muwebwa Ntambi
Chairperson,
Equal Opportunities Commission

TABLE OF CONTENTS

FOREWORD	iii
ACKNOWLEDGEMENTS.....	iv
LIST OF ACRONYMS	x
1.0 INTRODUCTION.....	1
1.1 METHODOLOGY.....	2
2.0 UGANDA’S INTERNATIONAL LEGAL OBLIGATIONS UNDER THE CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES (CRPD)	3
2.1 Non-discrimination.....	3
2.2 The Right to Equality.....	3
2.2.1 Accessibility.....	4
2.2.2 Reasonable accommodation.....	5
2.3 The Right to Equal Recognition before the Law	6
2.3.1 The Right of PWDs to exercise their Legal Capacity.....	6
2.3.2 The Right of PWDs to Own Property and Control their Financial Affairs	8
2.3.3 The Right of PWDs to Access to Justice	8
2.3.4 The Rights to Liberty, Health and Privacy of PWDs	9
2.3.5 Political Rights of PWDs	10
2.3.6 Right to Marry and Found a Family.....	10
2.3.7 The Right to Liberty of Movement and Nationality.....	11
2.3.8 The Right to Live Independently and be Included in the Community.....	11
2.4 Freedom from Inhuman, Degrading and Cruel Treatment and Violence, Exploitation and Abuse	11
2.5 Right to Work and Employment – Reasonable accommodation	12
2.6 Right to an Adequate Standard of Living and Social Protection	13
3.0 A REVIEW OF EXISTING LEGISLATION (INCLUDING BILLS) RELATING TO THE RIGHTS OF PWDS	14
3.1 Persons with Disabilities Bill, 2016	14
3.1.1 Recommendations for Legal Reform.....	17
3.2 Laws which deprive PWDs of their Liberty	19
3.2.1 Article 23 of the Constitution of the Republic of Uganda	19
3.2.2 The Trial on Indictments Act, Cap 23 as amended in 2008 and the Magistrates Courts Act, Cap 16 as amended in 2007	19

3.2.3	Prisons Act, 2006	22
3.2.4	Recommendations for Legal Reform	22
3.2.5	Legislation on Mental Health	23
3.2.6	Recommendations for Legal Reform	27
3.3	Rights relating to Family, Succession and Children	28
3.3.1	Laws on Marriage and Divorce in Uganda	28
3.3.2	Laws governing Succession and Inheritance in Uganda	29
3.3.3	Children (Amendment) Act, 2016 and Children Act Cap 59.....	30
3.3.4	Recommendations for Legal Reform.....	31
3.4	Rights relating to Nationality and Movement	33
3.4.1	Citizenship and Immigration Control Act, Cap 66 as amended in 2006 and 2009.....	33
3.4.2	Recommendations for Legal Reform.....	33
3.5	Rights relating to PWDs at the Workplace	33
3.5.1	Employment Act, 2006 and Employment Regulations, 2011	33
3.5.2	Recommendations for Reform	34
3.6	Laws governing the Right to Adequate Standard of Living and Social Protection in Uganda.....	34
3.6.1	National Health Insurance Bill, 2014	34
3.6.2	Recommendations for Reform	36
3.7	Electoral Laws and Participation of PWDs in Public Affairs	36
3.7.1	Qualifications to Stand for Elections	36
3.7.2	The Elections Procedure	37
3.7.3	Recommendations for Reform	37
3.8	Other Laws which restrict Legal Capacity of PWDs on the basis of Impairment.....	37
3.8.1	Administration of Justice.....	37
3.8.2	Recommendations for Legal Reform	39
4.0	CONCLUSIONS AND RECOMMENDATIONS.....	40
4.1	General Recommendations.....	40
4.1.1	Enact the PWDs Bill, 2016.....	40
4.1.2	Engage Members of Parliament.....	41
4.1.3	Engage the Uganda Law Reform Commission (ULRC)	41
4.1.4	Engage Key Stakeholders	42
4.2	Specific Recommendations for Legal Reform of the Analyzed Legislation.....	42
4.2.1	Persons with Disabilities Bill, 2016.....	42
4.2.2	Laws which deprive PWDs of their Liberty.....	44

4.2.3	Laws on Mental Health	44
4.2.4	Laws on Marriage and Divorce.....	45
4.2.5	Laws on Succession and Inheritance	45
4.2.6	The Children (Amendment) Act, 2016.....	46
4.2.7	Rights relating to Nationality and Movement.....	46
4.2.8	Rights relating to PWDs in the Workplace	46
4.2.9	Laws governing the Right to Adequate Standard of Living and Social Protection in Uganda.....	46
4.2.10	Electoral Laws and Participation of PWDs in Public Affairs	47
4.2.11	Other Laws which restrict Legal Capacity of PWDs on the basis of Impairment	47
4.3	Conclusion	48
5.0	APPENDICES IDENTIFYING PERSONS INTERVIEWED IN THE COURSE OF THE STUDY AND LEGISLATION CITED	50
5.1	Interviewees	50
5.2	Legislation Analyzed in the Study in the order of Analysis	50

LIST of ACRONYMS

CRPD	Convention on the Rights of Persons with Disabilities
EOC	Equal Opportunities Commission
MoES	Ministry of Education and Sports
MoFPED	Ministry of Finance, Planning and Economic Development
MoGLSD	Ministry of Gender, Labour and Social Development
MoH	Ministry of Health
MoJC	Minister of Justice and Constitutional Affairs
MPs	Members of Parliament
NCD	National Council for Disability
PWD	Person with Disability
PWDs	Persons with Disabilities
UHRC	Uganda Human Rights Commission
ULRC	Uganda Law Reform Commission

1.0 INTRODUCTION

People With Disabilities (PWDs) in Uganda face discrimination and barriers in accessing equal opportunities which deprives them the full enjoyment and realization of their human rights and fundamental freedoms.¹ The UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted to guarantee the protection and fulfillment of the rights of PWDs.²

Despite the legal protection of their rights enshrined in the CRPD and Constitution of the Republic of Uganda, 1995, PWDs continue to be marginalized.³ The Parliament fulfilled its mandate under Articles 35 and 32 of the 1995 Constitution of Uganda, which recognize the right of PWDs to inherent dignity and affirmative action respectively, by enacting the PWDs Act, 2006 which makes provision for respect, protection and realization of human rights of PWDs.⁴ However, the CRPD was adopted in the same year and Uganda ratified the same on September 25, 2008.⁵ Under the CRPD, Uganda has an obligation to domesticate the Convention and take measures towards its implementation, including through legislative reform.

In 2016, Uganda, through a reporting mechanism established under the CRPD for monitoring compliance with and implementation of the Convention by the State, underwent a review of its initial report to the Committee on the Rights of Persons with Disabilities (hereinafter referred to as ‘Committee’). In its Concluding Observations,⁶ the Committee noted that Uganda had not enacted a law to properly domesticate the CRPD, and that Ugandan legislation contained provisions which were manifestly inconsistent with the obligations assumed under the Convention. The Committee also expressed concern about the insufficient existing legal remedies to protect PWDs against discrimination and the non-recognition of reasonable accommodation in the legislation of Uganda.

This study conducts a comprehensive review and analysis of Uganda’s existing legislative framework highlighted by the Committee in its Concluding Observations in so far as it relates to the rights of PWDs, in terms of their consistency with the CRPD. Beyond the laws identified by the UN Committee, this study reviews selected laws which relate to the rights of PWDs in Uganda and are related to the legislation highlighted in the Concluding Observations. Finally, the study also makes reference, as appropriate, to relevant institutional and policy frameworks which relate to the rights of PWDs. The study goes on to make appropriate recommendations in line with the CRPD and best practices, around the continent and the globe, aimed towards legal reform for areas of inconsistency in the Ugandan legislation with obligations assumed under the Convention.

1 Mafabi, D. C (2016), “*Disempowering the Already Marginalized Persons with Mental Disabilities in the Criminal Justice System*” Public Interest Law Clinic (PILAC) Working Paper No. 5, May 2016.

2 The Convention on the Rights of Persons with Disabilities (CRPD) was adopted on 13th December 2006, opened for signature on 30th March 2007 and entered into force on 3rd May 2008. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-15&chapter=4&lang=en

3 Mafabi, D. C (2016), *supra*.

4 The PWDs Act was enacted by Parliament in 2006 and assented to by the President on 24th May 2006.

5 Uganda signed the CRPD on March 30, 2007, See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-15&chapter=4&lang=en. Since the enactment of the CRPD, there has been no significant statutory enactment or amendment adopted with a view to the further domestication of the CRPD. Indeed, in its initial report under the CRPD, submitted on 22 January 2013, the government noted that since 2009, there had been ‘debate between the Government and disabled people’s organizations on whether to annul or amend the Persons with Disabilities Act 2006’. According to the report, ‘[o]n the one hand, Government argues that the law was not well written and needs to be annulled and replaced with a new law; while on the other, disabled people’s organizations argue the law should only be amended to rectify the loopholes in it’. The report further noted that this dialogue was ‘still ongoing’ and that the government viewed it as ‘an opportune channel for further domestication of the Convention on the Rights of Persons with Disabilities’ – See Initial Report of Uganda to the Committee on the Rights of Persons with Disabilities, CRPD/C/UGA/1, 22 January 2013, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/047/42/PDF/G1504742.pdf?OpenElement>

6 UN Doc. CRPD/C/UGA/CO/1.

1.1 METHODOLOGY

The methodology for this study was mainly qualitative, involving a desk review of existing literature on the extent to which the rights of PWDs in Uganda are protected under the laws of Uganda, and including legislation cited by the Committee in the Concluding Observations of 2016 and other related laws.⁷ The review sought to identify gaps between Uganda’s existing legislative framework and the obligations assumed under the CRPD. The study also sought to identify best practices and strategies around the world which Uganda can adopt to inform its legal reform in order to comply with the CRPD.

Interviews were conducted with key stakeholders including officials from the Ministry of Gender, Labour and Social Development (MoGLSD), Equal Opportunities Commission (EOC), National Council for Disability (NCD), Uganda Human Rights Commission (UHRC), Uganda Law Reform Commission (ULRC), Members of Parliament representing PWDs, PWDs and Civil Society Organisations working to advance the rights of PWDs in Uganda and Africa. Key informants were selected on the basis of their special knowledge of, or experience with human rights and disability in Uganda.

⁷ The Committee specified the following laws and bills as being inconsistent with the CRPD: i) the Constitution of the Republic of Uganda; ii) the Persons with Disability Bill (2014); iii) the Children Act; iv) the Succession Bill (2011); v) the Divorce Act (1904); vi) the Hindu Marriage and Divorce Act (1961); vii) The Trial on Indictment Act (1971); viii) the Mental Health Bill (2014); ix) the Mental Treatment Act Cap 279 and x) the Citizenship and Immigration Control Act (2009). In addition, to these, the study analyzes a number of other following laws and policies, insofar as they are inextricably linked to those identified by the Committee: the Parliamentary Elections Act 2001, Marriage Act Cap 251, Marriage and Divorce Bill 2009, Administration of Estates of Persons of Unsound Mind Act Cap 155, Magistrate Courts Act Cap 16 as amended in 2007, Evidence Act Cap 6, Prisons Act 2006, and the Local Government Act, among others.

2.0 UGANDA'S INTERNATIONAL LEGAL OBLIGATIONS UNDER THE CRPD

The CRPD is the universal standard for the protection and realization of human rights and fundamental freedoms of PWDs.⁸ The object of the CRPD is to “promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all PWDs”⁹ without discrimination of any kind.¹⁰ The Committee on Rights of Persons with Disabilities has expanded on some of the rights in the CRPD in the General Comments on Equal Recognition before the Law, Accessibility and Women and Girls with Disabilities.

This section looks at Uganda’s obligations towards PWDs under the CRPD in depth, particularly with respect to its principles of non-discrimination, equality, equal recognition before the law, respect for individual autonomy and full and effective participation and inclusion in society.¹¹ These principles are selected given their overarching and cross-cutting nature, which makes them ideal frameworks for the analysis of the critical areas for reform of Uganda’s law and policies relating to the rights of PWDs.

2.1 Non-discrimination

Historically, PWDs have been marginalized, discriminated against and deprived of the full enjoyment of their human rights and fundamental freedoms. It is upon this background that the CRPD, in the strongest of terms, prohibits all forms of discrimination against PWDs on the basis of disability.¹² It goes ahead to define discrimination on the basis of disability to mean:¹³

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.

The CRPD, whilst acknowledging that PWDs continue to face barriers in their participation as equal members of society,¹⁴ states that discrimination against PWDs on the basis of disability amounts to violation of their inherent dignity.¹⁵ Article 4 of the CRPD specifically tasks Uganda to take all appropriate measures to modify or abolish existing legislations which constitute discrimination against PWDs.¹⁶ The State must also ensure that PWDs access equal and effective legal protection against disability based discrimination.¹⁷

2.2 The Right to Equality

PWDs are guaranteed of their right to equality, before and under the law, equal protection and equal benefit of the law without any discrimination under the CRPD.¹⁸ State parties to the CRPD must take appropriate steps to ensure that PWDs realise full and equal enjoyment of their human rights and freedoms.

8 Twinomugisha. B, (2015), “*Fundamentals of Health Law in Uganda*” Pretoria, Pretoria University Press (2015), at p.130.

9 Article 1 of the CRPD.

10 Article 4 (1) of the CRPD.

11 Article 3 of the CRPD. Others principles of the CRPD include: Respect for difference and acceptance of PWDs as part of human diversity and humanity, and Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

12 Article 5 (2) of the CRPD.

13 Article 2 of the CRPD. The Preamble of the CRPD para (p) states that PWDs face difficult conditions and usually are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

14 Preamble to the CRPD, para k.

15 Preamble to the CRPD, para h.

16 Article 4 (1) (b) of the CRPD.

17 Article 5 (2) of the CRPD.

18 Article 5 (1) of the CRPD.

Special protection is accorded to women and girls with disabilities, who are usually subject to multiple and intersection forms of discrimination.¹⁹

As a means of guaranteeing the right to equality of PWDs, the CRPD categorically calls upon Uganda to put in place affirmative action measures to promote the achievement of substantive equality for PWDs.²⁰ This can be achieved through promoting accessibility for PWDs and providing reasonable accommodation where and when it is required. These two concepts, as espoused in the CRPD, are explained below.

2.2.1 Accessibility

The Committee on Rights of Persons with Disabilities, in the CRPD General comment No. 2 on Accessibility, explains that accessibility is a vital precondition for persons with disabilities to live independently, participate fully and equally in society and realise effective enjoyment of their human rights and fundamental freedoms on an equal basis with others.²¹ It goes on to state thus:²²

As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. This approach stems from the prohibition against discrimination; denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity. Accessibility should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, legal or social status, gender or age. Accessibility should especially take into account the gender and age perspectives for persons with disabilities.

The duty to provide accessibility is an *ex ante* duty which means that State parties are obliged to ensure accessibility before receiving an individual request from a PWD to enter or use a place or service.²³ The State must ensure accessibility for PWDs in both urban and rural areas.²⁴ The obligation to implement accessibility is unconditional hence any omission to provide accessibility for PWDs on the ground that it is a burden is unacceptable.²⁵

The Committee on the Rights of Persons With Disabilities emphasizes that State parties to the CRPD should observe the right to accessibility through setting national accessibility standards.²⁶ States parties, in consultation with PWDs, must set broad accessibility standards which need to be specifically targeted towards service-providers, builders and other relevant stakeholders.²⁷ Barriers to access to existing facilities, goods and services open to the public must be removed gradually in a systematic and continuously monitored manner, with the aim of achieving full accessibility.²⁸ Uganda is tasked with establishing definite time frames; allocating adequate resources for the removal of existing barriers; setting effective monitoring mechanisms to ensure accessibility; and monitoring sanctions against anyone who fails to implement the

19 Article 6 (1) of the CRPD.

20 Article 5 (4) of the CRPD.

21 Preamble to the CRPD, para v and Article 9 (1) of the CRPD. CRPD General comment No. 2 (2014) on Article 9 of the CRPD: Accessibility adopted by the Committee on Rights of Persons with Disabilities at its eleventh session March 31 – April 11, 2014, at paras 1, 4 and 12. The Committee goes on to state in para 15 that “the notion of equality in international law has also changed over the past decades, with the conceptual shift from formal equality to substantive equality having an impact on the duties of States parties. States’ obligation to provide accessibility is an essential part of the new duty to respect, protect and fulfil equality rights. Accessibility should therefore be considered in the context of the right to access from the specific perspective of disability.”

22 General Comment No. 2 on Accessibility, paras 1 and 13.

23 *Ibid*, para 25.

24 *Ibid*, para 16.

25 *Ibid*, para 24.

26 *Ibid*, para 14.

27 General Comment No. 2 on Accessibility, para 25.

28 *Ibid*.

national accessibility standards.²⁹ The duty to observe established accessibility standards applies equally to both the public and private sector.

However, the Committee also tasks Uganda to go a step further and incorporate aspects of accessibility in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination.³⁰ Denial of access to PWDs should be clearly defined as a prohibited act of discrimination.³¹

The Committee on the Rights of Persons with Disabilities addressed the issue of accessibility in *Nyusti and Takács vs. Hungary*.³² The Committee found that all services provided to the public must be accessible to PWDs in accordance with Article 9 of the CRPD. The duty of State parties to the CRPD to eliminate discrimination on the basis of disability encompasses their obligation to regulate private entities offering services to the public to ensure that they take into account the special needs of PWDs and eliminate barriers to accessibility.

2.2.2 Reasonable accommodation

The CRPD recognizes that providing reasonable accommodation to PWDs is a positive step towards achieving substantive equality and eliminating discrimination.³³ It defines reasonable accommodation to mean:³⁴

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

The Committee on Rights of Persons with Disabilities explains in the CRPD General Comment No. 2 on Accessibility that:³⁵

Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account.

Uganda is required to take all appropriate steps to ensure that reasonable accommodation is provided to PWDs.³⁶ The duty to provide reasonable accommodation is enforceable from the moment an individual with an impairment needs it in a given situation, in order to enjoy her or his rights on an equal basis with the rest of the public in a particular context.³⁷ However, unlike the duty to ensure accessibility for PWDs, the duty to provide reasonable accommodation is not absolute because it exists only if implementation constitutes no undue burden on the State or other responsible entity.³⁸ Nonetheless, it is noteworthy that the denial of reasonable accommodation amounts to discrimination on the basis of disability.³⁹

29 General Comment No. 2 on Accessibility, para 24.

30 General Comment No. 2 on Accessibility, para 29.

31 Ibid.

32 *Nyusti and Takács vs. Hungary* Communication No. 1/2010, Views adopted by the Committee on the Rights of Persons with Disabilities on 16 April 2013. The complainants, who had severe visual impairments, entered into contracts for private account services with a local financial institution under which they paid the same fees as other clients. However, they were unable to access the banking services provided by the automatic teller machines (ATMs) on their own because none of the ATMs had braille font keyboards or voice assistance features. The State party was called upon to ensure that blind persons had access to automatic teller machines (ATMs).

33 Article 5 (3) of the CRPD reads: “In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”

34 Article 2 of the CRPD.

35 General Comment No.2 on Accessibility, para 25.

36 Article 5 (3) of the CRPD.

37 CRPD General Comment No. 2 on Accessibility, para 25.

38 CRPD General Comment No. 2 on Accessibility, para 25.

39 Article 2 of the CRPD. The Committee on Persons with Disabilities defines ‘denial of reasonable accommodation’ in CRPD General Comment No. 3 (2016) Article 6: Women and Girls with Disabilities adopted by the Committee on Rights of Persons with

2.3 The Right to Equal Recognition before the Law

The CRPD affirms the right of PWDs to equal recognition before the law which is hinged on their entitlement to respect of their inherent dignity, individual autonomy, independence, capacity, and freedom to make their own decisions and choices.⁴⁰ The importance of the right of PWDs to exercise their legal capacity is explained hereunder and is linked to their enjoyment and realization of other human rights and fundamental freedoms discussed below.

2.3.1 The Right of PWDs to exercise their Legal Capacity

The Committee on Rights of Persons with Disabilities, in the CRPD General Comment No. 1 on Equal recognition before the law, defines legal capacity to mean “the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency)” and it is central to accessing meaningful participation in society.⁴¹ Legal capacity is indispensable for the exercise and enjoyment by PWDs of civil, political, economic, social and cultural rights.⁴² The Committee acknowledges that in the past, PWDs have been deprived of their right to legal capacity in many spheres of their lives in a discriminatory manner.⁴³ It further states:

It [legal capacity] acquires a special significance for persons with disabilities when they have to make fundamental decisions regarding their health, education and work. The denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including the right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty.

The CRPD classifies terms such as “unsoundness of mind” and other discriminatory labels as an illegitimate basis for the denial of legal capacity of PWDs and perceived or actual deficits in mental capacity must, by no means, be used as justification for denying legal capacity.⁴⁴

Article 12 of the CRPD guarantees the inherent right of PWDs in Uganda to equal recognition before the law and enjoyment of full legal capacity on an equal basis with the public in all aspects of life.⁴⁵ In order to ensure that full legal capacity is restored to PWDs, the State has an obligation to abolish substitute decision-making regimes established by law such as guardianship, trusteeship and mental health laws which permit

Disabilities on September 2, 2016 at para 17 (d). Accessed at CRPD/C/GC/3. It states: “Denial of reasonable accommodation is discrimination if necessary and appropriate modification and adjustments (that do not impose a disproportionate or undue burden) are denied and are needed to ensure women (and men) with disabilities enjoy equal exercise of a human right or fundamental freedom.”

