

# THE PERSONS WITH DISABILITIES BILL 2014: A POOR ATTEMPT AT REINVENTING THE WHEEL

*By Veronica Kange*

## I. Introduction

In 2002, it was estimated that 16% of Ugandans were disabled.<sup>1</sup> The accompanying statistics in part informed the drafting of the 2006 Persons with Disabilities Act—partly as a measure to bring Uganda’s legal regime in line with international standards. On the 24<sup>th</sup> of May, 2006, President Museveni assented to the Persons with Disabilities Act, 2006. This was a welcome step, domesticating the UN Convention on the Rights of Persons with Disabilities. Most notably The Act was meant to operationalize Articles 32 and 35 of the 1995 Constitution, which guarantee the rights of PWDs.

Given the importance of the UN Convention on the Rights of Persons with Disabilities (CRPD),<sup>2</sup> the 2006 Act was applauded for domesticating most of the provisions of the Convention on Rights of Persons with Disabilities, which Uganda had earlier adopted and ratified. Like the proverbial seeds that fell on hard ground, the law was subject to controversy from the start. Many actors thought the Act focused on too many policy matters as opposed to actual law.<sup>3</sup> Ambiguity of some provisions, use of policy language, and presence of provisions that weren’t legally tenable<sup>4</sup> were some of the highlighted shortfalls. Nevertheless, Civil Society Organizations welcomed the Act, while calling for amendments to address the loopholes. The Legislature has since responded by introducing the Persons with Disabilities Bill 2014 to replace and reform the existing law. For brevity The 2014 Bill will hereon be referred to as the Bill while the Persons with Disabilities Act, 2006 will be called the 2006 Act.

## II. Matters of Concern

### a. *Definition of Disability*

Clause 2 of the Bill defines Disability to mean a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barrier, resulting in limited participation and includes an impairment specified in schedule 3 to this Act. The definition is largely medical thus limiting a broad coverage of all PWDs. Recognizing that most disabilities in Uganda are societal constructs, the bill could have been clearer in addressing this through the definitions. A look at the inclusive definition of the CRPD makes this more apparent. The CRPD defines PWDS to include “those who have long-term physical, mental,

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<sup>1</sup> 2002 UBOS Population and Housing Census [www.ubos.org/onlinefiles/uploads/ubos/pdf\\_documents/2002](http://www.ubos.org/onlinefiles/uploads/ubos/pdf_documents/2002)

<sup>2</sup>Convention for the Rights of Persons with Disabilities. Available online at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

<sup>3</sup> Juliet Waiswa PWDs want government to expeditious amend their 2006 Act published on April 12, 2014 in the New Vision Newspaper Available at <http://www.newvision.co.ug/news/654479-pwds-want-government-to-expeditious-amend-their-2006-act.html>

<sup>4</sup> Para 2 Memorandum to the Persons with Disabilities Bill, 2014

intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>5</sup>

Such a broad definition brings in an aspect of ‘*equality*’ which is at the core of human rights principles of inclusion and non-discrimination.

Similarly, a look at the categories of disabilities listed under Schedule 3 of the Bill reveals that the Bill is less inclusive in its terms compared to the 2006 Act. The Act took in wide consideration of all possible causes and origins of all functional limitations such as TB and skin disorders (outside albinism). The Bill makes no mention of conditions that are genetically predetermined, biologically or neurologically based like Downs Syndrome. The exclusion of all these categories from the definition automatically disqualifies some Ugandans living with such disabilities from the protection of the Bill and instead opens up the Bill for statutory interpretation if such conditions are to be recognized.

Therefore, any definition adopted must be wide and all inclusive. We could for example borrow a leaf from the 2014 Indian Rights of Persons with Disabilities Bill, which defined disability to include conditions like haemophilia and persons with benchmark disabilities.<sup>6</sup> These were defined as people with at least 40 per cent of any of the specified disabilities in the bill. This is a positive aspect, as it may be used in determining particular benefits that exist for PWDs for example social security or affirmative action. It is therefore from this undertaking, that the proposed bill adopt a similar approach to ensure that all PWDs are protected by the law.

