

**A LEGAL ANALYSIS ON SEXUAL VIOLENCE AND ACCESS  
TO JUSTICE FOR MINORS AND PERSONS WITH  
DISABILITIES IN UGANDA.**

**BY  
ABER PATRICIA  
LLB/38115/123/DU**

**A DISSERTATION SUBMITTED TO SCHOOL OF LAW IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR  
THE AWARD OF DEGREE OF BACHELOR OF LAWS OF  
KAMPALA INTERNATIONAL UNIVERSITY**

**JUNE, 2016**

## DECLARATION

I, ABER PATRICIA, declare that this thesis is my work alone, except where due acknowledgement is made in the text. It does not include materials for which any other university degree or diploma has been awarded.

Name: ABER PATRICIA

REG NO: LLB/38115/123/DU

Sign... 

Date... 13 June 2016.

## APPROVAL

I certify that I have supervised and read this study and that in my opinion; it conforms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University.

Signed:.....

MR. WANDERA ISMAIL

Date:.....13/06/2016.....

## **DEDICATION**

This dissertation is dedicated to my family members; dad, mum brothers and sisters, relatives and friends for their financial and emotional support.

I also dedicate this dissertation to all those who, in one way or another, facilitated my long academic journey, all the way to this Bachelor level.

Heartfelt thanks to you all.

God bless you.

## **ACKNOWLEDGEMENT**

First and foremost I am grateful to the Almighty God for guaranteeing my physical and intellectual health for the whole period of my course and for making the completion of this dissertation possible.

I would also like to acknowledge the contribution of my lecturers and all those who assisted me in this paper. Special appreciation goes to my supervisor MR. WANDERA ISMAIL for the valuable comments and commitment while doing this work

I would like to extend my sincere heartfelt gratitude to my family members for their ever present and emotional support.

Lastly, I acknowledge the support, advice and encouragement of those who supported me in this course, whom without; I may not have completed this exercise on time.

God bless you all.

## **LIST OF ACRONYMS AND ABBREVIATIONS**

CJS	Criminal Justice System
CWDs	Children with Disabilities
DPP	Director of Public Prosecutions
ICCPR	International Covenant on Civil and Political Rights
MWDs	Men with Disabilities
NGO	Non-Governmental Organizations
NPD	National Policy on Disabilities
PWDs	Persons with Disabilities
UHRC	Uganda Human Rights Commission
SVRI	Sexual Violence Research Initiative
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNCRC	United Nations Convention on the Rights of Children.
NCD	National Council on Disability

## **LISTS OF STATUTES AND INSTRUMENTS**

The 1995 Constitution of the Republic of Uganda as amended

The Children Act cap 59

The Persons with Disabilities Act 2006

The National Council for Disability Act 2003

The United Nation's Convention on the Rights of Persons with Disability

The United Nations Convention on the Rights of Children

## Table of Contents

DECLARATION .....	i
APPROVAL .....	ii
DEDICATION .....	iii
ACKNOWLEDGEMENT .....	iv
LIST OF ACRONYMS AND ABBREVIATIONS .....	v
LISTS OF STATUTES AND INSTRUMENTS .....	vi
ABSTRACT .....	ix
CHAPTER ONE .....	1
1.0. Introduction .....	1
1.1 back ground of the study .....	1
1.2. Statement of the problem .....	3
1.3. Research questions .....	3
1.4. Purpose of the study .....	4
1.5. Research objectives .....	4
1.6. Scope of the study .....	4
1.7. Significance of the study .....	4
1.8. Research methods .....	5
1.9. Literature review .....	5
2.0. Introduction .....	8
2.1. Defining persons with disabilities and minors .....	9
2.1.1. The impact of medical model of disability on Minors and PWDs' effective access to justice .....	11
2.1.2. Human rights-based approach to disability .....	12
2.1.3. Minors, Disability and national laws .....	12
2.2. Disability, minors and access to justice .....	13
2.2.1. Defining access to justice .....	14
2.2.2. Existence of normative legal framework that guarantees Minors and PWDs access to justice .....	16
2.2.3. Victim's knowledge of the law .....	16
2.2.4. Access to the built environments .....	16
2.2.5. Effective administration of justice .....	17
2.3. Key barriers to accessing justice .....	17