40 Preamble to the CRPD, para (n) and Article 3 (a) of the CRPD.

41 CRPD General Comment No. 1 (2014) on Article 12 of the CRPD: Equal Recognition before the law, by the Committee on the Rights of Persons with Disabilities adopted by the Committee on Rights of Persons with Disabilities at its eleventh session March 31 – April 11, 2014, at para 13. The Committee adds that: “Legal capacity is an inherent right accorded to all people, including persons with disabilities...it consists of two strands. The first is legal standing to hold rights and to be recognized as a legal person before the law. This may include, for example, having a birth certificate, seeking medical assistance, registering to be on the electoral role or applying for a passport. The second is legal agency to act on those rights and to have those actions recognized by the law. It is this component that is frequently denied or diminished for persons with disabilities. For example, laws may allow persons with disabilities to own property, but may not always respect the actions taken by them in terms of buying and selling property. Legal capacity means that all people, including persons with disabilities, have legal standing and legal agency simply by virtue of being human. Therefore, both strands of legal capacity must be recognized for the right to legal capacity to be fulfilled; they cannot be separated.”

42 Ibid at para 8.

43 Ibid at para 7. The Committee added at para 8 that, “The right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others.”

44 CRPD General Comment No. 1 on Equal Recognition before the law at para 13. In para 32, the Committee goes on to explain the basis upon which the State may deny a person of their legal capacity. It states that: “States have the ability to restrict the legal capacity of a person based on certain circumstances, such as bankruptcy or criminal conviction. However, the right to equal recognition before the law and freedom from discrimination requires that when the State denies legal capacity, it must be on the same basis for all persons. Denial of legal capacity must not be based on a personal trait such as gender, race, or disability, or have the purpose or effect of treating the person differently.”

45 Article 12 (1) and (2) of the CRPD.

forced treatment.⁴⁶

Whereas Article 12 of the CRPD prohibits the discriminatory denial of legal capacity, it requires the State to provide support to PWDs, where required, to enable them to exercise their legal capacity.⁴⁷ Uganda must take appropriate measures to ensure that PWDs access assistance and support in exercising their legal capacity and making decisions which have a legal effect.⁴⁸ However, support offered to PWDs to exercise their legal capacity must be accompanied by effective safeguards to protect them against abuse of their right to make legal decisions.⁴⁹ For instance, the measures must:⁵⁰

- i) respect the rights, will and preferences of the PWDs;
- ii) be free of conflict of interest and undue influence;
- iii) be proportional and tailored to the PWD's circumstances;
- iv) apply for the shortest time possible;
- v) never amount to substitute decision making;⁵¹ and
- vi) be subject to regular review by a competent, independent and impartial authority or judicial body.

States parties, Uganda inclusive, must review the laws allowing for guardianship and trusteeship for PWDs, and develop laws and policies to replace these regimes of substitute decision-making through reasonable accommodation and supported decision-making, which respects the person's autonomy, will, preferences

46 CRPD General Comment No. 1 on Equal Recognition before the law at paras 7 and 25. The Committee explains in para 27 that: "Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. However, these regimes have certain common characteristics: they can be defined as systems where (i) legal capacity is removed from a person, even if this is in respect of a single decision; (ii) a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and (iii) any decision made by a substitute decision-maker is based on what is believed to be in the objective "best interests" of the person concerned, as opposed to being based on the person's own will and preferences."

47 Ibid at para 15. The Committee adds at para 16 that: "States parties must refrain from denying persons with disabilities their legal capacity and must, rather, provide persons with disabilities access to the support necessary to enable them to make decisions that have legal effect."

48 Article 12 (3) of the CRPD and CRPD General Comment No. 1 on Equal Recognition before the law at para 16. The Committee explains in para 17 that: "Support is a broad term that encompasses both informal and formal support arrangements, of varying types and intensity. For example, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decisions, or may call on other forms of support, such as peer support, advocacy (including self-advocacy support), or assistance with communication. Support to persons with disabilities in the exercise of their legal capacity might include measures relating to universal design and accessibility — for example, requiring private and public actors, such as banks and financial institutions, to provide information in an understandable format or to provide professional sign language interpretation — in order to enable persons with disabilities to perform the legal acts required to open a bank account, conclude contracts or conduct other social transactions. Support can also constitute the development and recognition of diverse, non-conventional methods of communication, especially for those who use non-verbal forms of communication to express their will and preferences. For many persons with disabilities, the ability to plan in advance is an important form of support, whereby they can state their will and preferences which should be followed at a time when they may not be in a position to communicate their wishes to others. All persons with disabilities have the right to engage in advance planning and should be given the opportunity to do so on an equal basis with others. States parties can provide various forms of advance planning mechanisms to accommodate various preferences, but all the options should be non-discriminatory. Support should be provided to a person, where desired, to complete an advance planning process. The point at which an advance directive enters into force (and ceases to have effect) should be decided by the person and included in the text of the directive; it should not be based on an assessment that the person lacks mental capacity."

49 Article 12 (4) of the CRPD.

50 Ibid. The safeguards should be proportional to the degree to which such measures affect the person's rights and interests.

51 CRPD General Comment No. 1 on Equal Recognition before the law at para 17.

and human rights norms.⁵² The Committee on Rights of Persons with Disabilities emphasizes that the need for support and in making decisions by a PWD must not be used to question his/her legal capacity.

2.3.2 The Right of PWDs to Own Property and Control their Financial Affairs

Traditionally, PWDs were denied access to finance and property affairs on the basis of being of “unsound mind”.⁵³ The Committee on Rights of Persons with Disabilities strongly condemns this approach of denying persons with disabilities their right to exercise legal capacity for financial matters. PWDs are entitled to own or inherit property, control their own financial affairs and have equal access to bank loans, mortgages and other forms of financial credit.⁵⁴ The Committee stresses that disability must not be used as the basis for discrimination in the areas of finance and property.

States must ensure that PWDs access support to exercise their legal capacity, in accordance with the CRPD.⁵⁵ Uganda is specifically mandated to take appropriate and effective legislative measures to ensure that PWDs fully realise their rights with respect to financial and economic affairs on an equal footing with the rest of the public.⁵⁶

2.3.3 The Right of PWDs to Access to Justice

Persons With Disabilities have previously been deprived of their right to seek, access and participate in the field of justice for instance through restrictions from taking on key roles such as advocates, witnesses, judges and assessors in court processes.⁵⁷ To ensure that PWDs are able to seek and obtain enforcement of their human rights on an equal basis with others, they must have equal access and standing in courts and tribunals.⁵⁸

States Parties have an obligation to ensure equal and effective access to justice for PWDs. This can be achieved through the provision of procedural and age-appropriate support and accommodations which have the potential to facilitate their effective direct and indirect participation in all legal proceedings.⁵⁹ Persons with disabilities must also be granted legal capacity to testify and access legal representation in all

52 Ibid at para 28 and 29. The Committee states: “States parties’ obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the Convention.” On reasonable accommodation, the Committee states in para 34 that: “The right to reasonable accommodation in the exercise of legal capacity is separate from, and complementary to, the right to support in the exercise of legal capacity. States parties are required to make any necessary modifications or adjustments to allow persons with disabilities to exercise their legal capacity, unless it is a disproportionate or undue burden. Such modifications or adjustments may include, but are not limited to, access to essential buildings such as courts, banks, social benefit offices and voting venues; accessible information regarding decisions which have legal effect; and personal assistance.” The difference between the right to support and reasonable accommodation is that the former, in the exercise of legal capacity shall not be limited by the claim of disproportionate or undue burden. The State has an absolute obligation to provide access to support in the exercise of legal capacity. For reasonable accommodation, it is not absolute and is therefore subject to the claim of undue burden.

53 CRPD General Comment No. 1 on Equal Recognition before the law at para 23.

54 Article 12 (5) of the CRPD. CRPD General Comment No. 1 on Equal Recognition before the law at para 23 states: “Article 12, paragraph 5, requires States parties to take measures, including legislative, administrative, judicial and other practical measures, to ensure the rights of persons with disabilities with respect to financial and economic affairs, on an equal basis with others. Access to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may disability.”

55 Article 12 (3) of the CRPD and CRPD General Comment No. 1 on Equal Recognition before the law at para 23.

56 CRPD General Comment No. 1 on Equal Recognition before the law at para 23.

57 CRPD General Comment No. 1 on Equal Recognition before the law at para 38.

58 Ibid.

59 Article 13 (1) of the CRPD. The Committee explains in CRPD General Comment No. 1 on Equal Recognition before the law at para 38 that “such support could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods.”

judicial, administrative and legal proceedings on an equal basis with others.⁶⁰ The State is also called upon to provide appropriate disability rights training for personnel working in the justice sector to recognize persons with disabilities as full persons before the law and to give the same weight to complaints and statements from persons with disabilities.⁶¹

2.3.4 The Rights to Liberty, Health and Privacy of PWDs

The Committee on Rights of Persons with Disabilities in the CRPD General Comment No.1 on Equal recognition before the law raises concern and condemns the arbitrary deprivation of liberty of PWDs through detention in institutions and forced treatment either against their will or with the consent of a substitute decision-maker.⁶²

States Parties must ensure that PWDs realise their right to liberty and security of their person on an equal basis with others.⁶³ The existence of a disability should not, by itself, constitute a justification for the deprivation of liberty.⁶⁴ State parties must therefore, refrain from practices such as seclusion, detention, indefinite postponement of criminal proceedings while ordering incarceration and involuntary institutionalization of PWDs,⁶⁵ and establish a mechanism of reviewing cases where PWDs have been placed in a residential setting without their specific and free consent.⁶⁶

However, where State Parties deem it fit to deprive PWDs of their liberty through any process, it must be done on an equal basis with others. The PWDs should be entitled to guarantees in accordance with international human rights law and should be treated in compliance with the principles of CRPD, including the provision of reasonable accommodation where required.⁶⁷

The CRPD also reaffirms the right of PWDs to enjoyment of the highest attainable standard of health which includes the right to health care on the basis of free and informed consent.⁶⁸ PWDs are often denied their right to fully and effectively participate in decision making when they are subjected to substitute decision making regimes. States parties have an obligation to ensure that all medical professionals and psychiatrists obtain the free and informed consent of persons with disabilities prior to any treatment or medical interventions.⁶⁹

States parties also have an obligation to prohibit or substitute decision-makers from providing consent to treatment or medical interventions on behalf of PWDs.⁷⁰ All health and medical personnel should directly engage with PWDs during consultation, give them an opportunity to participate in their health decision making, and to the best of their ability, ensure that support persons do not substitute or have undue influence over the decision making of PWDs.⁷¹

Specific to women and girls with disabilities, the Committee on Rights of Persons with Disabilities in CRPD General Comment No. 3 calls upon States to adopt affirmative action measures to immediately address inequalities and ensure that women with disabilities have equality of opportunity with others. These measures should be aimed at enabling women with disabilities to exercise their legal capacity, give their free and informed consent, make their decisions about their lives and maintain total control over their

60 CRPD General Comment No. 1 on Equal Recognition before the law at para 39.

61 Article 13 (2) of the CRPD and the CRPD General Comment No. 1 on Equal Recognition before the law at para 39. The police, prison staff and judiciary specifically must be trained to respect the legal capacity of persons with disabilities, including legal agency and standing.

62 CRPD General Comment No. 1 on Equal Recognition before the law at para 40.

63 Article 14 (1) (a) of the CRPD.

64 Article 14 (1) (b) of the CRPD.

65 Concluding Observations on the Initial Report of Uganda by the Committee on Rights of Persons with Disabilities at para 27. Accessed at UN Doc. CRPD/C/UGA/CO/1.

66 CRPD General Comment No. 1 on Equal Recognition before the law at para 40.

67 Article 14 (1) (b) of the CRPD.

68 Article 25 (d) of the CRPD. CRPD General Comment No. 1 on Equal Recognition before the law at para 41.

69 CRPD General Comment No. 1 on Equal Recognition before the law at para 41.

70 CRPD General Comment No. 1 on Equal Recognition before the law at para 41.

71 Ibid.

sexual and reproductive health .⁷²

Closely related to the right to exercise legal capacity and health of PWDs is their right to privacy guaranteed under the CRPD. State parties have an obligation to protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.⁷³ Substitute decision-making regimes usually violate the right to privacy of PWDs because third parties are granted unlimited access to a wide range of personal and confidential information regarding the PWD.⁷⁴ States parties must therefore establish supported decision-making systems and ensure that persons providing support in the exercise of legal capacity fully respect the right to privacy of PWDs.⁷⁵

2.3.5 Political Rights of PWDs

The Committee on the Rights of PWDs acknowledges that for equal recognition of the legal capacity of PWDs to be achieved, the right to exercise their political rights should be recognized.⁷⁶ Restriction of legal capacity of some PWDs is used to deny them political participation, especially the right to vote and be elected. The decision-making ability of PWDs should not be a justification for their exclusion from exercising their political rights, including the right to vote and the right to stand for election.⁷⁷

The State has an obligation to actively promote an environment in which PWDs can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others.⁷⁸ The CRPD requires State parties to guarantee the enjoyment of political rights of PWDs including the right to vote, stand for election, and fully and effectively participate in the political sphere on an equal basis with others.⁷⁹ This entails ensuring that voting procedures, facilities and materials are appropriate, accessible and user friendly for PWDs; protecting the right of PWDs to stand for elections, effectively hold office, and perform all public functions at all levels of government with reasonable accommodation and support, where desired, in the exercise of their legal capacity.⁸⁰

2.3.6 Right to Marry and Found a Family

Persons With Disabilities, particularly those with psychosocial disabilities, are considered ‘insane’ and of ‘unsound mind’, thus they face restrictions from contracting marriages. Further, substitute decision makers, many a time, deem it wise to make drastic decisions on behalf of PWDs without their consent such as forced sterilization which deprives them of their right to found a family.

The CRPD regurgitates the right of PWDs to marry, found a family and freely make decisions regarding their sexual and reproductive health such as the number and spacing of their children.⁸¹ States Parties must therefore take effective steps to eliminate barriers which constitute discrimination against PWDs in all matters relating to marriage, family, parenthood and relationships.⁸²

Article 23 further guarantees the right of PWDs to retain their fertility on an equal basis with others, an entitlement which must be respected by guardians, trustees and other substitute decision makers. The State must see to it that these persons act in the best interests of the PWDs at all times.⁸³

Children with disabilities have a right to live with their parents on an equal basis with others, similarly, parents with disabilities have a right to raise their children, as such, the family should not be separated

72 CRPD General Comment No. 3 (2016) Article 6: Women and Girls with Disabilities adopted by the Committee on Rights of Persons with Disabilities on September 2, 2016 at para 62. Accessed at CRPD/C/GC/3.

73 Article 22 of the CRPD.

74 CRPD General Comment No. 1 on Equal Recognition before the law at para 47.

75 Ibid.

76 CRPD General Comment No. 1 on Equal Recognition before the law at para 48.

77 Ibid.

78 Article 29 (1) (a) of the CRPD.

79 Article 29 (1) (a) of the CRPD.

80 Article 29 (1) (a) of the CRPD and CRPD General Comment No. 1 on Equal Recognition before the law at paras 48 and 49.

81 Article 23 (1) of the CRPD.

82 Ibid.

83 Article 23 (2) of the CRPD.

solely on the basis of a disability of either the child or one or both of the parents.⁸⁴ The only exception to this shall be a decision of a competent authority, subject to judicial review finding that separation is necessary for the best interests of the child.⁸⁵ The State should appropriate support to PWDs to enable them to perform their child-rearing duties and where they are separated from their children, effort must be made for alternative care to be provided to the children within the wider family or community.⁸⁶

2.3.7 The Right to Liberty of Movement and Nationality

The CRPD reaffirms the right of PWDs in Uganda to a nationality, liberty of movement, and freedom to choose their residence on an equal basis with others.⁸⁷ PWDs are free to leave and return to their country as they wish thus, they must not be arbitrarily denied their right to obtain, possess and utilize immigration documentation which they may need to exercise their right to liberty of movement freely within and outside the country on the basis of disability.⁸⁸

2.3.8 The Right to Live Independently and be Included in the Community

Article 19 of the CRPD guarantees the right of PWDs to live independently in the community, have control over their everyday lives, choose where and with whom to live, and make choices on an equal basis with others. The continued segregation and detention of PWDs in institutions with the consent of other persons denies them their legal capacity and violates their right to live independently guaranteed under the CRPD.⁸⁹

The CRPD calls upon States to take steps towards deinstitutionalization of PWDs in a bid to restore their legal capacity.⁹⁰ However, PWDs should not be denied access to support to exercise their legal capacity on the basis of their choice of where and with whom to live.⁹¹

The Committee on Rights of Persons with Disabilities accentuates the right of PWDs to live in their communities and support rendered in the exercise of legal capacity should be provided through a community-based approach.⁹² All community services availed to the population should be made equally accessible to PWDs. The Committee states:⁹³

States parties must recognize that communities are assets and partners in the process of learning what types of support are needed in the exercise of legal capacity, including raising awareness about different support options. States parties must recognize the social networks and naturally occurring community support (including friends, family and schools) of persons with disabilities as key to supported decision-making.

Uganda has a duty under the CRPD to abolish legislation which facilitates institutionalization of PWDs and promote full inclusion and participation of PWDs in the community.⁹⁴

2.4 Freedom from Inhuman, Degrading and Cruel Treatment and Violence, Exploitation and Abuse

In its Concluding Observations, the Committee of Persons with Disabilities raised concern about inhuman, degrading and cruel treatment faced especially by persons with psychosocial disabilities in Uganda, as manifested through forced medical treatment and isolation in psychiatric hospitals.⁹⁵ This practice not only also deprives PWDs of their legal capacity to choose medical treatment but has also been found to cause

84 Articles 23 (3) and (4) of the CRPD.

85 Article 23 (4) of the CRPD.

86 Article 23 (5) of the CRPD.

87 Article 18 (1) (a) and (b) of the CRPD.

88 Article 18 (1) (b), (c), and (d) of the CRPD.

89 CRPD General Comment No. 1 on Equal Recognition before the law at para 44.

90 CRPD General Comment No. 1 on Equal Recognition before the law at para 46.

91 Ibid.

92 Ibid at para 45.

93 Ibid.

94 Ibid at para 46.

95 Concluding Observations on the Initial Report of Uganda by the Committee on Rights of Persons with Disabilities at para 28.

deep pain and trauma to victims.⁹⁶

Articles 15 and 17 of the CRPD guarantee the inherent right of PWDs to respect of their physical and mental integrity on an equal basis with others and their fundamental freedom of PWDs from aforementioned practices which amount to cruel, inhuman or degrading treatment. In this regard, the State is tasked to take effective legislative measures to protect PWDs, on an equal basis with others, from being subjected to such treatment with abolishing laws and policies which permit or perpetrate forced treatment being of utmost priority.⁹⁷ States parties must also respect the legal capacity of PWDs to make decisions, and provide access to support for decisions regarding psychiatric and other medical treatment,⁹⁸ and “develop alternative modes of treatment which respect the dignity, will and preferences of PWDs.”⁹⁹ This entails facilitating access by PWDs to accurate information on available options especially the non-medical approaches and independent support.¹⁰⁰

The CRPD also reaffirms the right to freedom from violence and abuse especially against women and children with disabilities.¹⁰¹ The Committee on Rights of Persons with Disabilities in CRPD General Comment No. 3 on Women and Girls with Disabilities recognizes that women with disabilities are usually subjected to harmful practices such as forced marriage and female genital mutilation.¹⁰² Harmful stereotypes which ‘infantilize’ women with disabilities and perceptions which portray them as being asexual, or hypersexual also perpetrate sexual violence against women.¹⁰³

Uganda is mandated to take suitable legislative measures to protect PWDs from all forms of exploitation, violence and abuse and provide gender-age-and-disability-sensitive assistance and support for PWDs on how to avoid, recognize and report instances of exploitation, violence and abuse.¹⁰⁴ The State must enact legislation to ensure that instances of exploitation, violence and abuse against PWDs are ably identified, investigated and, prosecuted.¹⁰⁵

2.5 Right to Work and Employment – Reasonable accommodation

PWDs are entitled, on an equal basis, to work in a labour market and work environment which is open, inclusive and accessible.¹⁰⁶ States are tasked to take legislative measures aimed at prohibiting discrimination of PWDs in the work environment with respect to just, favourable and safe working conditions including equal remuneration for work of equal value.¹⁰⁷ States are specifically called upon to take measures to enable PWDs to access opportunities in adapted workplaces and ensure that PWDs are given reasonable accommodation to where required to enable them to realise their right to work on an equal basis with others.¹⁰⁸

96 CRPD General Comment No. 1 on Equal Recognition before the law at para 42.

97 Ibid.

98 Ibid.

99 Concluding Observations on the Initial Report of Uganda by the Committee on Rights of Persons with Disabilities at para 35.

100 Ibid.

101 Article 16 (1) of the CRPD.

102 CRPD General Comment No. 3 on Women and Girls with Disabilities at paras 30 and 37.

103 Ibid.

104 Article 16 (2) of the CRPD. The CRPD further tasks State parties to ensure that all facilities and programmes designed to serve PWDs are effectively monitored by independent authorities as a means of preventing the occurrence of all forms of exploitation, violence and abuse. States should take all “appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.”

105 Article 16 (5) of the CRPD.

106 Article 27 of the CRPD.

107 Article 27 1 (a) and (b) of the CRPD read: “(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.”

108 Ibid.

2.6 Right to an Adequate Standard of Living and Social Protection

Article 28 of the CRPD guarantees the right of PWDs to an adequate standard of living and social protection on an equal basis with the rest of the public. The State is therefore enjoined to take steps to ensure that PWDs are able to access appropriate and adequate services without discrimination. Relatedly, Article 25 of the CRPD also tasks the State to “prohibit discrimination against PWDS in the provision of health insurance” where it is permitted under national law.