#### *b. Determination of Disability*

As with the definition of disability in the Bill, there is no leeway given to the dignity of PWDs. The mode for determination of disability is very limiting. The Third Schedule to the bill, provides that determination of a disability will be done by a medical doctor with relevant expertise after carrying out an examination. Given that disability can be viewed from a social aspect and not just the established medical specifications, this provision is very limiting and should be broadened to cover societal aspects of disability that may not be medically proven. It is therefore prudent to consider the inclusion of conditions without an apparent medical explanation which would be excluded by this Bill should it become law in its present state. Conditions affecting behavior, cognitive ability and social skills are just some of those that the Bill fails to address and as such it falls short on the scales of inclusivity. The list of determinants of disability should therefore be widened to include educationists, psychologists, cultural leaders and community representatives. This can be a committee or a selection of a few people from amongst those.

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<sup>5</sup> Article 2, United Nations Convention on Rights of Persons with Disabilities.

<sup>6</sup> Introduced in Rajya Sabha in India on February 7, 2013 by Mr. Mallikarjun Kharge the Minister of Social Justice and Empowerment.

More so, the very idea of only medically ascertained disability is very discriminative because it seeks to label Persons with disabilities and confine them to a category that excludes the rest that may not fall within the defined category.

Thirdly, referencing the Mental Treatment Act (1964) is a weakness, as this Act is outdated and unhelpful because of its archaic provisions. It shares the same outdated definitions and uses derogatory language. It is therefore important that the current bill is streamlined within prevalent conditions and legal frameworks that have evolved in language and practice to cover modern day health complications.

*c. The Bill vis-à-vis the International Legal Framework*

The Bill, unlike the 2006 Act, doesn't make mention of the United Nations Convention on the Rights of Persons with Disabilities (CRPD),<sup>7</sup> to which Uganda is a signatory and a fully ratified member state. As such, the Bill excludes a number of rights which are enshrined in the CRPD. Whereas the bill promotes respect for the right to life and non-discrimination in education, health, employment and accessibility, one cannot help but notice the glaring gaps.

Clause 4 of the Bill makes a blanket provision to capture all the rights in the constitution. Pertinent issues like access to justice and equal recognition before the Law, freedom from torture and other cruel, inhuman and degrading treatment, violence and abuse, respect for privacy, liberty of movement and nationality, habilitation and rehabilitation, social protection, participation in political and public life, participation in cultural life, leisure, recreation and sports, all guaranteed under Articles 12, 15, 22, 18, 28 and 30 of the UN Convention on Rights of Persons With Disabilities are not specifically named. These are core areas where PWDs face significant violations of their rights and thus require specific mention in any laws tailored to address their fundamental rights. Furthermore, the long title should be revised to include provisions for the specific rights that are included in the CRPD but are not mentioned in the current bill.

*d. Commencement of the Bill and Government Obligation*

Clause 1(2) of the Bill empowers the Minister to appoint different dates for the commencement of different provisions of this Act which may slow down the process of implementation. The law should be commenced in its entirety, because it is a continuation and an affirmation of earlier legislation that contained similar provisions, but have not wholly or even partly been realized during the nine years since the 2006 Act.

Secondly, the language used in most clauses is non-committal on the part of government. Whereas the current Act includes government among the duty bearers, the Bill does not. According to the committee on Gender, Labor and Social Development chaired by Nakasongola district woman MP Margaret Komuhangi, “the Bill in its current form tends to make government run away from its responsibilities of providing for persons with disabilities

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<sup>7</sup> Olive Nakatudde, Activists Want PWDs Bill 2014 Amended, Uganda Radio Network, February 20, 2015, accessed at <http://ugandaradionetwork.com/a/story.php?s=71245>.

(PWDs).”<sup>8</sup> Whereas government made much ado about the Act containing policy matters, the keen avoidance of any responsibility in the Bill reveals a non-committal spirit in the text of the new law. Therefore the Bill in its current state risks following the path of the old Act of non implementation. It is not enough to apportion responsibility to the private sector without the clear role of government as a custodian of state resources.