2.3.1. Structural barriers .....	18
2.3.2. Physical barriers.....	18
2.4. Criminal justice system.....	19
2.5. Sexual violence against Minors and PWDs.....	19
2.5.1. Sexual violence for Minors and PWDs under the UNCRPD and the UNCRC.....	21
2.5.2. Sexual violence for PWDs and minors under other UN-treaties .....	22
2.5.3. Sexual violence for Minors and PWDs under African Human Rights Framework. ....	23
2.6. Conclusion .....	24
CHAPTER THREE .....	26
3.0. Introduction.....	26
3.1. A legal analysis on Disability and the law.....	27
3.2. The legal analysis on sexual violence against Minors and PWDs.....	29
3.3. The legal analysis on access to justice for Minors and PWDs. ....	31
3.3.1. Discrimination and access to justice.....	32
3.4. Analysis of the law on access to built environment focusing on Minors and PWDs.....	35
3.5. Conclusion .....	37
CHAPTER FOUR. ....	38
4.1. Introduction.....	38
4.2. Effects of sexual violence and Access to justice on minors and PWDs.....	38
4.3. Government initiative to protect PWDs and minors against sexual violence and enable them to access to justice.....	42
4.4. Conclusion.....	44
CHAPTER FIVE .....	45
CONCLUSION AND RECOMMENDATION .....	45
5.0. Introduction.....	45
5.1. Summary .....	45
5.2. Conclusion .....	46
APPENDICES .....	50
BIBLIOGRAPHY.....	50

## **ABSTRACT**

The study's main objective was to critically analyze access to justice in relation to sexual violence law in Uganda and the specific objectives were to;

1. To analyze the existing laws in relation to defilement in Uganda.
2. To find out legal and policy frame work on Access to justice and sexual violence on minors and persons with disabilities.

The study was done in Uganda in the districts of Kampala and Kitgum in Northern Uganda and the respondents were sampled from police, parents non-governmental organizations and law makers overall a sample size of thirty was reached and data was gathered about the topic.

This report is organized into five chapters, chapter one covered introduction and background information, contains a brief over view of sexual violence and access to justice with a critical analysis of the law in Uganda. The study objectives, significance of the study, justification of the study, statement of the problem and research questions are all noted in this chapter. Chapter two brings out the related literature reviewed; chapter three explains the methodology that was used. Chapter four states the findings presented analyzed and discussed according to each study objective and finally chapter five presents the summary of the lessons learnt from the study, conclusions, recommendation and areas of further study.

The study revealed that the Ugandan law on sexual violence seems sufficient in protecting persons with disabilities and minors but they have gaps in them because most of the cases are not prosecuted hence government needs to increase sensitization and put the laws to strict adherence by stake holders.

## CHAPTER ONE

### 1.0. Introduction

This chapter provides an introduction for the proposed study. It aims at bringing out the research problem and clarifying its settings therefore it will be discussed under the background of the study, significance of the study and its conceptual framework

### 1.1 back ground of the study

Access to justice is the ability to obtain a just and timely remedy for violations of rights<sup>1</sup> as put forth in national and international norms and standards including the United Nations Conventions on the Rights of a Child (UNCRC).

Access to Justice generally contains 3 distinct, yet interdependent components:

“Substantive justice who concerns itself with an assessment of the rights claims that are available to those who seek a remedy; Procedural aspects which focus on the opportunities and barriers to getting one’s claim into court (or other dispute resolution forum); and, The symbolic component of access to justice which steps outside of doctrinal law and asks to what extent a particular legal regime promotes citizens’ belonging and empowerment”.<sup>2</sup>

Sexual violence is any act or attempt to obtain a sexual act by violence or coercion, unwanted comments or advances, acts to traffic persons or acts directed against a person’s sexuality regardless of the relationship to the victims<sup>3</sup>. The main forms of sexual violence are; rape, simple and aggravated defilement, indecent assault, incest, prostitution<sup>4</sup> to mention but a few.

although the United Nations Convention the rights of the child (UNCRC) clearly articulates that it is the state’s responsibility to protect children from all forms of violence,<sup>5</sup> it is widely acknowledged that globally little of that obligation has been translated into practice.

---

<sup>1</sup> A practitioner’s guide to human rights based approach to access to justice, UNDP, Bangkok, 2005

<sup>2</sup> R. Bahdi, “Background Paper on Women’s Access to Justice in the MENA Region”.

<sup>3</sup> WHO, world report on violence and health (Geneva: WHO 2002)

<sup>4</sup> Chapter XIV of the Penal Code act, cap 120

<sup>5</sup> Article 19 UNCRC

In Uganda, the situation is much different. Little is known about the children's perspectives on the nature and extent of sexual violence used against them. Less is known about who perpetrates the violence, where children most commonly experience it, and what ought to be done about it.