3.0 A REVIEW OF EXISTING LEGISLATION (INCLUDING BILLS) RELATING TO THE RIGHTS OF PWDS

The principal obligation of Uganda under Article 4 of the CRPD is “to ensure and promote the full realization of all human rights and fundamental freedoms for PWDs without discrimination.” This can be achieved through the adoption of suitable legislative measures and modifying or abolishing existing laws which contravene the CRPD.¹⁰⁹

The UN Committee on Rights of Persons with Disabilities observed, in its Concluding Observations in 2016, that Ugandan legislation still contains provisions which contravene protections guaranteed under the CRPD.¹¹⁰ In particular, the Committee observed that the following existing and envisaged laws fall short of the CRPD: i) the Constitution of the Republic of Uganda; ii) the Persons with Disability Bill (2014); iii) the Children Act; iv) the Succession Bill (2011); v) the Divorce Act (1904); vi) the Hindu Marriage and Divorce Act (1961); vii) The Trial on Indictment Act (1971); viii) the Mental Health Bill (2014); ix) the Mental Treatment Act Cap 279 and x) the Citizenship and Immigration Control Act (2009).

However, in so far as these laws relate to, or are inextricably linked to a number of other laws that relate to the rights of PWDs in Uganda, where appropriate, the scope of review is broadened to include laws which the Committee did not specifically highlight in their Concluding Observations. Problematic provisions are also contained in a number of other laws, including the Parliamentary Elections Act 2001, Marriage Act Cap 251, Marriage and Divorce Bill 2009, Administration of Estates of Persons of Unsound Mind Act Cap 155, Magistrate Courts Act Cap 16 as amended in 2007, Evidence Act Cap 6, Prisons Act 2006, and Local Government Act as amended among others. The Committee specifically raised concern about laws of Uganda which restrict the legal capacity of PWDs, particularly persons with psychosocial disabilities, on the basis of impairment, some of which is discussed hereunder.

This section of the study analyses the legislation above in so far as it relates to the rights of PWDs, to ascertain whether it is in consistent with the CRPD and highlight the areas for legal reform.

Legislations and policies not in line with the CRPD

3.1 Persons with Disabilities Bill, 2016

The Persons with Disabilities Act, 2006 (hereinafter referred to as “*PWDs Act*”) was passed by Parliament under its mandate in Article 35 of the 1995 Constitution in 2006, prior to ratification of the CRPD by Uganda.¹¹¹ The State committed to domesticate the CRPD in its national laws which was the genesis of the Persons with Disabilities Bill, 2016 (hereinafter referred to as “*PWDs Bill*”).¹¹² Although, initially a

¹⁰⁹ Article 4 (1) (a) and (b) of the CRPD reads: “States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake: a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention; b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.”

¹¹⁰ Concluding Observations on the Initial Report of Uganda by the Committee on Rights of Persons with Disabilities accessed at UN Doc. CRPD/C/UGA/CO/1.

¹¹¹ The PWDs Act was enacted by Parliament in 2006 and assented to by the President on 24th May 2006. However, the UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted on 13th December 2006, opened for signature on 30th March 2007 and entered into force on 3rd May 2008. Uganda signed the CRPD on 30th March 2007, as soon as it was opened for signature, and ratified the same on 25th September 2008. This information was accessed at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mntdsg_no=IV-15&chapter=4&lang=en

¹¹² Under Article 4 (1) (a) and (b) of the CRPD, the State committed to adopt all appropriate legislative measures for the implementation of the CRPD and to modify or abolish existing laws which contravened the CRPD. The Bill was gazetted on May 9, 2014 according to Disability Rights Coalition, (2014) “*Proposed Alternative Persons with Disabilities Bill Presented to the Hon Minister of Gender, Labour and Social Development.*”

private member's bill drafted in 2014, the State took over the process in a bid to reinforce the protection of the human rights and fundamental freedoms of PWDs under the CRPD and amend the PWDs Act which had shortcomings.¹¹³

The Committee on Rights of PWDs raised concern about the delay to enact the PWDs Bill which is meant to advance the rights of PWDs enshrined in the CRPD. It is noteworthy that progress has been made in terms of efforts to enact the PWDs Bill into law. The Ministry of Gender, Labour and Social Development (MoGLSD) has engaged different stakeholders including PWDs and various ministries whose recommendations are reflected in the latest version of the PWDs Bill, 2016 which the MoGLSD intended to present before Parliament by the end of the year, 2017.¹¹⁴

The intention of the PWDs Bill is to abolish derogatory language used to describe PWDs in the laws of Uganda; domesticate the CRPD; incorporate aspects of accessibility and reasonable accommodation; and strengthen the National Council for Disability.¹¹⁵ The 2016 version of the PWDs Bill is commended for adopting some of the recommendations from PWDs around the country¹¹⁶ particularly: key definitions from the CRPD such as discrimination on the basis of disability, reasonable accommodation and universal design;¹¹⁷ provision of reasonable accommodation to PWDs in employment;¹¹⁸ recognition of the right of PWDs to practice any profession¹¹⁹ and participate in politics;¹²⁰ and provision of supportive social services to PWDs.¹²¹

However, there are still some problematic provisions which raise concern because they, not only contravene the CRPD, but also withdraw some of the protections which the PWDs Act currently affords PWDs.¹²² The main duty bearer under the CRPD is the State which is tasked to protect, respect and fulfill the rights of PWDs. However, in the PWDs Bill, 2016, the obligation of the State to fulfil the rights of PWDs continues

113 Interview with Masaba Sam Wekesa, Commissioner, Department of Disability and Elderly, Ministry of Gender, Labour and Social Development (MoGLSD) on September 6, 2017. According to Zaminah Malole, Member of the Equal Opportunities Commission, in an interview conducted on September 7, 2017, The Act is shallow on some of the important aspects of the CRPD on equalization of opportunities for PWDs such as reasonable accommodation among others. The CRPD needs to be domesticated in Uganda. This is of utmost importance.

114 Ibid. Other Ministries which have participated in the consultation process include: Ministry of Health (MOH), Ministry of Education and Sports (MoES) and Ministry of Information, Communications T. The PWDs bill? was forwarded to the Ministry of Finance, Planning and Economic Development (MoFPED) to issue a Certificate of Financial Implication in respect to the same and the MoGLSD is expecting a response soon. Thereafter, the PWDs bill will be presented to the Cabinet by the Minister of Gender, Labour and Social Development to obtain a Cabinet number. The PWDs Bill will then be ready to be tabled on the floor of Parliament for debate. When it is presented to Parliament, it will be referred to as "The Persons with Disabilities Bill."

115 Interview with Masaba Sam Wekesa, Commissioner, Department of Disability and Elderly, Ministry of Gender, Labour and Social Development (MoGLSD) on September 6, 2017. Clause 42 of the PWDs Bill states: "The Council shall within three months after the end of each financial year, submit to the Minister, in respect of the financial year, a report on the functions of the Council and implementation of the Persons with Disabilities Act. The Minister shall within one month of receipt of the report, submit the report to Parliament." According to Masaba, this provision is meant to strengthen and empower the National Council of Disability to be a semi-autonomous body which acts a check and balance on the efforts of the Government towards implementation of rights of PWDs. According to Beatrice Guzu, Executive Secretary of the National Council for Disability (NCD), in an interview conducted on September 13, 2017, the NCD is going to be given more powers in the Bill. These include authority to monitor implementation of rights of PWDs, implement and design programmes for PWDs, and enforcement powers in the event of non-compliance of the law with respect to PWDs. She explained that consultations are still going on and these are the proposals which have been made to strengthen the mandate of the NCD.

116 Disability Rights Coalition, (2014) "*Proposed Alternative Persons with Disabilities Bill Presented to the Hon Minister of Gender, Labour and Social Development*" and Coalition for a CRPD Compliant Law on Disability (2014), "*Proposed Amendments to the Persons with Disabilities Bill, 2014 as Considered, Accepted and Ratified Through Regional Consultations With Persons with Disabilities and Disabled Persons Organizations (DPOs) Across Uganda.*"

117 Clause 1 of the PWDs Bill, 2016.

118 Clause 19 (2) and (3) of the PWDs Bill, 2016.

119 Clause 20 of the PWDs Bill, 2016.

120 Clause 10 of the PWDs Bill, 2016.

121 Clause 31 of the PWDs Bill, 2016.

122 For instance Section 8 of the PWDs Act guarantees the right of women with disabilities to access reproductive health services. This provision which is in line with Article 25 of the CRPD and the CRPD General Comment No. 3 on Women and Girls with Disabilities. However, this protection is not guaranteed under the PWDs Bill, 2016. According to Zaminah Malole, Member of the Equal Opportunities Commission (EOC), (supra) the Bill, in its current state does not reflect the CRPD.

to be vague.¹²³ This is observed from the ambiguities in the phrasing of some of the provisions such as Clause 5 where the duty to provide affirmative action for PWDs to ensure that they achieve their right to substantive equality is placed on everyone in generic terms. Similarly, the clauses on the right to freedom from cruel, inhuman and degrading treatment;¹²⁴ right to participate in public life;¹²⁵ protection and safety of persons with disabilities in situations of risk and humanitarian emergencies;¹²⁶ access to justice;¹²⁷ and right to education¹²⁸ are ambiguous on the duty of the State to realise the same.

The PWDs Bill (2016), does not accord adequate special protection of rights and freedoms of women and children with disabilities, falling short of the 1995 Constitution threshold.¹²⁹ Women and children with disabilities face multiple and intersectional discrimination thus the need to ensure that affirmative action is afforded to these groups of PWDs.¹³⁰ Further, the PWDs Bill lacks commitment on the part of the State in fulfilling the rights to education and health of PWDs compared to the PWDs Act.¹³¹ It also shies away

- 123 Coalition for a CRPD Compliant Law on Disability (2014-2015), *supra* explains that PWDs around the country expressed their concern about “the use of vague language in a number of clauses, as well as the lack of clear identification of duty bearers” in the PWDs Act although they commended the Act for having “substantive and important protections, which should be preserved in any amendment or repeal processes.”
- 124 Clause 6 of the PWDs Bill, 2016. Given the unfortunate circumstances under which persons with psychosocial disabilities continue to be detained and secluded against their will, the protection of their freedom from cruel, inhuman and degrading treatment must be deeply rooted in the Bill. This Clause should be clear and name some of the entities where PWDs are usually subjected to inhuman and degrading treatment, have a comprehensive list of what amounts to such treatment and the role of the State to fulfill this right and protect third parties from violating the same should be expressly stated in the law.
- 125 Clause 10 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (*supra*) recommended that the duty of the Government to “guarantee that persons with disabilities can exercise their political rights by- (a) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (b) protecting their right to vote by secret ballot in elections and referendums without intimidation and to stand for elections; and (c) allowing assistance in voting by a person of their own choice, on request and facilitating the use of assistive and new technologies where appropriate.” This recommendation is line with Article 29 of the CRPD but it was not adopted in the PWDs Bill, 2016.
- 126 Clause 11 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (*supra*) recommended that “the Uganda Peoples Defence Forces (UPDF), the Uganda Police and any other establishment, whether public or private, engaged in situations of risks and humanitarian emergencies [should], in all situations of armed conflict, take measures to ensure the safety and protection of persons with disabilities. Every reconstruction activity undertaken by the Government in response to any situation of armed conflict, humanitarian emergencies or natural disasters [should] take into account the accessibility requirements of persons with disabilities.” This recommendation is line with Article 11 of the CRPD but it was not adopted in the PWDs Bill, 2016.
- 127 Clause 12 of the PWDs Bill, 2016. PWDs in Uganda, through the Coalition for a CRPD Compliant Law on Disability (2014-2015) (*supra*) recommended that “the Minister of Justice shall ensure that all officials engaged in the administration of justice, including police and prison staff, are appropriately trained regarding the rights of persons with disabilities in relation to the judicial process.” This recommendation was not adopted in the PWDs Bill, 2016.
- 128 Clause 14 (2) of the PWDs Bill, 2016. It reads, “Persons with disabilities shall be accorded free and compulsory primary and secondary education in a manner that is accessible and offers appropriate support to persons with disabilities and parents of learners with disabilities to enable such learners to effectively participate in such education.” The phrasing of this provision in itself does not hold the Government responsible as the primary duty bearer.
- 129 Article 32, 33 and 34 of the 1995 Constitution of Uganda guarantee the rights of women and children with disabilities in strong terms.
- 130 CRPD General Comment No. 3 on Women and Girls with Disabilities at para 4 defines Multiple discrimination as “a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated” while Intersectional discrimination “refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.” The Committee on Rights on PWDS states at para 10 that “to date on women with disabilities express concern about the prevalence of multiple discrimination and intersectional discrimination against women with disabilities on account of their gender, disability and other factors which are not sufficiently addressed in legislation.” The Committee adds in para 17 (e) that women are also vulnerable to structural or systemic discrimination. These “are hidden or overt patterns of discriminatory institutional behaviour, discriminatory cultural traditions, social norms and/or rules. Harmful gender and disability stereotyping can lead to such discrimination... For example, due to stereotyping based on the intersection of gender and disability, women with disabilities may face barriers when reporting violence, such as disbelief and dismissal by police, prosecutors and courts. Likewise, harmful practices are strongly connected to and reinforce socially constructed gender roles and power relations that can reflect negative perceptions of, or discriminatory beliefs regarding women with disabilities, such as the belief that men with HIV/AIDS can be cured by engaging in sexual intercourse with women and girls with disabilities.”
- 131 Section 5 of the PWDs Act 2006 lays down comprehensive duties of the government in respect to the right to education of PWDs particularly “commitment of not less than 10% of all education expenditure to the educational needs of PWDs at all levels.” PWDs in Uganda, through the Coalition for a CRPD Compliant Law on Disability (2014-2015) (*supra*) recommended that the Government, through the MoES, commits to adopting “a Plan to be known as the Education Plan for Persons with Disabilities describing the steps government shall take to ensure that the right to education for persons with disabilities as

from making express provision for affirmative action and reasonable accommodation to ensure realization of these rights by PWDs.¹³²

Related to the right to health, Clause 7 of the PWDs Bill (2016) does not expressly afford special protection to the privacy of personal health and rehabilitation information of PWDs which, given the existing decision making regimes and stigma especially towards persons with psychosocial disabilities, is crucial to ensure the confidentiality of their personal health information.¹³³

3.1.1 Recommendations for Legal Reform

The PWDs Bill (2016) is a very important legislation which should domesticate the CRPD and address all human rights concerns of PWDs in other laws.¹³⁴ It should be the principal law which guarantees the human rights of PWDs and supercede the other laws which predate it. Therefore PWDs, in Uganda, Equal Opportunities Commission (EOC), National Council for Disability (NCD), Uganda Human Rights Commission (UHRC), Ministry of Labour, Gender and Social Development (MGLSD) should advocate for the enactment of the PWDs Bill (2016).

In the area of legal reform, the Bill goes a long way by stating that it shall supercede all other legislations in Uganda which contain provisions which are inconsistent with the CRPD.¹³⁵ This is very important because as opposed to pushing for legal reform of the various laws of Uganda in conflict with the CRPD, stakeholders can work towards the amendment of this Bill to cure the defects in all the other legislation in Uganda, as a short term goal.

However, as discussed above, the Bill still requires amendment to bring it in compliance with the CRPD before it is passed into law therefore engagement with Members of Parliament before it is presented in the House. There are particular areas of amendment which should be pursued. First of all, the State, under Article 4 of the CRPD commits to adopt measures for implementation of the human rights and freedoms of PWDs. Therefore, the Bill should have stronger commitment on the part of the State to ensure that PWDs realise their human rights guaranteed under the CRPD.

guaranteed under the provisions of this Act and as protected by international human rights law is realized within two years after the coming into force of the Bill.” They added that the same should be subject to review every five years. This recommendation was not adopted in the PWDs Bill, 2016. With regard to the right to health, the PWDs Bill, 2016 does not guarantee the right of women and girls with disabilities to access sexual and reproductive health services, a right guaranteed under both Article 25 of the CRPD and Section 8 of the PWDs Act, 20016. Section 9 of the PWDs Act calls upon the State to “introduce a system of early identification disabilities and intervention or strengthening of existing systems to minimize disabilities among the children and the elderly,” an aspect which is excluded in the PWDs Bill, 2016. Additionally, the Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that the PWDs Bill should expressly “prohibit discrimination against persons with disabilities in the provision of health and life insurance” and “prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.” This recommendation was not adopted.

132 Although reference is made to physical accessibility and information accessibility for the right to health, other aspects of accessibility are not considered for instance access to health services and possible barriers to access which will amount to discrimination.

133 Article 22 (2) of the CRPD states “States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.” The Committee on Rights of PWDs, in its Concluding Observations, at para 45, recommends that Government ensures the protection of personal information of PWDs in protocols in the health sector.

134 Interview with Zaminah Malole, Member of EOC, supra.

135 Section 43 of the Bill reads: “(1) Where the provisions of this Act are in conflict with those of any other law or regulation relating to Persons with Disabilities, the provisions of this Act will be taken to supersede such other law or regulation. (2) Such other Acts may include but are not limited to:- the Evidence Act, chapter 6; the Magistrates Courts Act, chapter 16; the Trial on Indictment Act, chapter 23; the Bank of Uganda Act, chapter 51; the Children Act, chapter 59; the Immigration Act, chapter 63; the Uganda Citizenship Act, chapter 65; the Electronic Media Act, chapter 104; the Uganda Communications Act, chapter 106; the Physical Planning Act, No. 8 of 2010; the Penal Code Act, chapter 120; the Uganda National Institute of Special Education Act, chapter 138; the Electoral Commission Act, chapter 140; the Administration of Estates of Persons of Unsound Mind, chapter 155; the Succession Act, chapter 162; the National Social Security Fund, chapter 222; the Workers’ Compensation Act, chapter 225; the Land Act, chapter 227; the Local Government Act, chapter 243; the Mental Treatment Act, chapter 279; the Prisons Act, chapter 304; the National Housing and Corporation Act, chapter 313*; the Universities and Tertiary Institutions, 7, 2001; the Parliamentary Elections Act, 8, 2001; the Uganda Broadcasting Corporation Act, 5, 2005; the Access to Information Act, 6, 2005; the Employment Act, 6, 2006 and the Uganda National Bureau of Standards Act, Cap 327.”

The PWDs Act, 2006, despite its enactment prior to the State's ratification of the CRPD, has strong protections of the rights of PWDs which the Bill ought to reaffirm not dispose of. For instance, a critical comparison between Section 5 of the PWDs Act, 2006 and Part III of the Bill reveals that the State commits itself less with respect to the right to education for children with disabilities, almost completely evading its role as a main duty bearer. An outstanding illustration is the commitment of 10% of the annual education budget to meet the expenditure for the educational needs of PWDs. This important pledge by the State is not carried on in the PWDs Bill.

Similarly clauses on the right to health,¹³⁶ freedom from cruel, inhuman and degrading treatment;¹³⁷ right to participate in public life;¹³⁸ protection and safety of persons with disabilities in situations of risk and humanitarian emergencies;¹³⁹ and access to justice¹⁴⁰ must clearly state the role that the State will play in ensuring the fulfillment of these rights.

The CRPD also accords special protection to women and girls with Disabilities as groups of people who face multiple forms of disability.¹⁴¹ The PWDs Bill should reaffirm this protection and put in place measures to ensure that they enjoy their human rights including access to sexual and reproductive health services which entitlement is not guaranteed in the present version of the Bill.

Whereas Part VI of the Bill addresses accessibility, it relates mainly to persons with physical disabilities. The Bill should be amended to provide for accessibility and reasonable accommodation to be guaranteed in all spheres of life of every PWD in Uganda. Similarly, throughout legislation in Uganda, the general presumption is that persons with psychosocial disabilities lack legal capacity to carry out various functions, a position which is inconsistent with the CRPD. The Bill should therefore, very strongly, state that as a general rule in all cases, PWDs have the capacity to make legally binding decisions and provide for support structures where necessary, in accordance with the CRPD.¹⁴² In similar terms, the Bill should expressly state that all legislations which use derogatory language and terminology against PWDs such as 'unsound mind' and 'lunatic' is amended and the continued use of such terms is a violation of the human rights of PWDs.¹⁴³

PWDs in Uganda recommended that the PWDs Bill should establish a Disability Fund "for the effective realization of the rights" under the legislation, majority of which have "resource implications."¹⁴⁴ This Fund

136 Part IV of the Bill.

137 Clause 6 of the PWDs Bill, 2016. Given the unfortunate circumstances under which persons with psychosocial disabilities continue to be detained and secluded against their will, the protection of their freedom from cruel, inhuman and degrading treatment must be deeply rooted in the Bill. This Clause should be clear and name some of the entities where PWDs are usually subjected to inhuman and degrading treatment, have a comprehensive list of what amounts to such treatment and the role of the State to fulfill this right and protect third parties from violating the same should be expressly stated in the law.

138 Clause 10 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that the duty of the Government to "guarantee that persons with disabilities can exercise their political rights by- (a) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (b) protecting their right to vote by secret ballot in elections and referendums without intimidation and to stand for elections; and (c) allowing assistance in voting by a person of their own choice, on request and facilitating the use of assistive and new technologies where appropriate." This recommendation is line with Article 29 of the CRPD but it was not adopted in the PWDs Bill, 2016.

139 Clause 11 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that "the Uganda Peoples Defence Forces (UPDF), the Uganda Police and any other establishment, whether public or private, engaged in situations of risks and humanitarian emergencies [should], in all situations of armed conflict, take measures to ensure the safety and protection of persons with disabilities. Every reconstruction activity undertaken by the Government in response to any situation of armed conflict, humanitarian emergencies or natural disasters [should] take into account the accessibility requirements of persons with disabilities." This recommendation is line with Article 11 of the CRPD but it was not adopted in the PWDs Bill, 2016.

140 Clause 12 of the PWDs Bill, 2016. PWDs in Uganda, through the Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that "the Minister of Justice shall ensure that all officials engaged in the administration of justice, including police and prison staff, are appropriately trained regarding the rights of persons with disabilities in relation to the judicial process." This recommendation was not adopted in the PWDs Bill, 2016.