*e. Affirmative Action for Children*

Part II of the 2006 Act on the right to quality education and health is very comprehensive and clear on affirmative action. The Bill, just like the Act, should also provide for affirmative action for children with disabilities at lower and higher institutions of learning so as to create equal grounds for them in the enjoyment of the right to education. This could be effected by admission of students with disabilities on government sponsorship at higher institutions of learning, provision of assistive devices for children with disabilities to enable them learn effectively, provision of Braille and sign language interpretation.

*f. Ambiguous Provisions*

The ambiguity of some sections of the Bill require clarification. Schedule 8, subsection 2(a) of the Bill, for example, calls for encouragement of persons with disabilities to apply for a job “where appropriate.” However, what amounts to “where appropriate” is not defined. Who for example determines what is appropriate and on what basis? This provision is problematic and requires interpretation in the text so as not to be subject to abuse.

Furthermore, Schedule 8, subsection 5 of the Bill allows employers of employees with disabilities a deduction from chargeable income as may be provided for by The Income Tax Act. The provision is very broadly stated and requires clarification. The PWDs Act 2006 Article 17 on Tax reduction is more specific. It states that private employers who employ ten or more persons with disabilities either as regular employees, apprentice or learner on full time basis shall be entitled to tax deduction of fifteen percent of all payable tax upon proof to the Uganda Revenue Authority. The provision should be adopted and amended to specify the conditions of employment of Persons With Disabilities to avoid abuse by the employers.

*g. Rehabilitation and implementation*

The rehabilitative clauses (Sections 10 and 11) of the PWDs Act are very important and should be reflected in the bill. The government should not be given the luxury of neglecting a section of its citizens simply because they require special attention. The Bill should also adopt affirmative action clauses enshrined in Section 13 of the Act to encourage employers to employ persons with disabilities and provide accessible facilities for them.

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<sup>8</sup> Henry Sekanjako, MPs move to reject new Bill on persons with disabilities, The New Vision, October 7, 2014, accessed at <http://www.newvision.co.ug/news/660515-mps-move-to-reject-new-bill-on-persons-with-disabilities.html>.

The 2006 Act was scarcely implemented. It has been argued that the law has in fact been subjected to amendment before implementation.<sup>9</sup> It is therefore crucial that the Bill sets out the mode of its implementation. Such could be in form of a scheme, where the government, through the Ministry of Gender, Labour and Social Development (MoGLSD) sets aside a budget which they can use to implement affirmative action for PWDs. This fund is especially relevant because the MoGLSD is one of the least funded ministries currently, and a separate fund will go a long way in supporting the realization of the rights of persons with disabilities.

### **Conclusion**

The reality is that the PWDs Act is not a perfect law but it is comprehensive and legislates on all pertinent issues that affect persons with disabilities in this country. According to Busingye Kabumba, "the draft law is regressive and less effective than the 2006 Act it seeks to replace."<sup>10</sup> Hence, merely repealing it with the proposed bill will not only take us many steps back but will also leave us in the hands of a law that is highly suspect, exclusionary and lacking in many respects as discussed above. The biggest challenge in the 2006 Act was implementation and, thus, there is need to build on the Act with current realities in mind, rather than taking us back years in the protection of rights of PWDs. We should therefore be guided by the loopholes of the Act in finding conditional, operationalized and penal amendments that will perfect the Act. It is therefore important that the legislative body revisit the bill and make amendments that are geared at strengthening the 2006 Act.

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<sup>9</sup> Patrick Ojok, Beyond Legislation, Implementing the employment provisions of the Persons with Disabilities Act (Uganda) 2006 and the United Nations Convention on Persons With Disabilities 2006, accessed at <http://www.jus.uio.no/smr/english/research/areas/development/docs/ojok.pdf>.

<sup>10</sup> Olive Nakatudde, Activists Want PWDs Bill 2014 Amended, *Supra* note 7.