The concept of protection of children means pursuing all activities aimed at ensuring respect and fulfillment of the children's rights as experienced in the CRC and other international Human Rights instruments. The government of Uganda ratified and domesticated the CRC by enacting a law for children. The rights of the child are therefore comprehensively addressed under the Uganda legal frame work.

The United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) regards sexual violence against Persons with Disabilities (PWDs), a violation of human rights<sup>6</sup>. Uganda is a state's party to the UNCPRD as it ratified it and its protocol on 25<sup>TH</sup> September 2008 without reservation. Therefore, they are under obligation to undertake all measures to protect PWDs from all forms of exploitation, violence and abuse.

Uganda has also domesticated the CRPD by enacting the Persons with Disability (PWDs) Act 2006 implying that the rights of the PWDs are also fully addressed.

Despite the preceding guarantee, sexual violence generally reported, has been on the increase in Uganda. Although this increase shows the general trend, PWDs and minors in particular have been affected disproportionately. Indeed, some studies suggest that, sexual violence against PWDs and minors do happen even more frequently than does violence against those of majority age and non-disabled persons<sup>7</sup>. A comparable study in Tanzania equally indicates that, persons with disabilities are victims of sexual violence on a far greater scale than persons without disabilities. Thus, given this trend, the present study becomes necessary in order to assess the effectiveness of the criminal justice system in Uganda and to assess its ability to afford accessible justice for minors and PWDs as a reaction to sexual violence.

---

<sup>6</sup>Art 16 of the UNCPRD

<sup>7</sup>Human right watch; as if we weren't human: Discrimination and violence against women with disabilities in Northern Uganda <<http://www.hrw.org/sites/default/files/report/Uganda>>

## 1.2. Statement of the problem

According to the 2008, Uganda disability survey<sup>8</sup>, more than eight percent of the general population are estimated to have some form of disabilities. These figures cover both physically and cognitive impaired persons. The comparable statistics indicate the prevalence of Minors and PWDs of over two million in Uganda. Historically, persons with disabilities have been discriminated against because of their disabilities. Discrimination, misperceptions and stereotypes about PWDs and a subsequent history of oppression put PWDs at an increased risk of sexual violence<sup>9</sup>. The same perception is also applies to children.

Despite the right to accessing justice guaranteed by the UNCRPD<sup>10</sup>, yet, there persists barriers to accessing justice for Minors and PWDs. Attitudinal, physical, and communication barriers in the justice system in particular the police and courts, leave persons with disabilities and minors who are victims of sexual violence unattended, hence resulting to prolonged PWDs exposure and defenseless against further abuses. Research in this area suggests that, mere acts of sexual violence are rarely reported to protective agencies, as such, if sexual violence is committed against Minors and or PWDs, the underreporting is even aggravated since the society is generally not prepared to respond to particular needs of PWDs an minors. Research further suggests that, where acts of sexual violence are reported, PWDs who are victims of sexual violence are likely to encounter professionals who show emotional resistance, little knowledge and skills, and even greater likelihood to re-victimize the already sexually victimized Minors and or PWDs<sup>11</sup>.

## 1.3. Research questions

From the above identified problems, the study proceeds to investigate the following key questions:

1. To what extent do policies and laws in Uganda address sexual violence against Minors and PWDs?
2. To what extent do policies and laws in Uganda guarantee access to justice for Minors and PWDs?

---

<sup>8</sup> National Bureau of Statistics, Uganda disabilities survey report (2008)<accessed on 08 February 2016>

<sup>9</sup> ibid

<sup>10</sup> Art 13ibid

<sup>11</sup> D Udell & Dellers' Access to justice, opening the courthouse door'

<[http://brenam.3cdn.net/297f4fbb202470c67\\_3vm6i6ar9.pdf](http://brenam.3cdn.net/297f4fbb202470c67_3vm6i6ar9.pdf)> (accessed 08 February 2016)

#### **1.4. Purpose of the study**

This study proceeds with an assumption that minors and persons with disabilities experience discrimination in various forms, including sexual violence and obstacles in accessing justice but that there could be gaps in the laws and policies aimed at protecting the persons with disabilities. Given this, Minors and PWDs could be confronted with a multitude of barriers in institutional and physical set up of justice system in Uganda.

#### **1.5. Research objectives**

On the basis of the issues identified, the purpose of this study is three fold:

1. It seeks to expose the nature and forms of sexual violence experienced by Minors and PWDs in Uganda?
2. It investigates access to justice for Minors PWDs in sexual violence situation? And
3. It intends to offer recommendations to improve Minors and PWDs accessibility to justice system?