141 CRPD Article 6, CRPD General Comment No. 3 on Women and Girls with Disabilities, supra and Concluding Observations 2016, supra at para. 10

142 Interview with Med Ssenogooba, Program Officer Africa at Disability Rights Fund, conducted on September 5, 2017.

143 Concluding Observations 2016, supra, at para. 4 and 5.

144 Coalition for a CRPD Compliant Law on Disability (2014), "Proposed Amendments to the Persons with Disabilities Bill, 2014 as Considered, Accepted and Ratified Through Regional Consultations With Persons with Disabilities and Disabled Persons

will support the annual budget allocation made for implementation of programmes for PWDs, catering specifically for the provision of services such as education, health care, social assistance and protection; ensuring accessibility for PWDs; and contributing towards the capital developments and expenses of organizations of PWDs.¹⁴⁵ If established, the State will be deemed to have taken positive steps to ensure that PWDs enjoy their human rights, thus fulfillment of its duty under Article 32 of the 1995 Constitution on affirmative action for PWDs and Article 4 of the 1995 Constitution.

3.2 Laws which deprive PWDs of their Liberty

3.2.1 Article 23 of the Constitution of the Republic of Uganda

The Committee on the Rights of PWDs expressed concern about Article 23 (1) (f) of the Constitution which has the effect of depriving PWDs of their liberty on the basis of impairment through forced detention and involuntary institutionalization.¹⁴⁶

Article 23 (1) of the Constitution states:

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... for the purpose of the care or treatment of that person or the protection of the community. (Emphasis added)

This provision is in contravention with Article 14 of the CRPD which guarantees the right of PWDs to liberty and freedom from arbitrary detention on the basis of impairment. The CRPD emphasizes that the mere existence of a disability should by no means justify a deprivation of liberty of PWDs and forced detention.¹⁴⁷ By this standard therefore, Article 23 (1) (f) of the Constitution falls short of the protection of the right to liberty of persons with psychosocial disabilities in Uganda.

3.2.2 The Trial on Indictments Act, Cap 23 as amended in 2008 and the Magistrates Courts Act, Cap 16 as amended in 2007

The Trial on Indictments Act and Magistrates Courts Act govern criminal proceedings in the High Court and Magistrates Courts respectively. In the Concluding Observations 2016, the Committee on Rights of PWDs articulated its concern about the deprivation of PWDs in Uganda of their liberty on the basis of impairment and “indefinite postponement of criminal proceedings while ordering incarceration.”¹⁴⁸

The right to liberty of persons with psychosocial disabilities is violated by some provisions of the Trial on Indictments Act with respect to the procedure persons with psychosocial disabilities are subjected to in the criminal justice system, particularly Sections 45 and 48. The process is described herein below:

During trial, Section 45 (1) of the Act requires the High Court to inquire into the fact of ‘unsoundness’ of an accused person if it has reason to believe that the person is of ‘unsound mind’ and consequently incapable of making his or her defence. If the Court finds in the affirmative, it must postpone further proceedings in the case and order the accused person to be detained in safe custody in a place and manner it thinks fit and transmit the court record or a certified copy of it to the Minister of Justice and Constitutional Affairs (MoJC).¹⁴⁹

The Minister may, by warrant, direct the court to order that the accused be confined as a ‘criminal lunatic’ in a mental hospital or other suitable place of custody.¹⁵⁰ By virtue of the warrant, the Minister is the sufficient

Organizations (DPOs) Across Uganda,” supra.

145 Ibid. If established, the Disability Fund should by no means prejudice the budget allocation for PWDs and it should be charged on the Consolidated Fund.

146 Concluding Observations 2016, supra, at para. 26 – 27.

147 Article 14 (1) b of the CRPD.

148 Concluding Observations 2016, supra, at para. 26 – 27.

149 Sections 45 (3) and (4) of the Trial on Indictments Act.

150 Section 45 (5) of the Trial on Indictments Act.

authority for the detention of the accused person unless he or she makes a further order in the matter or until the court finds the accused person incapable of making his or her defence and orders him or her to be brought before it again.¹⁵¹

Section 48 of the Trial on Indictments Act, which prescribes another problematic procedure, empowers the High Court to make a special finding of not guilty by ‘reason of insanity’.¹⁵² Where evidence is given on trial of an accused person that he or she was ‘insane’ at the time of committing the offence, Section 48 (1) of the Act states that the High court shall make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity.

When a special finding is made, the High Court must report the case for the order of the Minister of Justice, and must direct that the accused is kept in custody as a ‘criminal lunatic’ in the meantime.¹⁵³ The Minister may order a person in respect of whom a special finding has been made to be confined in a mental hospital, prison or other suitable place of safe custody.¹⁵⁴ The superintendent of a mental hospital, prison or other place where any ‘criminal lunatic’ is detained by an order of the Minister must make a report on the condition, history and circumstances of every such ‘lunatic’ to the Minister at the expiration of a period of three (3) years from the date of the Minister’s order and thereafter at the expiration of periods of two (2) years from the date of the last report.¹⁵⁵ On the basis of such report, the Minister may order that the ‘criminal lunatic’ be discharged or ‘otherwise dealt with’.¹⁵⁶

Section 48 (7) of the Act authorizes the Minister to order that a ‘criminal lunatic’ be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which they are detained to either a prison or a mental hospital may at any time.

Similar procedures are embedded in Sections 113 and 117 of the Magistrates’ Courts Act to govern Magistrates Courts during criminal proceedings in which an accused person is presumed to have psychosocial disabilities.¹⁵⁷

Section 82(6) of the Trial on Indictments Act is also in contravention of the CRPD because it does not accord PWDs equal treatment in the event of acquittal. It states that where the High Court finds that an accused person who has been in custody is innocent, he or she must be discharged, “unless he or she is acquitted by reason of insanity.” This provision violates the rights of persons with psychosocial disabilities to liberty, equality and non-discrimination affirmed by the CRPD.

The above procedures and reference to PWDs as ‘criminal lunatics’, ‘insane’ or persons of ‘unsound mind’ not only deprives persons with psychosocial disabilities of their liberty on the basis of impairment, but is also in outright contravention of the rights to equality and non-discrimination, fair hearing, inherent dignity, personal integrity and freedom from cruel, inhuman and degrading treatment guaranteed under the CRPD.¹⁵⁸

The Constitutional Court pronounced itself on the constitutionality and legality of Sections 45 and 82 (6) of the Trial on Indictments Act in *Center for Health, Human Rights and Development (CEHURD) and Iga Daniel vs Attorney General*.¹⁵⁹ The Court held that this procedure violates the rights of PWDs to a fair hearing, equal protection of the law, non-discrimination, inherent dignity and freedom from cruel, inhuman

151 Section 45 (6) of the Trial on Indictments Act.

152 Section 48 of the Trial on Indictments Act.

153 Section 48 (2) of the Trial on Indictments Act.

154 Section 48 (3) of the Trial on Indictments Act.

155 Under Section 48 (4) of the Trial on Indictments Act.

156 Section 48 (5) of the Trial on Indictments Act.

157 Sections 113 and 117 of the Magistrates’ Courts Act provide the same exact procedure under Sections 45 and 48 of the Trial on Indictments Act.

158 CEHURD & Iga Daniel vs AG Constitutional Petition No.64 of 2011 available at <http://www.cehurd.org/wp-content/uploads/2015/11/constitutional-petition-64.pdf>

159 Ibid.

and degrading treatment.¹⁶⁰ It went on to state that use of language like ‘criminal lunatic’ is derogatory and strips persons with psychosocial disabilities of their inherent dignity guaranteed under Article 24 and 35 of the 1995 Constitution of Uganda and the CRPD.¹⁶¹ The Court also found that this procedure “prejudges” an individual who is presumed to have psychosocial disabilities before the trial and treats such person differently from other people, a contravention of the right to the presumption of innocence.¹⁶²

In regard to the procedure laid down in Section 48 of the Trial on Indictments Act and Section 117 of the Magistrates Courts Act, Justice Batema, in his decision in *Bushoborozi Eric vs Uganda*,¹⁶³ condemned the procedure as ousting the jurisdiction of the Court to the Minister of Justice, which results into delayed justice for PWDs in the criminal justice system.¹⁶⁴ The Court opined that keeping accused persons with psychosocial disabilities on remand for years without justice is a violation of their human rights.

Whereas these progressive judgments are greatly welcomed in terms of building jurisprudence on the rights of persons with psychosocial disabilities and attempting to change the current status quo in Uganda, these decisions have been criticized for falling short of the legal protection of the right to liberty under the CRPD. In the *CEHURD* case, the Constitutional Court presents Article 23 (1) (f) as the model position on detention of PWDs.¹⁶⁵ With regard to this case, Uganda Parents of Persons with Intellectual Disabilities (UPPID) explains that:¹⁶⁶

The Court did not sufficiently reflect on the extent to which the Constitutional restrictions on the liberty of persons with intellectual or psychosocial disabilities might themselves be overbroad and overreaching. In addition, by giving pride of place to the medical model in respect of the determination of disability, and subjecting release to a finding of ‘mental fitness’ the decision entrenches the stereotype of the inherent danger to self and others implicit in intellectual or psychosocial disabilities.

Similarly, *Eric Bushoborozi v Uganda*, the Court’s continued use of the derogatory term ‘criminal lunatics’ in the Trial on Indictments Act is problematic insofar as it strips PWDs of their dignity.¹⁶⁷ It also upholds the medical approach for persons with psychosocial disabilities in the criminal justice system as opposed to a human rights based approach under the CRPD.¹⁶⁸

Nonetheless, these decisions highlight the significant irregularities in the above laws and have created a lacuna in the law relating to persons with psychosocial disabilities in the criminal justice system having found the above procedures in the Trial on Indictments Act and Magistrates Courts Act unconstitutional.

160 Ibid. The Constitutional Court quoted the decision of the African Commission on Human and People’s Rights in *Media Rights Agenda vs Nigeria* in which the court held that “cruel, inhuman and degrading treatment is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.”

161 Ibid. The Constitutional Court relied on the decision of the African Commission on Human and People’s Rights in *Purohit & Moore vs The Gambia*, Communication No. 241/2001 where it held that “human dignity is an inherent basic right to which all human beings regardless of mental capacities or disabilities are regardless of mental capacities/disabilities are entitled to without discrimination.”

162 Ibid. The Court stated that “At the stage of Section 45 (5) of the Trial on Indictments Act, the defence has not been heard and the trial has not been concluded. There is no judgment and ‘criminal lunatic’ imputes to the mind of the accused guilt for an offence for which they have not been fully tried.”

163 *Bushoborozi Eric vs Uganda* High Court at Fort Portal No. 0011 of 2015.

164 The Court held that “any court waiting for the minister’s orders is giving away the independence of the Judiciary and is in one way or another accepting to be ordered around by the Minister who, as experience has shown, is too busy to issue the orders.”

165 *CEHURD & Iga Daniel vs AG* Constitutional Petition No.64 of 2011 available at <http://www.cehurd.org/wp-content/uploads/2015/11/constitutional-petition-64.pdf> at page 19. The Court states: “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).” The court goes ahead to provide that the Trial on Indictments Act should be construed in line with this constitutional provision. In its recommendations, the Court continues to prescribe detention of persons with psychosocial disabilities in the trial process for purposes of the treatment for an indefinite period which in itself is a violation of the right to liberty of PWDs.

166 Uganda Parents of Persons with Intellectual Disabilities (UPPID), “*Legal Capacity and Access to Justice for Persons with Intellectual Disability: A Review of Uganda’s Legal Regime*” Disability Rights Fund (DRF).

167 Ibid.

168 Ibid. The Court recommended shifting the duty of ensuring “proper medical and other treatment” of the persons with psychosocial disabilities from the Minister of Justice to the Courts.

3.2.3 Prisons Act, 2006

The Prisons Act lays down the procedure to be followed if a prisoner is found to have psychological disabilities. Section 74 (1) of the Act states that ‘insane and mentally abnormal persons’ should by no means be detained in prison but rather, quick arrangements must be made to transfer them to mental hospital as soon as possible.¹⁶⁹

If the mental hospital finds that the prisoner who was transferred is entitled to be discharged, the medical superintendent in charge of the hospital is required to notify the officer in charge of the prison from which the prisoner was transferred.¹⁷⁰ The prisoner will then either be delivered into custody if he or she is still liable to be confined in prison, or be released.¹⁷¹

The use of derogatory terms such as ‘insane and mentally abnormal persons’ to refer to persons with psychosocial disabilities is an outright violation of their right to inherent dignity as emphasized in the *CEHURD* case and jurisprudence of the African Commission on Human and People’s Rights.¹⁷² Secondly, this provision does not specify the duration of detention in the mental hospital upon transfer from the prison. It implies that until such time when the prisoner is discharged from the mental hospital, even after their prison term has expired, he or she shall remain in detention. This position is inconsistent with Article 14 of the CRPD insofar as it arbitrarily deprives PWDs of their liberty on the sole basis that they have a disability.

3.2.4 Recommendations for Legal Reform

The Committee on Rights of Persons with Disabilities recommends that the State employs urgent measures to repeal the constitutional and legal provisions discussed above which permit forced detention and “indefinite postponement of criminal proceedings while ordering incarceration which unduly discriminate against persons with disabilities and do not allow for fair trial standards on an equal basis with others.”¹⁷³ These impugned provisions include: Article 23 (1) (f) of the 1995 Constitution, Sections 45, 48 and 82 (6) of the Trial on Indictments Act, Sections 113 and 117 of the Magistrates Courts Act and Section 74 of the Prisons Act.

Relatedly, the Constitutional Court made orders in its decision in the 2015 *CEHURD* case (*supra*) that the State should amend the Trial on Indictments Act to prescribe a procedure to handle PWDs in the criminal justice system.¹⁷⁴ Similarly, in *Bushoborozi Eric vs Uganda*, the High Court emphasized the need for legal reform in the laws relating to persons with psychosocial disabilities on remand awaiting the orders of the Minister of Justice.¹⁷⁵

The State is aware of the inconsistencies in these laws in relation to the CRPD and has particularly committed to review some of the above legislation with the aim of making the requisite amendments of the Article 23

169 Section 74 (1) of the Prisons Act. Section 74 (2) states that: “(2) Where a medical officer or officer in charge is of the opinion that a prisoner is insane or mentally abnormal, the officer shall take all necessary action to produce his or her judgment under the Mental Treatment Act; if a magistrate adjudges such prisoner to be a person of unsound mind the prisoner shall be removed promptly from the prison and confined in a mental hospital.”

170 Section 74 (3) of the Prisons Act.

171 *Ibid.* However, according to Section 74 (4), in the event of further detention, the period during which the prisoner has been detained in the mental hospital shall be considered as part of his or her term of imprisonment.

172 *CEHURD & Iga Daniel vs AG Constitutional Petition No.64 of 2011* and *Purohit & Moore vs The Gambia*, Communication No. 241/2001, (*supra*).

173 Concluding Observations 2016, *supra* at para 26 – 27 and National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 86.

174 *CEHURD v. AG*, *supra*.

175 *Bushoborozi Eric vs Uganda*, *supra*. Justice Batema ordered the Deputy Registrar of the High Court of Fort Portal to “serve a copy the ruling to the Rules Committee and the Principal Judge with a view of prompting the development of some rules and or Practice Directions.”

(1) (f) of the 1995 Constitution and the Trial on Indictments Act.¹⁷⁶ It should therefore, through the Uganda Law Reform Commission, revise the procedures laid down in these laws to “include provisions on legal and procedural accommodations” for persons with psychosocial disabilities.¹⁷⁷

The Persons with Disabilities Bill, which seeks to domesticate the CRPD, cites the Trial on Indictments Act, Magistrates Courts Act and Prisons Act as legislations with provisions which are in conflict with the rights of PWDs. If passed into law, it will supersede these impugned provisions. However, the PWDs Bill does not make specific provision for the protection of right to liberty nor does it prohibit forced detention and indefinite postponement of criminal proceedings. The Bill should be amended to incorporate strong legal safeguards on the right to liberty of PWDs clearly stating instances which will amount to violation.

The relevant stakeholders including the Uganda Law Reform Commission, MoJC, MoH, and MoGLSD, NCD, EOC, UHRC and Persons with psychosocial disabilities and civil society organisations which defend their rights should come together and set guidelines to be used by the State, going forward, on steps to take when it interfaces with PWDs in the criminal justice system, in both High Court and Magistrates Courts.

3.2.5 Legislation on Mental Health

Currently the laws that govern mental health in Uganda are: i) Mental Treatment Act, Cap 279, and Mental Health Bill, 2014. This section of the report discusses this legislation under the lens of the CRPD.

3.2.5.1 Mental Treatment Act, Cap 279

This law has a number of concerns which are in contravention of the CRPD right from the definitions of terms used in the Act. It refers to person with psychosocial disabilities as ‘persons of unsound mind’ defined to mean ‘an idiot or a person who is suffering from mental derangement.’ This is definition violates the right of persons with psychosocial disabilities to their inherent dignity guaranteed under the CRPD and Constitution of Uganda.¹⁷⁸ The Constitutional Court of Uganda has also pronounced itself and condemned the use of such language to refer to PWDs in legislation.¹⁷⁹

The various procedures under the Mental Treatment Act relating to admission of PWDs in mental institutions are problematic because they do not meet the threshold set by the CRPD. Persons with psychosocial disabilities may be admitted on mental hospitals when a Magistrate adjudges him or her of ‘unsound mind’ and issues a reception order: i) having received information on oath by an informant that a person is suspected to have psychosocial disabilities¹⁸⁰ and ii) having received an application from a relative or friend

¹⁷⁶ Committee of Rights of Persons with Disabilities, (2015), “Consideration of Report submitted by Uganda under Article 35 of the CRPD”, submitted in January 2013 at para 120 – 122. The Report states: “Amendments are needed in both the civil and criminal commitment procedures. Article 23 (1) (f) of the Constitution lists mental disability, or suspicion of mental disability as one of the permissible exceptions to the right to freedom from deprivation of personal liberty where such deprivation is for the purpose of the care or treatment of the person or the protection of the community needs to be amended. Similarly, Section 45 (3) of the Trial on Indictment Act, Cap 23, that allows the presiding Judge the possibility to indefinitely postpone criminal proceedings while ordering the incarceration of an accused as a criminal lunatic in a mental hospital or other place of detention needs review to create clarity to guide decisions made. Another section that needs revisiting to align it to the Convention is Section 48 (2) of the Act, which states that a person found not guilty by reason of insanity shall be kept in custody as a criminal lunatic in such place and in such manner as the Judge may direct, with any decision as to the release or continued detention of such person left to be taken with the Minister.”

¹⁷⁷ Mafabi, D. C (2016), “Disempowering the Already Marginalized Persons with Mental Disabilities in the Criminal Justice System” Public Interest Law Clinic (PILAC) Working Paper No. 5, May 2016 at p. 47. She adds that, “This review should include all stages of the criminal process including police investigation, line-up, re-enactment of the event, confrontation with the attacker, preliminary hearings, taking oath being advised on one’s rights, entering plea, giving testimony in court and cross examination.”

¹⁷⁸ Article 3 (a) and 14 of the CRPD and Article 35 of the 1995 Constitution of Uganda.

¹⁷⁹ CEHURD & Iga Daniel vs AG Constitutional Petition No.64 of 2011, *supra*.

¹⁸⁰ Section 2 of the Mental Treatment Act states that any Magistrate, upon receiving information on oath of any informant who has good cause to suspect and believe that a person is of ‘unsound mind’ and is thus ‘proper subject to be placed under care and treatment’, may see and question the person suspected of being of ‘unsound mind’ and hold an inquiry in private as to

of a person who has psychosocial disabilities.¹⁸¹ Further, every patient admitted to a mental hospital must be kept in detention until he or she is removed, released on trial, discharged or dies.¹⁸²

In ‘urgent cases’, Section 6 empowers any police officer, of and above the rank of assistant inspector, medical practitioner, or chief, who is “satisfied that it is necessary for the public safety, or for the welfare of a person alleged to be of unsound mind” to make an urgency order to detain such person in a hospital or other suitable place of detention.¹⁸³

For starters, the Mental Treatment Act on a whole is archaic and outdated with no regard for human rights and freedoms of PWDs.¹⁸⁴ The procedure of adjudging persons with psychological disabilities is problematic because it is prone to abuse by third parties with ill intentions which has detrimental consequences on the PWDs. It also cannot be said that Magistrates have the requisite capacity and are the best placed persons to carry out an inquiry to determine whether or not a person has psychosocial disabilities.¹⁸⁵ Secondly, the detention of PWDs for an indeterminable period for purposes of treatment as prescribed under the Mental Treatment Act is a violation of their right to liberty, freedom to live independently, right to choose their place of residence and live in the community.¹⁸⁶ Such detention accompanied by forced treatment in institutions also deprives persons with psychosocial disabilities of their right to give free and informed consent prior to any treatment or medical interventions.¹⁸⁷

The Act also does not make provision for genuine consultations to be carried out with PWDs in mental hospitals thus they are denied the opportunity to participate in their health decision making which is wholly left to the medical personnel.¹⁸⁸ It also empowers relatives and friends leave to pursue the detention of PWDs whereas the position in the CRPD is that substitute decision-makers should not provide consent to

the state of mind of that person. If it appears to the Magistrate, upon such inquiry, that such person is of ‘unsound mind’, the Magistrate may adjudge the person to be of ‘unsound mind’ and proceed to make a reception order for the care and treatment of the person at a special mental hospital.

181 Section 5 of the Mental Treatment Act empowers relatives or friends of a person alleged to be of ‘unsound mind’ to apply for a reception order from a Magistrate for the admission of that person as a private paying patient to a mental hospital, if there is adequate accommodation in the hospital.