#### **1.6. Scope of the study**

This study is to be conducted in northern Uganda and Uganda at large where disability remains a largely invisible issue. The researcher shall be able to locate abundant literature addressing sexual violence against minors generally and persons with disabilities in particular. On access to justice generally, the researcher shall located a wide body of literature, addressing particularly access to justice for both Minors and PWDs in sexual violence situation.

#### **1.7. Significance of the study**

1. to form a basis for further research for any person who may be interested in this area of study and is to be used as a reference and source of literature pertaining sexual violence on children and persons with disabilities in Uganda
2. is to guide policy makers both government and non -governmental organizations In drafting the guidelines that helps to provide an appropriate approach in dealing with issues sexual violence pertaining children and persons with disabilities.
3. Further it is to help policy makers in amending laws on matters concerning sexual violence and access to justice for minors and persons with disabilities.

## 1.8. Research methods

The study involves a combination of comparative and analytical approaches. In-depth review of national laws, relevant international treaties, policies and other documents considered pertinent to this research are considered. Throughout this research, primary sources including legislation, treaties, declarations, resolutions, and reports are critically examined to assess their relevance in affording access to justice to Minors and PWDs who fall victims of sexual violence. Interviews were also conducted, especially to solicit pertinent information on the underlying legal framework regulating accessibility to built structures. Northern Uganda remains focal points in this research.

## 1.9. Literature review

Minors and Persons with disabilities experience sexual violence at alarming rate<sup>12</sup>.

Yet, they are less likely to receive judicial remedies that their counterparts without disabilities receive<sup>13</sup>. Civjan argued that, PWDs who are victims of sexual violence, more often meets justice system that is inadequately prepared to meet their particular needs.

He further noted that, there are several reasons for this lapse, which includes societal, attitudinal and some, physical. Naidu et al stated that, the way the society makes sense of disability often determines its response to the needs of disabled people. Making this sound more realistic Civjan observed that, PWDs are often treated as children, devalued, or simply not thought of when programs are designed. Alongside this societal perception, physical and attitudinal barriers to accessing justice system persist at a significant level. It is important to note that, PWD's experiences of sexual violence often occurs in astounding situations, abuse by partners, caregivers, and family members is so common among persons with disabilities „that it can be assumed to exist in any local .In this respect, research shows that, many adults with disabilities have experienced sexual abuse either in their adulthood or they may be adult survivors of childhood sexual abuse<sup>14</sup>.Smith and Harrell observed that, isolation within a community, reliance on caregivers for personal care, and limited transportation options

---

<sup>12</sup> SR Civjan' Making sexual assault and domestic violence accessible'

<sup>13</sup> SR Civjan "making sexual assault and domestic violence available"

<sup>14</sup> People with disabilities and sexual assaults<Disabilities and sexual assaults.

does create unsafe situations for Minors and PWDs<sup>15</sup>. Furthermore, severe underreporting of sexual violence crimes and perpetrator's perception of PWDs as easy targets because of societal stereotypes and extremely low rates of prosecutions, serves to further expose Minors and PWDs to sexual violence crimes<sup>16</sup>.

Although this research does not attempt to categorize disabilities, Sobsey associates diversity in disabilities to their increased vulnerability to sexual violence. He observes that, disability encompasses a broad and diverse range of disability types, including cognitive, physical, sensory, and psychiatric disabilities which take the form of limitations and mobility and any result of neurological conditions. Unlike Sobsey, Anello identified six types of disabilities; physical disabilities, developmental (or intellectual) disabilities which Usually associate with delayed or limited development in learning that affect persons with ability to understand, differentiate or remember., mental health or psychiatric disabilities which include major depressive disorder, learning disabilities that Usually associate with delayed or limited development in learning that affect persons with ability to understand, differentiate or remember, hearing and visual disabilities which ranges from partial hearing, loss to deaf. They share a view that, it is incorrect to make general statements about the rate of victimization among Minors and PWDs<sup>17</sup>. For example; people with cognitive disabilities are disproportionately affected by sexual violence<sup>18</sup>. Another study found that individuals with developmental disabilities, for example are up to ten times more likely to experience sexual assault than adults with other type of disabilities. However, sexual violence to persons with disabilities is not without gender ramification, in 1994 a statistical survey on assault and sexual assault against women in Canada indicated that women and girls with disabilities are considerably more likely to face sexual violence than men with disabilities. Despite this finding, the survey acknowledged that men and young boys are also vulnerable to sexual violence

---

<sup>15</sup> N Smith & S Harrell "forging new collaboration, A guide for rape crisis, domestic violence and disabilities organization'.