182 Section 14 of the Mental Treatment Act. Section 17 on discharge states that “when a medical superintendent is of the opinion that any person detained in a mental hospital is fit to be discharged from the hospital, he or she shall at once make a full report on the person to the chief medical officer and, if the chief medical officer is satisfied that the patient is fit to be discharged, he or she shall order the discharge of the patient who shall be discharged forthwith accordingly.” Section 18, in regard to discharge of a paying patient, states that: “(1) ... any magistrate upon the advice in writing of the chief medical officer may permit the discharge of any person now or hereafter placed under care and treatment in a mental hospital, whose relatives or friends may be willing to undertake the care of the person. (2) Those relatives or friends may be required by the magistrate to give an undertaking or bond, with or without sureties, in such amount as the magistrate may deem fit that the person shall be properly taken care of, and that all reasonable precautions shall be taken to prevent him or her from doing injury to himself or herself or others.”

183 Section 6 of the Act reads: “If any police officer not below the rank of assistant inspector, any medical practitioner, or any chief is satisfied that it is necessary for the public safety, or for the welfare of a person alleged to be of unsound mind with regard to whom proceedings ought to be taken under this Act, that such person should, before any such proceedings can be taken, be placed under care and control, that officer, practitioner or chief may make an order in the prescribed form (hereafter referred to as an “urgency order”) and thereupon shall remove that person to a hospital or other suitable place of detention; and the person in charge of that place may if he or she thinks fit, by virtue of the urgency order, receive and detain the person therein, but no person shall be so detained for more than ten days, and before the expiration of that time either proceedings shall be taken with regard to the person alleged to be of unsound mind as are required by this Act, or, if the person has recovered meanwhile, he or she shall no longer be detained.

184 Mulumba, M., “*Analysis of the Uganda Mental Treatment Act from a Human Rights and Public Health Perspective*” accessed at <http://psychrights.org/countries/Uganda/UgandasMentalHealthLaw.pdf> Mulumba explains that the Act was passed in 1964 and has been overtaken by various developments including the adoption of the UN CRPD. See also, Nyombi, C., Kibandama, A., and Kaddu, R., “*A Critique of the Uganda Mental Health Treatment Act, 1964*” accessed at <http://www.memphis.edu/law/documents/mhlp-vol3-final.pdf>. The authors explain that the Act “was drafted in line with the Mental Health Act, 1959 of England. While the English have ironed out numerous injustices through a series of reforms culminating in the Mental Health Act, 1983, Uganda continues to harbor a mosaic of outdated statutory frameworks that are ominously out of touch with modern society.”

185 Mulumba, *ibid.* and Nyombi, *et. al, ibid.*

186 Articles 14 and 19 of the CRPD.

187 Article 25 (d) of the CRPD and CRPD General Comment No. 1 on Equal Recognition before the law at para 41.

188 Section 13 of the Mental Treatment Act states: “Upon admission to a mental hospital every patient shall be subject to the directions and control of the chief medical officer and any officers attached to the mental hospital and to the observance of any rules which may be made under this Act.”

treatment or medical interventions on behalf of persons with psychosocial disabilities.¹⁸⁹

3.2.5.2 Mental Health Bill, 2014

The Mental Health Bill, 2014 is a direct product of the efforts to reform the outdated Mental Treatment Act.¹⁹⁰ The Bill is welcomed for its recognition and protection of human rights and fundamental freedoms of persons with psychosocial disabilities in Uganda.¹⁹¹ These include: the right to respect and human dignity;¹⁹² right to privacy and non-disclosure of health information;¹⁹³ right to non-discrimination;¹⁹⁴ freedom from exploitation, abuse and degrading treatment;¹⁹⁵ right to access health information;¹⁹⁶ and the right to manage one's affairs.¹⁹⁷

However, in many ways, the Mental Health Bill rejuvenates the medical approach of the Mental Treatment Act which mostly contradicts with the legal safeguards and protections guaranteed under the CRPD.¹⁹⁸ It stresses institutionalization and forced treatment of persons with persons with psychosocial disabilities rather than supporting their inclusion in the community, a contravention of the CRPD.¹⁹⁹ The Committee on the Rights of Persons with Disabilities has criticized detention, compulsory institutionalization or confinement on the basis of disability. "It establishes that community living, with support, is no longer a favourable policy development but an internationally recognized right."²⁰⁰

Whereas the Mental Health Bill recognizes the right of PWDs to exercise their legal capacity and to appoint a personal representative, it does not guarantee their right to support nor put in place safeguards to protect PWDs when they are receiving support. Support structures must: respect the rights, will and preferences of the PWDs, be free of conflict of interest and undue influence, be proportional and tailored to the PWD's circumstances, apply for the shortest time possible, never amount to substitute decision making, and be subject to regular review by a competent, independent and impartial authority or judicial body.²⁰¹

The Bill therefore shifts away from the spirit of the CRPD insofar as it places emphasis on substituted decision making as opposed to supported decision making.²⁰² It empowers relatives to make decisions on behalf of PWDs which deprives them of their right to give free and informed consent,²⁰³ "a fundamental feature of respecting an individual's autonomy, self-determination and human dignity."²⁰⁴

189 CRPD General Comment No. 1 on Equal Recognition before the law at para 41.

190 Memorandum of the Mental Health Bill, 2014.

191 Part III of the Mental Health Bill.

192 Clause 36 of the Bill, *supra*.

193 Clauses 36 and 41 of the Bill, *supra*.

194 Clause 37 of the Bill, *supra*.

195 Clauses 38 of the Bill, *supra*.

196 Clause 40 of the Bill, *supra*.

197 Clause 44 of the Bill, *supra*.

198 Interview with Derrick Kizza, Executive Director of Mental Health Uganda (MHU), conducted on August 30, 2017. Part II of the Bill provides for the medical approach towards persons with psychosocial disabilities and Part III lays down the human rights protections. Making such a separate provision does not embed human rights protections in the treatment of persons with psychosocial disabilities.

199 *Ibid*.

200 United Nations Human Rights Council (2013) "*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*" adopted by the UN General Assembly on February 1, 2013 at the 22nd Session A/HRC/22/53 at paras 84 and 85.

201 Article 12 (4) of the CRPD.

202 *Ibid*. Clause 31 (6) of the Bill authorizes medical personnel to obtain consent for treatment of a voluntary person who lacks capacity from a personal representative of persons with psychosocial disabilities or a mental health practitioner in their absence. Clause 46 also empowers the Court to appoint a relative to be personal representative where a person with psychosocial disabilities cannot manage their own affairs. This personal representative has the authority to manage the estate of the PWDs and act as his or her guardian when required. In United Nations Human Rights Council (2013) at para 65, Juan Mendez states that "people with disabilities are stripped of their legal capacity worldwide, due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctor's decision that the person "lacks capacity" to make a decision. Deprived of legal capacity, people are assigned a guardian or other substitute decision maker, whose consent will be deemed sufficient to justify forced treatment."

203 Interview with Derrick Kizza, *Ibid*.

204 United Nations Human Rights Council (2013), *supra* at para 28. The Report explains at para 66 that "only in a life-threatening emergency in which there is no disagreement regarding absence of legal capacity may a health-care provider proceed without

Dainius Pūras, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has raised concern about the “large number of persons with psychosocial disabilities are deprived of their liberty and legal capacity in closed institutions on the grounds of their medical diagnosis.”²⁰⁵

The Bill further makes provision for seclusion, mechanical restraints and use of electroconvulsive therapy in exceptional cases, which practices have been classified as cruel, inhuman and degrading treatment.²⁰⁶ The Special Rapporteur on the right to health has also criticized the use of such mechanisms based on medical necessity and protection of public necessity for being in contravention of the CRPD.²⁰⁷ On violation of human rights on the basis of medical necessity, Juan E. Méndez, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states:²⁰⁸

The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.

He goes on to reaffirm that:

Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment. Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

Thus the provisions of the Mental Health Bill which permit institutionalization and violation of human rights of persons with psychosocial disabilities in their ‘best interest’ are inconsistent with the CRPD and require legal reform to bring them in compliance.

informed consent to perform a life-saving procedure.”

205 United Nations Human Rights Council (2015) “*Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras*” adopted by the UN General Assembly on April 2, 2015 at the 29th Session A/HRC/29/33 at para 99.

206 Interview with Derrick Kizza, *supra*. Clauses 11, 12 and 14 of the Bill respectively provide for the use of electroconvulsive therapy, seclusion and mechanical restraints in exceptional cases during the treatment of persons with psychosocial disabilities. In United Nations Human Rights Council (2013) *supra*, the Special Rapporteur states at para 63: “there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint may constitute torture and ill-treatment. The Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment. Moreover, any restraint on people with mental disabilities for even a short period of time may constitute torture and ill-treatment.”

207 United Nations Human Rights Council (2015), *supra* at para 97. The Special Rapporteur states that “the history of psychiatry demonstrates that the good intentions of service providers can turn into violations of the human rights of service users. The traditional arguments that restrict the human rights of persons diagnosed with psychosocial and intellectual disabilities, which are based on the medical necessity to provide those persons with necessary treatment and/or to protect his/her or public safety, are now seriously being questioned as they are not in conformity with the Convention.” At para 98, the Special Rapporteur adds that on most occasions these exceptional cases allow for the restriction of the human rights of persons with psychosocial and intellectual disabilities who consequently suffer from systemic or ad hoc violations of their rights.

208 United Nations Human Rights Council (2013) “*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*” adopted by the UN General Assembly on February 1, 2013 at the 22nd Session A/HRC/22/53 at para 35. He adds at para 63 that “it is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions. The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock procedures.”

3.2.6 Recommendations for Legal Reform

The Mental Treatment Act which authorizes the institutionalization of PWDs on the grounds of their disability without their free and informed consent should be repealed. However, the Mental Health Bill which seeks to amend the gaps and repeal the Mental Treatment Act is inconsistent with the CRPD and requires urgent review to address some of the problematic provisions before it is passed into law.

The key areas which require revision in order for the Mental Health Bill to comply with the CRPD include: the authorization of involuntary institutionalization of PWDs ‘for their care and treatment’ without their free and informed consent; restrictions on the exercise of legal capacity;²⁰⁹ use of grounds such as the likelihood of them posing a danger to themselves or others and public security as justification for forced care and treatment,²¹⁰ use of inhuman and degrading methods of treatment such as seclusion, electroconvulsive therapy and mechanical restraints on the basis of ‘medical necessity.’²¹¹ The Bill should specifically provide for the right to community based care and living for persons with psychosocial disabilities in Uganda.²¹²

The Persons with Disabilities Bill is also an avenue which can be used to influence legal reform in the area of mental health. Whereas it reaffirms the freedom with PWDs from torture and cruel, inhuman and degrading treatment,²¹³ Clause 6 should be revised to specifically prohibit torture and degrading treatment in all health-care institutions, both public and private.²¹⁴ It should also declare that “abuses committed in the context of health-care can amount to torture or cruel, inhuman or degrading treatment or punishment.”²¹⁵

The relevant stakeholders particularly MoH, MoGLSD, medical professionals, EOC, UHRC, NCD and persons with psychosocial disabilities and organisations which advocate for their rights should work together to revise the Mental Health Bill to ensure that human rights of PWDs are not violated by medical practices adopted in the law. Members of Parliament should also be part of these engagements prior to the debating of the Bill in the House to ensure that all the anomalies are addressed before enactment.

The State should also consider adopting the approach of its peer States in regard to legal reform of mental health legislation. Ghana for instance, amended its mental health laws by passing the Mental Health Act 2012.²¹⁶ “It is a major milestone in addressing mental health as a public health issue and also in the protection of the human rights of people with mental disorders in Ghana.”²¹⁷ “The Mental Health Act, for the first time, laid out a clear procedure for persons with mental disabilities to challenge continued detention”²¹⁸ and “creates a tribunal mandated to hear complaints of people with mental disabilities detained under the Act.”²¹⁹ The Act also establishes a Mental Health Authority whose mandate includes “proposing mental health policies, promoting mental health, preventing mental illness and providing accessible, community-oriented, integrated, quality and culturally appropriate community mental health care to persons with mental illness living in Ghana.”²²⁰

209 Concluding Observations 2016, supra at para 26 – 27 and United Nations Human Rights Council (2013) “*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*” adopted by the UN General Assembly on February 1, 2013 at the 22nd Session A/HRC/22/53 at para 86.

210 Ibid.

211 Ibid.

212 United Nations Human Rights Council (2015) “*Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras*” adopted by the UN General Assembly on April 2, 2015 at the 29th Session A/HRC/29/33 at para 85.

213 Clause 6 of the PWDs Bill.

214 United Nations Human Rights Council (2013), supra at para 85.

215 Ibid.

216 Doku, V C K., Wusu-Takyi, A., and Awakame, J., (2012) “Implementing the Mental Health Act in Ghana: Any Challenges Ahead? Ghana Medical Journal, December 2012, 46 (4): 241-250 accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3645169/#R7> “The last major revision of mental health law was undertaken in the late 1960s, culminating in the enactment of the Mental Health Decree, NRC 30, in 1972... The process that culminated in the passage of the Mental Health Act by Parliament in March 2012 was initiated in 2003.”

217 Ibid.

218 Ibid at p. 10. It should be noted however, that some provisions of the Ghana Mental Health Act, 2012 still authorise forced admission, involuntary treatment, and guardianship, a violation of the CRPD.

219 Human Rights Watch (HRW), (2012) “Like a Death Sentence: Abuses against Persons with Mental Disabilities in Ghana” October 2012, ISBN:1-56432-945-3 accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3645169/#R7>

220 Movement for Global Mental Health (MGMH), “Mental Health Authority Ghana” accessed at <http://www.globalmentalhealth.org/mental-health-authority-ghana>

This bold step taken by Ghana to amend its laws and take on commitments as a State including establishing a Mental Health Authority, which is operational today and making progress, is a great initiative with respect to legal reform.²²¹ The Authority is trying to establish a community mental health system, a good model for Uganda to adopt in its mental health legislation.²²² Although the Ghana mental health law still has some gaps, it sets an example which Uganda as a State can follow with respect to reforming mental health laws to bring them in compliance with the CRPD.

Laws that restrict the legal capacity of PWDS The following section will discuss the laws that restrict legal capacity in relation to the ability of PWDs to found a family, to enter into and dissolve a marriage and to inherit and bequeath property

3.3 Rights relating to Family, Succession and Children

In the Concluding Observations, the Committee on the Rights of Persons with Disabilities raised concern about laws of Uganda which, on the basis of impairment, restrict the legal capacity of PWDs particularly “their ability to make choices in aspects such as marriage and inheritance.” This section of the study analyses the laws of Uganda that governs marriages, succession and children.

3.3.1 Laws on Marriage and Divorce in Uganda

The laws currently governing marriage and divorce in Uganda include the Marriage Act Cap 251, Customary Marriage and Registration Act Cap 248, Hindu Marriage and Divorce Act Cap 250 and the Divorce Act Cap 249.²²³

The common thread running all these laws is their restriction on the legal capacity of persons with psychosocial disabilities. Under Section 11 of the Customary Marriage and Registration Act and Section 2 of the Hindu Marriage and Divorce Act, one of the requirements for a valid marriage is both parties must be of ‘sound mind, lest the marriage is deemed void.’²²⁴ Further, for marriages under the Marriage Act and Customary Marriage and Registration Act, where any of the intending parties is below the age of twenty one, the consent of parents is a pre-requisite for a valid marriage.²²⁵ However, these laws prohibit a person of ‘unsound mind’ from giving consent to their child to marry.

Similarly, the Marriage and Divorce Bill, 2009 seeks to “reform and consolidate all the laws governing act to reform and consolidate the law relating to Civil, Christian, Hindu, Bahai and Customary marriages.”²²⁶ However, it also falls short of the standard of the CRPD to the extent that denies persons with psychosocial disabilities the right to marry and found a family in similar terms as the laws above.²²⁷ Under Clause 129, the general rule is that for all transactions related to the matrimonial property, prior written consent of the other spouse is required. However, one of the instances in which such consent may be dispensed is if the spouse is of ‘unsound mind.’²²⁸ These provisions of the Bill are discriminatory to persons with psychosocial disabilities thus require revision in order to comply with the CRPD.

On divorce, one of the recognized grounds for nullification of a marriage in Section 12 of the Divorce Act is if “either party was a lunatic or idiot at the time of the marriage.”²²⁹ The use of such derogatory terms is in itself a violation of the right to inherent dignity of persons with psychosocial disabilities.²³⁰ The effect of this provision is that it denies marriages contracted by persons with psychosocial disabilities legal recognition.

221 Interview conducted with Med Ssenooba, supra.

222 Ibid.

223 The Marriage and Divorce of Mohammedans Act Cap 252 mainly governs registration of Islamic marriages as opposed to the other marriage laws which specify the requirements of a valid marriage. This is due to the fact that Islamic marriages are governed by Islamic law.

224 Section 11 (c) of the Customary Marriage and Registration Act and Section 2 (1) (b) of the Hindu Marriage and Divorce Act.

225 Section 17 of the Marriage Act and Section 32 of the Customary Marriage and Registration Act.

226 Long Titles of the Marriage and Divorce Bill, 2009.

227 Marriage and Divorce Bill, Clauses 27 (b), 34 (1) (b), 48 (b), 55 (b), 69 (b), 76 (1) (b), 87 (b), 94 (1) (b), 103 (b) and 109 (1) (b).

228 Clause 129 (3) (a) of the Marriage and Divorce Bill.

229 Section 12 (1) (c) of the Divorce Act.

230 CEHURD and Iga Daniel vs AG and Purohit and Moore vs the Gambia, supra.

These laws not only infringe the right of PWDs to marry and found a family but also disregard their right to exercise their legal capacity and freedom to make their choices. They are in contravention of the rights of PWDs to equal recognition before the law and non-discrimination guaranteed under the CRPD.²³¹

3.3.2 Laws governing Succession and Inheritance in Uganda

The Succession Act Cap 162 and Administration of Estates of Persons of Unsound Mind Act Cap 155 are the principal laws on succession and inheritance. Nonetheless, this section will also analyze the Succession Bill 2011 to gauge whether it is in compliance with the CRPD. The Committee on Rights of Persons with Disabilities expressed concern about the laws of succession and inheritance in Uganda which restrict legal capacity of persons with disabilities on the basis of impairment, especially persons with psychosocial disabilities.²³²

It is also concerned about the de facto guardianship in families of persons with disabilities that deprive persons with disabilities of their ability to make choices in aspects such as marriage and inheritance.

3.3.2.1 The Succession Act Cap 162 and the Succession Bill 2011

The Succession Act has a number of discriminatory and legal capacity restrictive provisions against persons with psychosocial disabilities, contrary to the spirit of the CRPD. As regards persons with capacity to make a will, the general rule under Section 36 is that persons who are ‘insane’ or of ‘unsound mind’ cannot make a will and the exception is during intervals when they are ‘of sound mind.’²³³

These legal capacity restrictions extend to the powers to manage estates of deceased persons as Personal Representatives under the Act. Any adult person, duly appointed in a will to act as an Executor or chosen by the family of the deceased to act as an Administrator, may carry out this duty and exercise the powers laid down in the Act. However, Sections 184 and 190 forbid the grant of Probate or Letters of Administration respectively to persons who are of ‘unsound mind’. Similarly, under Section 217, where the sole beneficiary under a will or an intestate’s estate is a ‘lunatic’, letters of administration must be granted to a guardian of the ‘lunatic’ for the use and benefit of the ‘lunatic’ until they become ‘of sound mind’.²³⁴

The Succession Act falls below the standard of the CRPD insofar as it does not recognize the right of persons with psychosocial disabilities to exercise their legal capacity. Even in instances where they are assumed to be unable to make decisions and manage their affairs, they can still do so support systems.

With respect to domicile, whereas every adult person in Uganda is entitled to acquire a new domicile for purposes of succession, Section 17 of the Succession Act bars persons with psychosocial disabilities from exercising this right.²³⁵ Their domicile must always follow the domicile of another person implying that they are not independent persons, a position contrary to the principle of individual autonomy and independence of PWDs in Article 3 of the CRPD.

The Succession Bill 2011, an initiative to reform the law on succession in Uganda, does not address any of the gaps in the Act highlighted above. Thus it does not meet the threshold of the CRPD in terms of protecting the right of PWDs to inherit property, manage their own affairs and participate in matters of inheritance on an equal basis with the rest of the public.

3.3.2.2 Administration of Estates of Persons of Unsound Mind Act Cap 155

This Act, which came into force in 1951, seeks to “make provision for the administration of the estates of persons of unsound mind.” It defines a ‘person of unsound mind’ to mean ‘any person adjudged to be of unsound mind under Section 4 of the Mental Treatment Act or any person detained under section 113 or 117

²³¹ Articles 3 (a), 12 and 23 of the CRPD.

²³² Concluding Observations 2016 at para 22.

²³³ Sections 36 (1) and (4) of the Succession Act.

²³⁴ Uganda Parents of Persons with Intellectual Disabilities (UPPID), “*Legal Capacity and Access to Justice for Persons with Intellectual Disability: A Review of Uganda’s Legal Regime*” Disability Rights Fund (DRF) (supra).

²³⁵ Section 17 of the Succession Act states: “an insane person cannot acquire a new domicile in any other way than by his or her domicile following the domicile of another person.”

of the Magistrates Courts Act'.²³⁶ These provisions have been challenged for contravening human rights of persons with psychosocial disabilities.²³⁷

The High Court may appoint a relative of a person of 'unsound mind' to act as the manager of his or her estate.²³⁸ It is noteworthy that a relative is defined in the Act to include "a member of a clan or other customary organisation."²³⁹ This manager has powers to manage the estate of the person of 'unsound mind' and may, with special permission of the High Court, engage in transactions with respect to the property, using the names of the owner, including sale, mortgage, transfer by gift, lease and invest the funds of the estate.²⁴⁰ Where the Court does not appoint a manager, it is empowered to sell or otherwise dispose of the property 'for the benefit of the person of 'unsound mind.'²⁴¹

This structure of guardianship prescribed by the Administration of Estates of Persons of Unsound Mind Act must remain in place until such time when the person of 'unsound mind' ceases to be so, in which case, the manager must deliver an account to the owner who will then be "given full control of his or her estate."²⁴²

The rationale behind this law is that persons with psychosocial disabilities are unable to exercise their legal capacity and incapable of managing their own affairs thus they require substitute decision makers. The United Nations Special Rapporteur, Juan E. Méndez has condemned the stripping of PWDs of their legal capacity "through judicial declaration of incompetency or merely by a doctor's decision that the person "lacks capacity" to make a decision. Deprived of legal capacity, people are assigned a guardian or other substitute decision maker."²⁴³ The CRPD prohibits

Article 12 of the CRPD prohibits the discriminatory denial of legal capacity to persons with psychosocial disabilities. This Act is therefore completely out of touch with the CRPD with respect to the principles of individual autonomy and independence as well as the right of persons with psychosocial disabilities to equal recognition before the law.²⁴⁴

3.3.3 Children (Amendment) Act, 2016 and Children Act Cap 59

The Committee on Rights of Persons with Disabilities noted that the legislation of Uganda does not provide adequate protection for the rights of children with disabilities.²⁴⁵ It is however worth noting that the Children (Amendment) Act, 2016 was passed after the Committee had adopted the Concluding Observations 2016 on the initial report of Uganda, looking solely at the Children Act, Cap 59.²⁴⁶

Prior to the amendment, the Children Act Cap 59 had gaps in protecting the rights of children with disabilities including the lack of clear provisions on the principle of non-discrimination.²⁴⁷ Section 9, on the rights of children with disabilities was "unclear" with regard to the responsible duty bearer to fulfill and protect rights of children with disabilities.²⁴⁸ "It places the obligation of early assessment, appropriate treatment, rehabilitation and equal opportunities upon both the parents of children with disabilities and the

236 Section 1 (c) of the Administration of Estates of Persons of Unsound Mind Act.

237 See Section 3.2 of this study above.

238 Sections 1 (a), 2 and 3 of the Act. The Court acts upon an application of a superintendent or other person in charge of a mental hospital, the commissioner of prisons or a relative of any such person of unsound mind.

239 Section 1 (d) of the Administration of Estates of Persons of Unsound Mind Act.

240 Sections 4 and 12 of the Administration of Estates of Persons of Unsound Mind Act.

241 Section 9 (1) of the Administration of Estates of Persons of Unsound Mind Act.

242 Section 8 of the Administration of Estates of Persons of Unsound Mind Act.

243 United Nations Human Rights Council (2013) "*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*" adopted by the UN General Assembly on February 1, 2013 at the 22nd Session A/HRC/22/53 at para 65.

244 Article 3 and 12 of the CRPD.

245 Concluding Observations 2016 at para 12.

246 Uganda made its initial report to the Committee on Rights of Persons with Disabilities on April 7 – 8, 2017. The Committee adopted its Concluding Observations 2016 on April 18, 2016 and the Children (Amendment) Act was passed into law on May 20, 2016.

247 National Union of Disabled Persons of Uganda (NUDIPU) (2013), "*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*" December 2013 at para 266.

248 Ibid.

State without clarifying who is actually responsible.”²⁴⁹

Section 9 was amended in the Children Amendment Act, 2016 to insert new subsections which read:²⁵⁰

- (1) A parent or guardian shall in liaison with a qualified medical practitioner be responsible for the identification of a child with disabilities or a child with special needs.
- (2) In the event that a child is identified with any disability or special needs, such child shall be afforded such facilities as are necessary to address their needs by government.
- (3) A child with disabilities or a child with special needs shall have access to such education suitable to address their disabilities or special needs.
- (4) A child shall not be discriminated against on account of their disability or special needs.
- (5) A person who contravenes this section commits an offence and is liable, on conviction, to a term of imprisonment of five years, or to a fine not exceeding one hundred and fifty currency points or both.
- (6) The Board shall give first priority in funding and implementation of programmes for children with special needs and shall not divert funds for such programmes.

The Amendment to the Act also establishes a National Children Authority whose functions include monitoring the implementation of the Act and advising the Government on formulation of children rights programmes.²⁵¹ The Government is commended for the additional legal safeguards to ensure that children with disabilities enjoy their human rights and freedoms.

However, to the extent that the duties of the State, as the main duty bearer, to ensure realization of the rights of children with disabilities is not clearly expressed, the Amendment falls short of the standard set by Article 7 of the CRPD. For instance, whereas Section 9 guarantees the right of children with disabilities to access to education on an equal basis with others, the duty of the Government and measures it is required to take are not specified.

3.3.4 Recommendations for Legal Reform

Marriage and Divorce Laws

The Marriage Act, Customary Marriage and Registration Act, Hindu Marriage and Divorce Act, the Divorce Act and Marriage and Divorce Bill contain provisions which are in conflict with Article 12 of the CRPD insofar as they deprive PWDs of their right to exercise their legal capacity on the basis of impairment.²⁵² These provisions should be repealed totally from the respective laws which can effectively be done through: i) the Marriage and Divorce Bill and ii) Persons with Disabilities Bill.

The Marriage and Divorce Bill, when passed into law, will consolidate all the laws governing marriage above thus it poses a strategy to influence legal reform in the said legislation. Therefore, efforts should be directed towards revising the Bill to eliminate all provisions which restrict the exercise of capacity of persons with psychosocial disabilities. The Persons with Disabilities Bill also presents a good opportunity to repeal the provisions in the marriage laws which deprive persons with psychosocial disabilities of their right to exercise their legal capacity. Whereas the PWDs Bill (2016) guarantees the right to marry and equal rights in marriage, it should specifically state that it repeals the impugned provisions of the above stated Acts of Parliament on marriage.²⁵³

249 Ibid.

250 Section 10 of the Children (Amendment) Act.

251 Part IIA of the Children (Amendment) Act.

252 Concluding Observations 2016, at para 22 and 47.

253 Clause 8 of the PWDs Bill.

Succession Laws in Uganda

The Succession Act, similar to the marriage laws, contains provisions which deny persons with psychosocial disabilities their right to exercise legal capacity and make legally binding decisions. The impugned provisions should be repealed for perpetrating discrimination based on disability. This can successfully be pursued through the Succession Bill which is yet to be debated in Parliament. The Bill, which repeals some provisions of the Succession Act can be used as an avenue to repeal all provisions which deny PWDs equal opportunities available to the rest of the public and are discriminatory.

The Administration of Estates of Persons of Unsound Mind Act, which establishes a formal substituted decision-making regime for persons with psychosocial disabilities, should be repealed as a whole and replaced with supported decision-making, which respects the person's autonomy, will, preferences and human rights norms.²⁵⁴

The Committee on Rights of Persons with Disabilities explains that:

“State parties’ obligation to replace, substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the Convention”.

The Persons with Disabilities Bill presents an opportunity to repeal impugned provisions of both the Succession Act and the entire Administration of Estates of Persons of Unsound Mind Act. The Bill states both laws as legislations which it will supercede when it is passed. However, to the extent that the spirit of the Administration of Estates of Persons of Unsound Mind is in contravention of the CRPD, the PWDs Bill should abolish the law. The PWDs Bill should expressly provide that PWDs have a right to own property and have legal capacity to manage their own affairs. The Bill should also make provision for support and assistance to be given to PWDs when required, to assist them to make legally binding decisions, specifying safeguards for support.

Children (Amendment) Act, 2016

The Committee on Rights of Persons with Disabilities recommended an amendment of the Children Act “in order to mainstream rights of children with disabilities across all programmes.”²⁵⁵ The 2016 Amendment to the Children Act is welcomed with respect to protection of the human rights and freedoms of children with disabilities. However, it does not clearly spell out the duty of the State to ensure that children realise the full enjoyment of rights, a contravention of Articles 4 and 7 of the CRPD. The law ought to provide in clear terms that the State has the duty to ensure that children with disabilities access education services in Section 10 of the Act as amended.

This, however, can be cured under the PWDs Bill which, as a domestication of the CRPD, should clearly stipulate the rights of children with disabilities and the duties of the State as a main duty bearer. Whereas

²⁵⁴ CRPD General Comment No. 1 on Equal Recognition before the law at para 28 and 29. The Committee states: “On reasonable accommodation, the Committee states in para 34 that: “The right to reasonable accommodation in the exercise of legal capacity is separate from, and complementary to, the right to support in the exercise of legal capacity. States parties are required to make any necessary modifications or adjustments to allow persons with disabilities to exercise their legal capacity, unless it is a disproportionate or undue burden. Such modifications or adjustments may include, but are not limited to, access to essential buildings such as courts, banks, social benefit offices and voting venues; accessible information regarding decisions which have legal effect; and personal assistance.” The difference between the right to support and reasonable accommodation is that the former, in the exercise of legal capacity shall not be limited by the claim of disproportionate or undue burden. The State has an absolute obligation to provide access to support in the exercise of legal capacity. For reasonable accommodation, it is not absolute and is therefore subject to the claim of undue burden.

²⁵⁵ Concluding Observations at para 13 (a).

the PWDs Bill provides for the right to access education in Clause 13, the State is not tasked as the main duty bearer responsible for the realization of this right by all children with disabilities. The PWDs Bill should therefore be revised to i) introduce a provision speaking to the rights of children and ii) state the responsibilities in terms of ensuring enjoyment of all human rights by children with disabilities.

3.4 Laws that Deprive PWDS of their Rights relating to Nationality and Movement

3.4.1 Citizenship and Immigration Control Act, Cap 66 as amended in 2006 and 2009

The principal legislation governing Nationality and Movement in Uganda is the Citizenship and Immigration Control Act Cap 66. Although the Committee on Rights of Persons with Disabilities makes reference to the Immigration Act 1970, it was repealed by the Citizenship and Immigration Control Act and is not in operation in Uganda.²⁵⁶

In regard to dual citizenship, the Citizenship and Immigration Control Act is discriminatory to persons with disabilities in so far as it lists ‘being of sound mind’ as a qualification for a successful application.²⁵⁷ The CRPD guarantees the right of PWDs to “acquire and change a nationality” on an equal basis with others. This position is therefore discriminatory on the basis of disability and in contravention of Article 18 of the CRPD which protects the right of PWDs to liberty of movement and nationality.

3.4.2 Recommendations for Legal Reform

The provision of the Citizenship and Immigration Control Act which denies persons with psychosocial disabilities the right to apply for dual citizenship requires urgent amendment to bring it in line with Article 18 of the CRPD.²⁵⁸ The State, through the Law Reform Commission, should repeal this provision to ensure that persons with psychosocial disabilities enjoy the right to movement and liberty guaranteed under the CRPD.²⁵⁹

This anomaly in the citizenship law can be cured through the Persons with Disabilities Bill. Although the Bill, in its current state, does not expressly provide for the right of PWDs to liberty of movement and nationality, there is still room to revise the Bill before it is tabled in Parliament. Key stakeholders including persons with psychosocial disabilities, should push for the right to apply for dual citizenship to be recognized in the PWDs Bill which should also repeal the provision in the Citizenship and Immigration Control Act.

3.5 Rights relating to PWDs at the Workplace

3.5.1 Employment Act, 2006 and Employment Regulations, 2011

The central law governing the rights related to work and employment in Uganda is the Employment Act 2006. The Act was passed into law prior to the adoption of the CRPD, thus it is commended for the protections it guarantees for PWDs in the work place.²⁶⁰ These include non-discrimination in employment on the basis of disability and classifying termination of employment due to one’s disability as unfair.²⁶¹

The Employment Regulations²⁶² require employers to: encourage PWDs to apply when they advertise

²⁵⁶ The Long Title and Section 84 (b) of the Citizenship and Immigration Control Act, Cap 66.

²⁵⁷ Section 19C (g) of the Citizenship and Immigration Control Act.

²⁵⁸ Concluding Observations, para 36 and 37.

²⁵⁹ National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 114.

²⁶⁰ The Employment Act was passed into law on May 24, 2006 while the Convention on the Rights of Persons with Disabilities (CRPD) was adopted on 13th December 2006, opened for signature on 30th March 2007 and entered into force on 3rd May 2008. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en

²⁶¹ Sections 6 (3) and 75 (g) of the Employment Act.

²⁶² The Employment Regulations 2011 were created by the Minister of Gender, Labour and Social Development under Section 97 (2) (f) of the Employment Act.

vacancies;²⁶³ desist from using screening methods which will discriminate against PWDs during interviews;²⁶⁴ ensure that the premises of the workplace are accessible for employees with disabilities;²⁶⁵ provide assistance and devices required by employees with disabilities to enable them to execute their duties;²⁶⁶ accord PWDs equal opportunities and treatment at the workplace;²⁶⁷ and “re-deploy, re-orient and re-align” employees who get disabilities in the course of their employment and are unable to perform their previous duties, subject to availability of alternative positions.²⁶⁸

However, there are some protections under the CRPD which are not provided under the Act. For instance Section 2 of the Employment Act on the meaning of disability²⁶⁹ uses a “narrow medical definition which does not take into account the social aspects.”²⁷⁰ The Act also does not mention provision of reasonable accommodation to PWDs at the workplace to enable their realization of the right to work on equal basis with others in line with Article 27 of the CRPD. It should be noted that denial of reasonable accommodation amounts to disability based discrimination under the CRPD.²⁷¹

Whereas, there are PWDs employed in the formal sector, these are the minority thus there are inadequate protections for PWDs working in the informal sector under the laws of Uganda.²⁷² The Employment Act and Regulations do not provide safeguards for PWDs employed in the informal sector for example the right to equal pay for work of equal value.²⁷³

3.5.2 Recommendations for Reform

The Employment Act and Employment Regulations go a long way in terms of protecting the rights of PWDs at the workplace. However, there are CRPD guarantees which should be incorporated in these laws through legal reform to bring them into compliance with the Convention including provision of reasonable accommodation regardless of disability.²⁷⁴ The definition in the Employment Act should also be harmonized with the CRPD definition of disability.

It should be noted however, that the PWDs Bill provides for the right of PWDs to reasonable accommodation in employment.²⁷⁵ The Bill is therefore a means of legal reform in the employment laws above in itself. Efforts should therefore be targeted towards the enactment of the PWDs Bill which incorporates protections under the CRPD for PWDs in the workplace.

3.6 Laws governing the Right to Adequate Standard of Living and Social Protection in Uganda

3.6.1 National Health Insurance Bill, 2014

This Bill seeks to establish a National Health Insurance Scheme whose objectives are to “facilitate the provision of accessibility, affordable, acceptable and quality healthcare services to citizens” and “promote social protection by protecting households from catastrophic health expenditure.”²⁷⁶ It is a welcome initiative

263 Regulation 35 (1) of the Employment Regulations.

264 Regulation 35 (2) of the Employment Regulations.

265 Regulation 35 (7) of the Employment Regulations.

266 Ibid.

267 Regulation 35 (8) of the Employment Regulations.

268 Regulation 35 (9) of the Employment Regulations.

269 Section 2 of the Employment Act defines disability to mean: “any permanent: a) physical disability or impairment; b) physical illness; c) psychiatric illness; d) intellectual or psychological disability or impairment; e) loss or abnormality of physiological, psychological or anatomical structural functions; f) reliance on guide dog, wheelchair or any other remedial means; g) presence in the body of organisms capable of causing illness.”

270 National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 203.

271 Article 2 of the CRPD.

272 NUDIPU (2013), *supra* at para 204. “Approximately 80% of persons with disabilities live below the poverty line, and 46 percent of persons with disabilities aged 14-64 declared that they were excluded from accessing employment opportunities (UNHS 2005/6).”

273 Concluding Observations 2016, para 52.

274 Ibid, para 53 (b).

275 Clauses 19 (2), (3) and (4) of the PWDs Bill.

276 Long Title and Memorandum of the National Health Insurance Bill, 2014 and the Ministry of Finance Planning and Economic Development (2017) “*Certificate of Financial Implications for the National Health Insurance Bill, 2014*” April 2017.

of the Ministry of Health which will enable people in Uganda to realise their right to health.

However, since the State plans to enroll various categories of people on the National Health Insurance Scheme in Uganda at different times, PWDs are most probably going to face discrimination upon establishment of the Scheme. The first phase of enrollment will fully cover public servants and employees in the formal sector²⁷⁷ whereas only 20% of persons in the informal sector²⁷⁸ and 10% of the indigents will enroll annually for a period of ten (10) years when they will all be brought on board.²⁷⁹ For every beneficiary in public service and the formal sector, only four (4) dependents shall benefit from their contribution whereas the informal sector can only bring on board two (2) dependents.²⁸⁰

This Bill is problematic because majority of PWDs in Uganda are employed in the informal sector or are unemployed and are living below the poverty line,²⁸¹ which implies that they will likely be left out from this scheme which amounts to discrimination under the CRPD. According to the Uganda Poverty Status Report 2014, “severe and partial disability is strongly correlated with poverty” and “individuals with disabilities are disproportionately affected by poverty.”²⁸² The Report explains further that PWDs are “likely to have more expensive consumption needs to attain a given standard of living due to additional expenditures related to healthcare, assistive devices, transportation and assistance workers.”²⁸³ It should be noted that the Healthcare Benefits package of National Health Insurance Scheme under Schedule 1 of the Bill does not include disability friendly aspects such as the provision of assistive devices or professional assistance when required at health facilities for instance sign language interpreters.

In addition, due to the limited number of dependants allowed per beneficiary, vulnerable groups among PWDs such as women and children with disabilities will be excluded from benefiting from the National Health Scheme in families of beneficiaries with more than four (4) dependants.²⁸⁴ This is inconsistent with the CRPD which requires States to recognize that women and girls with disabilities are usually subject to multiple and intersectional disabilities and steps should be taken to ensure their “full and equal enjoyment” of their human rights.²⁸⁵

In the Concluding Observations, the Committee on Rights of Persons with Disabilities raised concern about the “lack of coverage in relation to national health insurance” for PWDs in Uganda.²⁸⁶ Article 25 of the CRPD expressly prohibits discrimination of PWDs in health insurance schemes. Article 32 of the Constitution of Uganda calls upon the State to take positive steps to ensure that all barriers which cause marginalization and discrimination against PWDs are eliminated. Failure to enroll all PWDs on the Scheme on an equal basis with the rest of the public is a violation of both of the 1995 Constitution and the CRPD in so far as it will perpetrate discrimination against PWDs in Uganda and deny them their right to an adequate

277 Ibid. Public servants and formal employees shall contribute 4% of their monthly salary.

278 Ibid. Persons in the informal sector will contribute One Hundred Thousand Ugandan Shillings (UGX. 100,000/=) per annum.

279 Ibid. “The indigents shall not contribute as they are subsidized by the contributions from other members of the Scheme.”

280 Ibid.

281 National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 204. “Approximately 80% of persons with disabilities live below the poverty line, and 46 percent of persons with disabilities aged 14-64 declared that they were excluded from accessing employment opportunities (Uganda National Household Survey 2005/6).” At para 207, the Report states: “In Uganda, there is an estimated 3.5 million disabled youth. Across the country, between 54 percent and 66 percent of Uganda’s youth live on USD 1 or less per day and 73 percent to 84 percent live on USD 2 or less per day.”

282 Ministry of Finance, Planning and Economic Development (2014), “Poverty Status Report 2014: Structural Change and Poverty Reduction in Uganda” Economic Development Policy and Research Department, November 2014 at para 4.2.3 at p. 79. The Report adds that, “In 2009/10, 92.3 percent of households with a severely disabled member were poor or insecure non-poor compared with the national average of 67.4 percent.”

283 Ibid.

284 Initiative for Social and Economic Rights (ISER) (2015), “*Getting it Right: Uganda’s Proposed National Health Insurance Scheme*” Economic and Social Rights Advocacy (ESRA) Brief, Issue 4, April 2015 at p. 7.

285 Article 6 and 7 of the CRPD and CRPD General Comment No. 3 (2016) Article 6: Women and Girls with Disabilities adopted by the Committee on Rights of Persons with Disabilities on September 2, 2016 accessed at CRPD/C/GC/3 at para 9. It states that: “Article 6 is a binding non-discrimination and equality provision that unequivocally outlaws discrimination against women with disabilities and promotes equality of opportunity and equality of outcomes. Women and girls with disabilities are more likely to be discriminated against than men and boys with disabilities and the larger population of women and girls.”

286 Concluding Observations 2016 at para 54.

standard of living.²⁸⁷

3.6.2 Recommendations for Reform

The National Health Insurance Bill should “grant a special vulnerability status” to PWDs in “their own right or as persons dependent” on the primary beneficiary under the National Health Insurance Scheme.²⁸⁸ Kenya, under its National Hospital Insurance Fund (NHIF), covers health insurance for vulnerable groups including persons with

In relation to the number of dependents per beneficiary, there is also no numerical limit.²⁸⁹ The State should adopt this approach for the National Health Insurance Bill because given that poverty and disability are interlinked,²⁹⁰ the National Health Insurance Scheme, if established as per the current provisions of Bill, will perpetrate discrimination against PWDs.

The State should take steps to revise the Bill so as to make provision for access to free health services for PWDs in line with Article 32 on affirmative action and the CRPD. Key stakeholders including the MoH, MoGLSD, EOC, UHRC, civil society and PWDs should lobby for this revision of the Bill. Members of Parliament should also be engaged to ensure that the provisions in the Bill which are likely to exclude PWDs from benefiting from the National Health Insurance Scheme such as the proposed phased implementation of indigents and informal sector are amended to ensure access to health services by PWDs in accordance with Article 25 of the CRPD.

3.7 Electoral Laws and Participation of PWDs in Public Affairs

3.7.1 Qualifications to Stand for Elections

The Constitution of Uganda guarantees the right of all Ugandans to participate in public affairs including the right to vote and be elected.²⁹¹ However, the Committee on Rights of Persons with Disabilities expressed concern about laws of Uganda which contain restrictions which bar persons with psychosocial disabilities from standing for elections in Uganda²⁹² including the 1995 Constitution of Uganda, Presidential Elections Act 2005 as amended, Parliamentary Elections Act 2001 as amended, Local Governments Act Cap 243 as amended and the Electoral Commission Act Cap 140. This Section analyses these laws to ascertain whether they are compliant with the CRPD.

Article 80 of the 1995 Constitution of Uganda states that a person of ‘unsound mind’ does not qualify to stand as a Member of Parliament. This is reiterated in the Parliamentary Elections Act.²⁹³ This restriction also extends to other political posts such as President of Uganda,²⁹⁴ Speaker of the Parliament of Uganda²⁹⁵ Ministers²⁹⁶ and Local Government Councilor.²⁹⁷ Furthermore, from the nomination forms of some of these posts, candidates are required to swear that they have never, at any time whatsoever, been adjudged to be of “unsound mind.”²⁹⁸

287 Article 28 of the CRPD.

288 ISER (2015), *supra*. at p.10.

289 ISER (2015), *ibid*. at p. 8.

290 Interview with Joseph Mbulamwana, Executive Director of Uganda National Association for the Deaf (UNAD) conducted on September 12, 2017.

291 Article 59 of the 1995 Constitution reads: (1) every citizen of Uganda of eighteen years of age or above, has a right to vote. (2) It is the duty of every citizen of Uganda of eighteen years of age or above, to register as a voter for public elections and referenda. Article 39 (1) reads: “Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.”

292 Concluding Observations 2016 at para 56.

293 Section 5 (2) (a) of the Parliamentary Elections Act.

294 Article 102 (c) and Section 4 (4) (a) of the Presidential Elections Act.

295 Article 82 (1) of the 1995 Constitution of Uganda states that the Speaker and Deputy Speaker of Parliament shall be chosen from among the Members of Parliament.

296 Article 113 (1) of the 1995 Constitution of Uganda.

297 Section 116 (2) (a) of the Local Governments Act.

298 Section 10 and the Form in the 3rd Schedule at para 7 (ii) of the Presidential Elections Act. Form EC 2 in the 7th Schedule to the Local Governments Act.

Similarly if a person is adjudged to be “of unsound mind” during their term of office in public office, they are liable to be disqualified. This applies to the President,²⁹⁹ Vice President,³⁰⁰ Members of Parliament,³⁰¹ Prime Minister,³⁰² Ministers,³⁰³ Governor of Bank of Uganda,³⁰⁴ Inspector General of Police,³⁰⁵ Auditor General and³⁰⁶ District Chair Persons,³⁰⁷ Resident District Commissioners³⁰⁸ and Local Government Councillors³⁰⁹ among other positions.

The Committee on Rights of Persons with Disabilities has stressed that ‘unsoundness of mind’ is not a justifiable basis for depriving PWDs of legal capacity.³¹⁰ These laws unnecessarily restrict the legal capacity of persons with psychosocial disabilities, deny them an equal opportunity to stand for elections on an equal basis with others and are discriminatory according to Article 29 of the CRPD.

3.7.2 The Elections Procedure

The Electoral Commission established by the Electoral Commission Act Cap 140 is the body tasked with organising, conducting and overseeing elections conducted in Uganda.³¹¹ However, the Act is silent on: the duties of the Commission with respect to the right to vote of PWDs; provision of disability friendly voting materials in accessible formats which are easy to understand; and a conducive voting environment in which the right to secrecy of PWDs in the voting process is respected.³¹² In so far as the rest of the public is afforded these protections, denial of the same to PWDs amounts to discrimination and is therefore non-compliant with Article 29 of the CRPD.

3.7.3 Recommendations for Reform

The electoral laws of Uganda should recognize the right of all PWDs to participate in the public affairs, as both candidates and voters under Article 29 of the CRPD. The State, through the Uganda Law Reform Commission, should therefore take steps to repeal these discriminatory provisions, including Article 80 of the 1995 Constitutions and other Constitutional provisions.³¹³

The PWDs Bill is commended for reaffirming the right of PWDs in Uganda “to fully participate in political and public life and to vote and be voted in any political office” on an equal basis with others.³¹⁴ However, the duty of the State to ensure the realization of the right to vote, through the Electoral Commission, is lacking in the legislation. The PWDs Bill should therefore be revised to include the duties of the State to provide voting materials in accessible formats which are easy to understand and ensure that PWDs can vote in a conducive and secretive environment.

3.8 Other Laws which restrict Legal Capacity of PWDs on the basis of Impairment

3.8.1 Administration of Justice

The 1995 Constitution of Uganda reaffirms that “judicial power is derived from the people” and must be exercised in the name of the people of Uganda.” By virtue of this position, all people in Uganda have a right

299 Article 107 (1) (c) of the 1995 Constitution of Uganda.

300 Article 108 (4), Constitution.

301 Articles 83 (1) (b) and 84 (2) (a) of the Constitution of the 1995 Constitution of Uganda and Section 95 (1) (a) of the Parliamentary Elections Act.

302 Article 108 (4) (c) of the 1995 Constitution of Uganda.

303 Article 116 (b) (ii) of the 1995 Constitution.

304 Article 161 (5) (a) of the 1995 Constitution of Uganda.

305 Article 224 (a) of the 1995 Constitution of Uganda.

306 Article 163 (10) (a) of the 1995 Constitution of Uganda.

307 Article 185 (1) (c) of the 1995 Constitution of Uganda.

308 Article 203 (2) of the 1995 Constitution.

309 Section 116 (2) of the Local Governments Act.

310 CRPD General Comment No. 1 on Equal Recognition before the law at para 13.

311 Article 61 of the 1995 Constitution of Uganda.

312 These were the Concerns raised by the Committee on Rights of Persons with Disabilities in the Concluding Observations 2016 at para 56.

313 Concluding Observations 2016, para 57.

314 Clause 10 (1) of the PWDs Bill.

to participate in the administration of justice by the courts of law.

The Committee on Rights of Persons with Disabilities specifically criticizes laws which exclude PWDs “from key roles in the justice system as lawyers, judges, witnesses or members of a jury” on the basis on impairment.³¹⁵ This section discusses some legislations which govern the justice sector with the aim of determining whether it is in line with the CRPD.

3.8.1.1 Trial on Indictments Act, as amended in 2008

During criminal proceedings in the High Court in Uganda, assessors are appointed from the general public to assist the court in the process of administration of justice. Assessors are required to attend a criminal trial and give an opinion to the court, depending on the evidence presented, on whether to acquit or convict accused persons in criminal proceedings. Section 3 and the Schedule to the Trial on Indictments Act states that “All citizens of Uganda between the ages of twenty-one (21) and sixty (60), who are able to understand the language of the court with a degree of proficiency sufficient to be able to follow the proceedings” qualify to be court assessors.

However, under Section 68 (1) of the Act, deafness, blindness and mental infirmity are recognized grounds to challenge the appointment of an assessor before he or she is sworn in. This provision of the law is both discriminatory and restrictive of the legal capacity of PWDs in the above categories on the basis of impairment, contrary to Article 5 and 12 of the CRPD. PWDs in Uganda have a right to equal recognition before the law thus by denying them an equal opportunity to participate in the administration of justice as assessors, like the rest of the public, this law perpetrates discrimination on the basis of disability.

3.8.1.2 Evidence Act, Cap 6

The Evidence Act is very important legislation which empowers the people of Uganda to participate in the administration of justice especially as witnesses. As a general rule under Section 117, a ‘lunatic’ is competent to testify, “unless he or she is prevented by his or her ‘lunacy’ from understanding the questions put to him or her and giving rational answers to them.” Although the provision allows persons with psychosocial disabilities to testify in court, the term ‘lunatic’ is derogatory, degrading and inconsistent with the CRPD protection of the rights of PWDs to inherent dignity. On the use of the term ‘lunatics’ to describe persons with psychosocial disabilities, the African Commission in *Purohit and Moore v. The Gambia* noted that they “without any doubt dehumanize and deny them any form of dignity.”

The Committee on Rights of Persons with Disabilities raised concern about the “barriers faced by PWDs in the justice system as a result of lack of reasonable accommodation and accessibility.” The Evidence Act makes no mention of accessibility structures in place and provision of reasonable accommodations to PWDs to enable them to effectively participate in legal proceedings as witnesses. To this end, the Evidence Act is not compliant with the duties of the State under the Article 13 of CRPD which reaffirms the right of PWDs to access justice.

3.8.1.3 Restrictions from participation of PWDs as Advocates and Judicial Officers

The Advocates Act lays down the rules and norms governing the legal profession in Uganda. In order for an advocate to appear in the courts of law in Uganda, he or she must obtain a practicing certificate from the Chief Registrar of the High Court. However, Section 12 of the Advocates Act prohibits the Registrar from issuing or renewing a practicing certificate of any advocate is “adjudged to be of unsound mind under the Mental Treatment Act.”³¹⁶

This restriction has a spillover effect and extends by implication to restrict persons with psychosocial disabilities from participating in some public offices in the justice sector. For instance, in order to be

³¹⁵ CRPD General Comment No. 1 on Equal Recognition before the law, supra at para 38 on Access to Justice.

³¹⁶ Section 12 (1) (b) of the Advocates Act.

appointed as a Judicial Officer,³¹⁷ Director of Public Prosecutions (DPP)³¹⁸ and Attorney General,³¹⁹ one must be an advocate of the High Court.³²⁰

The denial of persons with psychosocial disabilities the opportunity to practice as advocates under the justice system, despite having the requisite academic qualifications, is discriminatory on the basis of disability and denies them equal opportunity availed to other lawyers to participate in the justice sector. This provision is therefore inconsistent with the CRPD principles of non-discrimination, equality of opportunity and full and effective participation in society.³²¹

3.8.2 Recommendations for Legal Reform

The Trial on Indictments Act and Advocates Act contain provisions which limit the participation of PWDs in the justice sector on the basis of a disability. The impugned provisions of these laws should be repealed for being discriminatory and inconsistent with Article 13 of the CPRD and 1995 Constitution of Uganda.³²²

Clause 12 (3) of the Persons with Disabilities Bill seeks to cure this anomaly. It states:³²³

In all matters pertaining to access to justice, persons with disabilities shall not, by reason only of their disability, be taken to be unfit persons, including but not limited to serving as judicial officers, sureties, assessors or witnesses.

This provision is consistent with Article 13 of the CRPD and addresses a concern which was raised by the Committee on Rights of Persons with Disabilities about PWDs being deprived of their right to participate and take on key roles in the field of justice such as advocates, witnesses, judges and assessors in court processes.³²⁴ Enactment of the PWDs Bill is therefore a means of realising legal reform in terms of participation of PWDs in the administration of justice. However, the Bill needs to be revised to make provision for accessibility and gender and age procedural accommodation for PWDs in courts of law to facilitate their access to justice.³²⁵ This includes ensuring that PWDs obtain information in accessible formats such as “braille, tactile, augmentative and alternative formats and Ugandan sign language.”³²⁶

With regard to the Evidence Act, the Committee on Rights of Persons with Disabilities has explicitly called upon the State to amend legislation which uses derogatory terminology against PWDs such as “lunacy.” Section 117 of the Evidence Act should therefore be amended to this effect. In the same vein, the PWDs Bill should be revised to specifically prohibit the use of derogatory terms against PWDs in all spheres of their lives.

317 Article 143 of the 1995 Constitution states that a Chief Justice must have practised as an advocate for at least twenty years, Deputy Chief Justice or Principal Judge must have practised as an advocate for at least fifteen years, a Justice of the Supreme Court must have practised as an advocate for at least fifteen years, a Justice of the Court of Appeal must have practised as an advocate for at least ten years as an advocate and a Judge of the High Court must have practised as an advocate for at least ten years.

318 Article 120 (2) of the 1995 Constitution states that for a person to qualify to be appointed Director of Public Prosecutions, he or she should be qualified to be appointed a Judge of the High Court thus he/she should have must have practised as an advocate for at least ten years.

319 Article 119 (2) of the 1995 Constitution states that for a person to be appointed Attorney-General, he or she must be qualified to practise as an advocate of the High Court and must have practised for at least ten years.

320 Article 144 (2) (a) of the 1995 Constitution of Uganda.

321 Article 3 of the CRPD.

322 Article 21 of the 1995 Constitution provides for the right to equality and non-discrimination.

323 Clause 12 (3) of the PWDs Bill.

324 CRPD General Comment No. 1 on Equal Recognition before the law at para 38.

325 Concluding Observations, para 24 and 25.

326 Ibid.

4.0 CONCLUSIONS AND RECOMMENDATIONS

The legal framework which has been analysed hereinabove, on the whole, falls short of the standard set by the CRPD with regard to respect, protection and fulfillment of the human rights and fundamental freedoms of PWDs in Uganda. A number of laws, as noted above, also use derogatory terms with reference to PWDs, especially persons with intellectual or psychosocial disabilities.³²⁷ The legal reform of this laws is long overdue especially for legislation which has, for decades, deprived PWDs equal opportunities and uses derogatory terminology against them. This section discusses the general recommendations for legal reform, which cut across all the laws discussed, highlighting strategic actions which should be adopted.

4.1 General Recommendations

In the course of the analysis of various pieces of legislation above, it was noted that there are a number of recommendations targeted towards legal reform which cut across all the laws analysed. These include: the enactment of the PWDs Bill, the necessity of engaging Members of Parliament and Uganda Law Reform Commission and the importance of involving relevant stakeholders in the law reform process especially PWDs.

4.1.1 Enact the PWDs Bill, 2016

The PWDs Bill, when enacted into an Act of Parliament, will be the principal legislation of Uganda which domesticates the CRPD. All efforts should be directed towards the passing of the Bill into law as a matter of utmost urgency and importance.³²⁸ However, the Bill has a high standard to meet in terms of protecting the human rights and freedoms of PWDs, which, it should aspire to meet. Although the 2016 version of the Bill adopted some protections embedded in the CRPD and recommendations proposed by PWDs around the country, it still does not meet the threshold of the CRPD.³²⁹

This legislation must therefore be subjected to extensive review and revision by all stakeholders including the MoGLSD and other ministries, NCD, EOC, UHRC, PWDs, ULRC, Members of Parliament and Civil Society. The Bill should be revised looking at two main aspects: i) its compliance with the CRPD and ii) the loopholes in other laws which can be cured under the Bill. The second aspect is very important because it presents an effective strategy to repeal or amend the problematic provisions embedded in the other laws of Uganda with regard to the rights of PWDs, applying the threshold of the CRPD.

The PWDs Bill can also employed as a mechanism to guarantee special protection to the right of PWDs to equal recognition before the law, especially the aspect of full and free exercise their legal capacity.³³⁰ The Bill should ensure that full legal capacity is restored to PWDs by: expressly stating that PWDs, as a general rule, can make legally binding decisions in all spheres of their lives; abolishing “substitute decision-making regimes established by law such as guardianship;” replacing “substitute decision-making regimes with supported decision-making.”³³¹ The Bill should provide for the right of PWDs to access support and assistance, when required, whilst establishing safeguards to ensure that the “autonomy, will and preferences” of PWDs are respected.³³²

327 These include: the Penal Code Act Cap 120; Mental Treatment Act Cap 279; Advocates Act Cap 267; Administration of Estates of Persons of Unsound Mind Act Cap 155; Prisons Act 2006; the Constitution of 1995, Trial on Indictments Act Cap 23; Marriage Act Cap 251; Customary Marriage and Registration Act Cap 248; and the Succession Act Cap 162.

328 Interview with Zaminah Malole, *supra*.

329 Interviews with Med Ssenooba and Derrick Kizza, *supra*.

330 Interview with Med Ssenooba, *supra*.

331 CRPD General Comment No. 1 on Equal Recognition before the law at paras 7 and 25.

332 *Ibid*. The Committee on Rights of Persons with Disabilities explains in para 27 that: “Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. However, these regimes have certain common characteristics: they can be defined as systems where (i) legal capacity is removed from a person, even if this is in respect of a single decision; (ii) a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and (iii) any decision made by a substitute decision-maker is based on what is believed to be in the objective “best interests” of the person concerned, as opposed to being based on the

This can be adopted as a short term strategy with the aim of eventually enacting a law which provides, in depth, spells out the duties of the State to ensure PWDs enjoy their right to make choices, live independently, exercise their legal capacity and, without prejudice, receive support and assistance in making decisions, where necessary.³³³

4.1.2 Engage Members of Parliament

This report discusses a number of Bills which can be used as a means to repeal or revise the problematic provisions in the respective Acts including the PWDs Bill, Mental Health Bill, Marriage and Divorce Bill, Succession Bill and National Health Insurance Bill. Due to the unique mandate of the Members of Parliament to make laws, they are the best placed stakeholders to champion the revision of these laws before they are passed. The impugned provisions in the legislation discussed above, for which there is an existing Bill to either amend or repeal such law, MPs should be engaged immediately in preparation for such time when these Bills are presented on the floor of Parliament for debate.

With regard to repealing constitutional provisions which are inconsistent with the CRPD, particularly, Articles 23 (1) (f) and Article 80, the MPs remain a key stakeholder to engage because they have the opportunity to influence constitutional amendments.

4.1.3 Engage the Uganda Law Reform Commission (ULRC)

The mandate of the Uganda Law Reform Commission is to:³³⁴

study and keep under constant review the Acts and other laws comprising the laws of Uganda with a view to making recommendations for their systematic improvement, development, modernization and reform with particular emphasis on - (a) the elimination of anomalies in the law...

Engaging ULRC is key since it is the appropriate duty bearer tasked with the responsibility to undertake mass revision of all the laws of Uganda which use derogatory terms against PWDs and deprive them of equal opportunities on the basis of disability.

The Constitutional Court of Uganda called upon the State to undertake a review of these laws in *Center for Health, Human Rights and Development (CEHURD) and Iga Daniel vs Attorney General*.³³⁵ The Court stated that:

The potential of persons living with disability cannot be realised 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 uphold their equality with other persons. (Emphasis added)

In addition to revision of laws which use derogatory language, the ULRC should undertake revision of all laws which deprive PWDs of their legal capacity and participation in public affairs. However, this process should be done with genuine consultation of PWDs as important stakeholders.³³⁶

Going forward, the ULRC should adopt a Disability Checklist for legislators to use when making amendments or enacting legislation to ensure their compliance with the CRPD.³³⁷ Thus the ULRC should work closely with the Parliament, the legislative arm of Uganda.

person's own will and preferences."

333 Interview with Med Ssengooba, supra and National Union of Disabled Persons of Uganda (NUDIPU) (2013), "*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*" December 2013 at para 68.

334 Section 10 of the Uganda Law Reform Commission Act, Cap 25.

335 CEHURD & Iga Daniel vs AG Constitutional Petition No.64 of 2011 available at <http://www.cehurd.org/wp-content/uploads/2015/11/constitutional-petition-64.pdf>

336 Interview with Esther Kyozira, Program Manager, National Union of Disabled Persons of Uganda (NUDIPU).

337 Ibid.

4.1.4 Engage Key Stakeholders

Persons with Disabilities should be at the centre of reform of legislation which violates their human rights. The participation of PWDs and organizations which represent them in engagements and consultations is key because PWDs are the ultimate beneficiaries of the legal reform process thus they should be consulted and actively engaged at all stages.

Another category of key stakeholders in the envisaged legal reform process include statutory bodies which are tasked to monitor the implementation of human rights of the Equal Opportunities Commission (EOC), Uganda Human Rights Commission (UHRC) and National Council for Disability (NCD) tasked with monitoring implementation of human rights including those of PWDs as a vulnerable group in Uganda.³³⁸ These bodies play a crucial role in terms of advocating for the rights of PWDs and are key partners who have the capacity to influence the reform of laws which are inconsistent with the CRPD.

4.2 Specific Recommendations for Legal Reform of the Analyzed Legislation

4.2.1 Persons with Disabilities Bill, 2016

- The Bill should be enacted into law. It presents an opportunity to domesticate the CRPD, adopt and reinforce the progressive provisions of the Persons with Disabilities Act, and address all human rights shortfalls as regards PWDs in other legislation.³³⁹
- The Bill should state in clear terms that it is the principal law on human right of PWDs in Uganda thus it should supersede all other legislation in this regard, a way to cure the inconsistencies with the CRPD embedded in numerous laws on various matters including mental health, detention, marriage and divorce, succession and inheritance, financial matters, citizenship, electoral processes, access to justice, employment, health, education, and court processes.³⁴⁰
- Prior to its enactment however, the Bill must be amended to bring it in compliance with the CRPD and PWDs Act. Therefore engagement with Members of Parliament is vital before it is presented in the House. The key actors in this regard include the MoGLSD, EOC, NCD, PWDs, and CSOs.

Key areas of amendment include:

- a) Stronger commitment on the part of the State is required in all sectors to ensure that PWDs realize their human rights guaranteed under the CRPD. The duty of the State to *fulfill* rights and freedoms of PWDs through the adoption of appropriate measures for their implementation should be clearly stated and emphasized because the State remains the main duty bearer under Article 4 of the CRPD. For instance clauses on affirmative action for PWDs,³⁴¹ the right to education,³⁴² right to health,³⁴³ freedom from cruel, inhuman and degrading treatment,³⁴⁴ right to participate in public life,³⁴⁵ protection and safety of

338 UHRC and EOC were established under Articles 51 and 32 of the 1995 Constitution of Uganda respectively. The NCD was created under the National Council for Disability Act, 2003.

339 Interview with Zaminah Malole, Member of EOC and Hon. Lucy Akello, Member of Parliament, *supra*.

340 Interview with Hon. Lucy Akello, Member of Parliament, *supra*.

341 Clause 5 of the Bill.

342 Part III of the Bill.

343 Part IV of the Bill.

344 Clause 6 of the PWDs Bill, 2016. Given the unfortunate circumstances under which persons with psychosocial disabilities continue to be detained and secluded against their will, the protection of their freedom from cruel, inhuman and degrading treatment must be deeply rooted in the Bill. This Clause should be clear and name some of the entities where PWDs are usually subjected to inhuman and degrading treatment, have a comprehensive list of what amounts to such treatment and the role of the State to fulfill this right and protect third parties from violating the same should be expressly stated in the law.

345 Clause 10 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (*supra*) recommended that the duty of the Government to “guarantee that persons with disabilities can exercise their political rights by- (a) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (b) protecting their right to vote by secret ballot in elections and referendums without intimidation and to stand for elections; and (c) allowing assistance in voting by a person of their own choice, on request and facilitating the use of assistive and new technologies where appropriate.” This recommendation is line with Article 29 of the CRPD but it was not adopted in the PWDs Bill, 2016.

persons with disabilities in situations of risk and humanitarian emergencies,³⁴⁶ and access to justice³⁴⁷ should clearly state the role that the State will play in ensuring the fulfillment of these rights.

- b) The PWDs Act, 2006 contains progressive provisions which offer strong protection to PWDs which the Bill ought to reaffirm and not dispose of. Disregarding the already existing protections will amount to retrogression, a violation of the duty of the State to fulfil the human rights of the PWDs.³⁴⁸ For instance, commitment of 10% of the annual education budget to educational needs of PWDs and the promotion of special sexual and reproductive health services to women and girls with disabilities are among the protections which are currently omitted in the Bill. Thus the PWDs Act and PWDs Bill should be harmonized to come up with a comprehensive domestication of the CRPD.³⁴⁹
- c) The PWDs Bill should reaffirm the special protection accorded to women and girls with Disabilities under the CRPD as persons who face multiple forms of disability and put in place measures to ensure that they enjoy their human rights including access to sexual and reproductive health services which entitlement is not guaranteed in the present version of the Bill.
- d) Part VI of the Bill should be amended to provide for accessibility and reasonable accommodation for all PWDs in all spheres of life.
- e) The Bill should guarantee, as a general rule in all cases, the right of all PWDs to exercise their legal capacity and provide for support structures where necessary, in accordance with the CRPD.³⁵⁰ It should expressly provide for the right of PWDs to own property and manage their own affairs.
- f) The Bill should expressly state that all legislation which uses derogatory language and terminology against PWDs such as ‘imbecile’, ‘unsound mind’ and ‘lunatic’ is amended and the continued use of such terms is a violation of the right to respect and dignity of PWDs.³⁵¹
- g) The PWDs Bill should provide for the establishment of a Disability Fund to ensure that the realization of the rights by PWDs is adequately funded by the State.³⁵² This Fund, if established, should be charged on the Consolidated Fund and aimed at supporting the annual budgetary allocation made for implementation of programmes for PWDs and promoting accessibility.³⁵³
- h) The Bill should incorporate strong legal safeguards on the right to liberty of PWDs clearly stating instances which will amount to violation. Although the Bill cites the Trial on Indictments Act, Magistrates Courts Act and Prisons Act as legislations with provisions which are in conflict with the rights of PWDs, it does not make specific provision for the protection of the right to liberty of PWDs nor does it prohibit forced detention and indefinite postponement of criminal proceedings.
- i) The Bill can be explored as an avenue to influence legal reform in the area of mental health. Although it guarantees the freedom of PWDs from torture and cruel, inhuman and degrading treatment, Clause 6 should be revised to expressly prohibit torture and degrading treatment in all health-care institutions,

346 Clause 11 of the PWDs Bill, 2016. Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that “the Uganda Peoples Defence Forces (UPDF), the Uganda Police and any other establishment, whether public or private, engaged in situations of risks and humanitarian emergencies [should], in all situations of armed conflict, take measures to ensure the safety and protection of persons with disabilities. Every reconstruction activity undertaken by the Government in response to any situation of armed conflict, humanitarian emergencies or natural disasters [should] take into account the accessibility requirements of persons with disabilities.” This recommendation is line with Article 11 of the CRPD but it was not adopted in the PWDs Bill, 2016.

347 Clause 12 of the PWDs Bill, 2016. PWDs in Uganda, through the Coalition for a CRPD Compliant Law on Disability (2014-2015) (supra) recommended that “the Minister of Justice shall ensure that all officials engaged in the administration of justice, including police and prison staff, are appropriately trained regarding the rights of persons with disabilities in relation to the judicial process.” This recommendation was not adopted in the PWDs Bill, 2016.

348 Paragraph 20 of the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People’s Rights (Nairobi Principles and Guidelines).

349 Interview with Hon. Lucy Akello, Member of Parliament, supra.

350 Interview with Med Sengooba, Program Officer Africa at Disability Rights Fund, conducted on September 5, 2017, supra.

351 Concluding Observations 2016, supra, at para. 4 and 5, supra.

352 Coalition for a CRPD Compliant Law on Disability (2014), “*Proposed Amendments to the Persons with Disabilities Bill, 2014 as Considered, Accepted and Ratified Through Regional Consultations With Persons with Disabilities and Disabled Persons Organizations (DPOs) Across Uganda*,” supra.

353 Ibid.

both public and private. It should also clearly state that abuses committed in the context of health-care amount to torture or cruel, inhuman or degrading treatment or punishment.

- j) The Bill does not expressly provide for the right of PWDs to liberty of movement and nationality, an anomaly which should be corrected before it is passed into law. The Bill should also recognize the right of persons with psychosocial disabilities to apply for dual citizenship and supersede the Citizenship and Immigration Control Act.
- k) The PWDs Bill should be revised to specifically prohibit the use of derogatory terms against PWDs in all legislation, policies and all their spheres of life. The provision on prohibition of derogatory language should have a criminal sanction in the event of violation. In addition, all words or phrases used to refer to PWDs which are considered to be derogatory should be listed in a Schedule to the Act.

4.2.2 Laws which deprive PWDs of their Liberty

The laws discussed above in this regard include Article 23 (1) (f) of the 1995 Constitution, Sections 45, 48 and 82 (6) of the Trial on Indictments Act, Sections 113 and 117 of the Magistrates Courts Act and Section 74 of the Prisons Act.

- The above provisions should be repealed insofar as they permit forced detention and indefinite postponement of criminal proceedings while ordering incarceration.³⁵⁴
- A procedure, compliant with the CRPD, of handling PWDs in the criminal justice system must be prescribed under the Trial on Indictments Act, Magistrates Courts Act, and Prisons Act.³⁵⁵
- The Uganda Law Reform Commission should revise the procedures laid down in these laws to include “provisions on legal and procedural accommodations” for persons with psychosocial disabilities.³⁵⁶ ULRC should work closely with the relevant stakeholders including MoJC, MoH, MoGLSD, NCD, EOC, UHRC and Persons with psychosocial disabilities and CSOs to come up with an appropriate procedure to be followed when PWDs interface with the criminal justice system, in all courts of law.

4.2.3 Laws on Mental Health

- The Mental Treatment Act, Cap 279 which authorizes the institutionalization of PWDs on the grounds of their disability should be repealed.
- The Mental Health Bill which seeks to amend the gaps and repeal the Mental Treatment Act should be reviewed and amended to comply with the CRPD before it is passed into law.
- The key areas which require revision in order for the Mental Health Bill to comply with the CRPD include:
 - a) Authorization of involuntary institutionalization of PWDs ‘for their care and treatment’ without their free and informed consent;
 - b) Restrictions on the exercise of legal capacity;
 - c) Use of grounds such as the likelihood of PWDs posing a danger to themselves or others and public security as justification for forced care and treatment; and
 - d) Use of inhuman and degrading methods of treatment such as seclusion, electroconvulsive therapy and mechanical restraints on the basis of medical necessity.

³⁵⁴ Concluding Observations 2016, *supra* at para 26 – 27 and National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 86, *supra*.

³⁵⁵ CEHURD v. AG, *supra*.

³⁵⁶ Mafabi, D. C (2016), “Disempowering the Already Marginalized Persons with Mental Disabilities in the Criminal Justice System” Public Interest Law Clinic (PILAC) Working Paper No. 5, May 2016 at p. 47, *supra*.

- The Bill should specifically provide for the right to community based care and living for persons with psychosocial disabilities in Uganda.³⁵⁷
- The relevant stakeholders include MoH, MoGLSD, medical professionals, EOC, UHRC, NCD and persons with psychosocial disabilities and CSOs which advocate for their rights should work closely to revise the Bill to ensure that human rights of PWDs are not violated by medical practices adopted in the law. Members of Parliament, especially members of the Health Committee, should also be a part of these engagements prior to the debating on the Bill in the House to ensure that all the anomalies are addressed prior to its passing.
- The legal reform of mental health legislation in Ghana can be adopted in the Ugandan context. The Mental Health Act of Ghana, 2012 lays down a clear procedure for persons with mental disabilities to challenge continued detention and goes further to create a tribunal mandated to hear complaints of people with mental disabilities detained under the Act.³⁵⁸ The Act also establishes a Mental Health Authority whose mandate includes providing accessible, community-oriented, integrated, quality and culturally appropriate community mental health care to persons with mental illness living in Ghana.³⁵⁹ This is an approach Uganda can also adopt to reform mental health laws and bring them in compliance with the CRPD.

4.2.4 Laws on Marriage and Divorce

- The impugned provisions of the Marriage Act, Customary Marriage and Registration Act, and Hindu Marriage and Divorce Act which deny PWDs the right to exercise their legal capacity on the basis of impairment should be repealed.
- Section 12 of the Divorce Act which includes insanity as a ground for divorce should be repealed.
- The right of PWDs to marry and remain in a marriage should be accorded express protection in the Marriage and Divorce Bill. The Marriage and Divorce Bill, when passed into law, will consolidate all the laws governing marriage and divorce. It therefore poses a great strategy to influence legal reform in the said areas. Efforts should be directed towards revising the Bill to eliminate all provisions which restrict the exercise of legal capacity of persons with psychosocial disabilities with regard to marriage and divorce.

4.2.5 Laws on Succession and Inheritance

- Sections 17, 36 (1) and (4), 184, 190, and 217 of the Succession Act, which have the effect of denying persons with psychosocial disabilities of their right to exercise legal capacity and make legally binding decisions, should be repealed.
- The Succession Bill, which has not yet been passed into law, can be used as an avenue to repeal these provisions of the Succession Act.
- The Administration of Estates of Persons of Unsound Mind Act which establishes a formal substituted decision-making regime for persons with psychosocial disabilities, should be repealed in its entirety and replaced with supported decision-making system, which respects the PWD's autonomy, will, preferences and human rights.³⁶⁰

357 United Nations Human Rights Council (2015) “*Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras*” adopted by the UN General Assembly on April 2, 2015 at the 29th Session A/HRC/29/33 at para 85.

358 Human Rights Watch (HRW), (2012) “Like a Death Sentence: Abuses against Persons with Mental Disabilities in Ghana” October 2012, ISBN:1-56432-945-3 accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3645169/#R7>

359 Movement for Global Mental Health (MGMH), “Mental Health Authority Ghana” accessed at <http://www.globalmentalhealth.org/mental-health-authority-ghana>

360 CRPD General Comment No. 1 on Equal Recognition before the law at para 28 and 29.

4.2.6 The Children (Amendment) Act, 2016

- The 2016 Amendment to the Children Act does not clearly spell out the duty of the State to ensure that children with disabilities realize the full enjoyment of their human rights and freedoms, a contravention of Articles 4 and 7 of the CRPD.
- The law ought to provide in clear terms that the State has the duty to ensure that children with disabilities access education services in Section 10 of the Act as amended.
- In terms of strategy, chances of the Children Act being amended to rectify this are slim because there has been a recent 2016 amendment. However, this can be cured under the PWDs Bill where the role of the State, as a main duty bearer, towards implementation of human rights of children with disabilities should be emphasized. Whereas the PWDs Bill provides for the right to access education in Clause 13, the State is not tasked as the main duty bearer responsible for the realization of this right by all children with disabilities. The PWDs Bill should therefore be revised to i) introduce a provision speaking to the rights of children and ii) emphasize the responsibility of the State in the realization and ensuring enjoyment of all human rights by children with disabilities.

4.2.7 Rights relating to Nationality and Movement

- Section 19C (g) of the Citizenship and Immigration Control Act, which denies persons with psychosocial disabilities the right to apply for dual citizenship, requires urgent amendment to bring it in line with Article 18 of the CRPD.³⁶¹
- The State, through the Law Reform Commission, should repeal this provision to ensure that persons with psychosocial disabilities enjoy the right to movement and liberty guaranteed under the CRPD.³⁶²

4.2.8 Rights relating to PWDs in the Workplace

- The Employment Act definition of disability under Section 2 should be broadened in harmony with the CRPD definition.
- The CRPD guarantees including reasonable accommodation should be incorporated in the Employment Act.
- The employment Act and Regulations should be revised to provide safeguards for PWDs employed in the informal sector for example the right to equal pay for work of equal value.³⁶³
- It should be noted however, that the PWDs Bill provides for the right of PWDs to reasonable accommodation in employment.³⁶⁴ The Bill is therefore a means of legal reform in the employment laws above in itself. Efforts should therefore be targeted towards the enactment of the PWDs Bill which incorporates protections under the CRPD for PWDs in the workplace.

4.2.9 Laws governing the Right to Adequate Standard of Living and Social Protection in Uganda

- The National Health Insurance Bill should recognize PWDs as a special category in their own right or as a dependant under a primary beneficiary under the National Health Insurance Scheme.³⁶⁵
- The numerical limit of dependents per beneficiary should be removed to ensure that all PWDs, especially the most vulnerable such as women, older persons and children with disabilities benefit from

361 Concluding Observations, para 36 and 37.

362 National Union of Disabled Persons of Uganda (NUDIPU) (2013), “*Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD)*” December 2013 at para 114.

363 Concluding Observations 2016, para 52.

364 Clauses 19 (2), (3) and (4) of the PWDs Bill.

365 Initiative for Social and Economic Rights (ISER) (2015), “*Getting it Right: Uganda’s Proposed National Health Insurance Scheme*” Economic and Social Rights Advocacy (ESRA) Brief, Issue 4, April 2015 at p. 10.

the National Health Scheme in families where beneficiaries have more than four (4) dependants.³⁶⁶

- The Healthcare Benefits package of National Health Insurance Scheme under Schedule 1 of the Bill should be broadened to include disability friendly aspects such as the provision of assistive devices or professional assistance when required at health facilities for instance sign language interpreters.
- The MOH should take steps to revise the National Health Insurance Bill to make provision for access to free health services for PWDs in line with Article 32 on affirmative action and the CRPD. Other key stakeholders including the MoGLSD, EOC, UHRC, civil society and PWDs, who should lobby for this revision of the Bill.
- Members of Parliament should also be engaged to ensure that the provisions in the Bill which are likely to exclude PWDs from benefiting from the National Health Insurance Scheme such as the proposed phased implementation of indigents and informal sector are amended to ensure access to health services by PWDs in accordance with Article 25 of the CRPD.

4.2.10 Electoral Laws and Participation of PWDs in Public Affairs

- The electoral laws of Uganda including Article 80 of the Constitution of the Republic of Uganda, 1995, Presidential Elections Act, 2005 as amended, Parliamentary Elections Act, 2001 as amended, Local Government Act, Cap as amended, and Electoral Commission Act, Cap 140 as amended require amendment to recognize the right of all PWDs to participate in the public affairs, as both candidates and voters under Article 29 of the CRPD. The State, through the Uganda Law Reform Commission, should therefore take steps to repeal these discriminatory provisions, including Article 80 of the 1995 Constitutions and other Constitutional provisions.³⁶⁷
- Clause 10 (3) of the PWDs Bill guarantees the right of PWDs to be appointed for any political office or other public position, a provision which will cure the above concerns when the Bill is passed into law. However, the Constitution, which is the supreme law, takes precedence to all subsidiary laws thus this provision will require a constitutional amendment to address the violation embedded in Article 80.
- The duty of the State to ensure the realization of the right to vote, through the Electoral Commission, should be emphasized in the PWDs Bill. This Bill should therefore be revised to expressly state the duties of the Government to provide voting materials in accessible formats which are easy to understand and ensure that PWDs can vote in a conducive and secretive environment.

4.2.11 Other Laws which restrict Legal Capacity of PWDs on the basis of Impairment

4.2.11.1 Trial on Indictments Act, Cap 23 and Evidence Act, Cap 6

- Section 68 (1) of the Trial on Indictments Act which states that deafness, blindness and mental infirmity are grounds to challenge the appointment of an assessor before swearing in should be repealed for being discriminatory. Similarly, Section 113 which prohibits ‘lunatics’ from being witnesses in court proceedings should be repealed. It is important to note that Clause 12 (3) of the Persons with Disabilities Bill cures this anomaly by providing that PWDs “shall not, by reason only of their disability, be taken to be unfit persons, including but not limited to serving as judicial officers, sureties, assessors or witnesses.”
- Enactment of the PWDs Bill is therefore a means of realizing legal reform in terms of participation of PWDs in the administration of justice. However, the Bill needs to be revised to make provision for accessibility, gender and age procedural accommodation for PWDs in courts of law to facilitate their access to justice.³⁶⁸ This includes ensuring that PWDs obtain information in accessible formats such as “braille, tactile, augmentative and alternative formats and Ugandan sign language.”³⁶⁹

366 ISER (2015), *ibid.* at p. 8.

367 Concluding Observations 2016, para 57.

368 Concluding Observations, para 24 and 25.

369 *Ibid.*

- The National Union of Disabled Persons of Uganda (NUDIPU) is working closely with other organizations including Public Interest Law Clinic (PILAC), Center for Disability Law and Policy (CDLP) to develop Judicial Rules on Disability to guide judicial officers on how to deal with PWDs when they interface in courts of law.³⁷⁰ In terms of scope, the Rules cover a number of aspects to ensure inclusion of all types of disabilities in the court or trial processes including reasonable accommodation for PWDs.³⁷¹ If the courts are made to appreciate the importance of inclusion of PWDs in the court system, amendment of laws which inhibit PWDs in accessing justice will be inevitable. Therefore engagement with the Judiciary in this regard is of utmost importance.³⁷²

4.2.11.2 Advocates Act, Cap 267

- Section 12 (1) (b) of the Advocates Act which prohibits the Registrar from issuing or renewing a practicing certificate of any advocate is “adjudged to be of unsound mind under the Mental Treatment Act should be repealed.
- Clause 20 (1) of the PWDs Bill is a great avenue of legal reform in this area because it protects the right of PWDs to engage in any lawful business, trade or occupation of their choice. Further Clause 10 (3) of the Bill guarantees the right of PWDs to be appointed for any political office or other public position.

4.3 Conclusion

The CRPD sets a threshold for the protection of the human rights and freedoms of PWDs in member States, Uganda inclusive. The State committed to domesticate the CRPD in its national laws and take steps to amend or repeal legislation which contravene the CRPD principles including non-discrimination, equality of opportunities, independence, inherent dignity and individual autonomy of PWDs.

To date, Uganda lacks a legislation domesticating the CRPD and its existing legislation perpetrates discrimination against PWDs in various spheres of their lives. The State has therefore, on the most part, performed below the standard laid down in Article 4 of the CRPD with regard to adopting legislative measures to redress past imbalances faced by PWDs and ensure compliance with the Convention. Hence forth, the Government must take urgent and targeted steps towards the legal reform of the laws in question as a matter of urgency and importance to ensure that PWDs in Uganda are able to fully realize and enjoy their rights. As observed in the report above, the PWDs Bill is a critical legislation through which the anomalies in the various laws discussed can be cured in the short term thus energies and efforts should be directed towards revising the Bill to align it with the CRPD.

³⁷⁰ Interview with Esther Kyoziira, Program Manager, NUDIPU, *supra*.

³⁷¹ *Ibid*.

³⁷² *Ibid*.

5.0 APPENDICES

5.1 Interviewees

Zaminah Malole – Member of the Equal Opportunities Commission (EOC)

Masaba Wekesa – Commissioner, Disability and the Elderly, Ministry of Gender, Labour and Social Development (MoGLSD)

Hon. Lucy Akello – Member of Parliament, Shadow Minister for the Ministry of Gender, Labour and Social Development, and member of the Gender, Labour and Social Development Committee, Parliament of Uganda

Beatrice Guzu – Executive Secretary, National Council for Disability (NCD)

Med Ssengooba – Program Officer Africa, Disability Rights Fund (DRF)

Derrick Kizza – Mental Health Uganda (MHU)

Joseph Mbulamwana – Uganda National Association of the Deaf (UNAD)

Esther Kyozira – Program Manager, National Union of Disabled Persons of Uganda

Jolly Acen – Executive Director, National Union of Women with Disability of Uganda (NUWODU)

5.2 Legislation Analyzed in the Study in the order of Analysis

Persons with Disabilities Bill, 2016

Article 23 of the Constitution of the Republic of Uganda, 1995

Trial on Indictments Act, Cap 23 as amended in 2008

Magistrate Courts Act, Cap 16 as amended in 2007

Prisons Act, 2006

Mental Treatment Act, Cap 279

Mental Health Bill, 2014

Marriage Act, Cap 251

Customary Marriage and Registration Act, Cap 248

Hindu Marriage and Divorce Act, Cap 250

The Marriage and Divorce Bill, 2009

Divorce Act, Cap 249

Succession Act, Cap 162

Succession Bill, 2011

Administration of Estates of Persons of Unsound Mind Act, Cap 155

Children (Amendment) Act, 2016

Citizenship and Immigration Control Act, Cap 66 as amended in 2006 and 2009

Employment Act, 2006

Employment Regulations, 2011

National Health Insurance Bill, 2014

Article 80 of the Constitution of the Republic of Uganda, 1995

Presidential Elections Act, 2005 as amended

Parliamentary Elections Act, 2001 as amended

Local Government Act, Cap as amended

Electoral Commission Act, Cap 140 as amended

Trial on Indictments Act, Cap 23

Evidence Act, Cap 6

Advocates Act, Cap 267