<sup>16</sup> Smith & Harrell supra



In Uganda, survivors with disabilities who reach out for justice, are often met by criminal justice system that is not fully equipped to work at the intersection of sexual violence and disability. PWDs in Uganda meet discrimination and disadvantage that originates in a history of institutions. Obstacles to accessing justice system can have dangerous consequences. For example, compared to persons without disabilities facing similar circumstances, those with disabilities who lack effective access to justice, experience violence that is more severe and long lasting hence this suggests the need for disability-awareness and integration training across all governmental and non-governmental organizations that have a role to play in dealing with the abused PWDs.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0. Introduction

sexual violence is a human rights issue; it impedes victims of sexual violence of full enjoyment of the human rights to physical and mental integrity and sexual autonomy<sup>19</sup>. If committed against Minors and or PWDs, sexual violence also constitutes a manifestation of discrimination and hatred against PWDs Women and girls with disabilities are particularly exceptionally vulnerable to sexual violence although available literatures suggest that men with disabilities are equally vulnerable to sexual violence. This suggestion also finds favour with the Amnesty International, which noted that, criminal justice system should not be tainted by stereotypical assumptions, including assumptions about sexual violence towards men and boys, as well as towards women and girls. As indicated in the preceding chapter, social exclusion, limited mobility, communication barriers, and social perceptions that Minors and PWDs are weak, stupid, or asexual help to compound the problem. Nevertheless, sexual violence against PWDs and Minors is further exacerbated as PWDs are often financially and socially dependent on others<sup>20</sup>, and the same position applies to minors who are often victims of sexual violence.

On the other hand, it will to be shown below in this research that, significant challenges towards ensuring effective access to justice for Minors and PWDs still remain in Uganda. This is despite the fact that the United Nations Convention on the Rights Persons with Disabilities(UNCRPD) and the United Nations Convention on the Rights Children (UNCRC) guarantees the rights of Minors and PWDs to live free from sexual violence as well as guarantees towards an uninterrupted right to recourse in case of human rights violation including sexual violence<sup>21</sup>.

---

<sup>19</sup> Amnesty international "Rape and sexual violence: Human right law and standards in the international criminal court. <<http://www.armnesty.org/en/liburary/assets/lor53/001/2011/en7f5eae8f-c008-4caf-ab590f84605b61e0/lor530012011.en.pdf>>(accessed on 05 January 2016).

<sup>20</sup> WHO & WB "World report on disability"<[http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf)> (accessed on 08 February 2016).

<sup>21</sup> Art 16 of UNCRPD.

## 2.1. Defining persons with disabilities and minors

Earlier definition of disability was conceived since 1975, when the Declaration on the Rights of Disabled People was adopted by the United Nations. Accordingly, a “disabled person” was defined as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities. As will be indicated in subsequent sections, this definition embraced the medical model of disabilities and failed to reflect on the impact the social environment has in disabling PWDs.

The declaration had an influential role on national laws; one example is the 1990 Americans with Disabilities Act (ADA)<sup>22</sup> which defined a disability as a physical or mental impairment that substantially limits one or more major life activities of such individual. This definition was later explained by the United States of America Supreme Court in the case of *Sutton v United Air Lines inc*<sup>23</sup> (the Sutton case), in which, the court confirmed the literal meaning of disability as entrenched under the ADA. Like the declaration, the ADA, reinforces the medical model of disability.

On the other hand, the UNCRPD does not define disability or persons with disabilities in a strict sense; it rather provides guidance on the concept of “disability” and its relevance to the Convention<sup>24</sup>. The UNCRPD adopted a social model of disability by recognizing that, disability is an evolving concept that results from interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others

The Convention further states that, Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others<sup>25</sup>.

---

<sup>22</sup> Americans with Disabilities Act 42 U.S.C & 12101.

<sup>23</sup> *Sutton v United Air lines inc* (97-1943) 527 U.S.471 (1999).

<sup>24</sup> OHCRM 'Monitoring the convention on the right for Minors and PWDS: Guidance for human right monitors, professional training series No 17,15 (accessed on 08 February 2016).

<sup>25</sup> Art 1 *ibid*

As stipulated under the Children's Act, a child is a person below the age of 18 years.<sup>26</sup> However there are no clear definitions of a minor in literature but *Noble J* noted that worldwide, 40-47 % of sexual assault is perpetrated against girls aged 25 or younger<sup>27</sup>. Both boys and girls are victims of sexual violence and most of them do not report this vice because of fear of being stigmatized and most of them lack money which is asked for by the police while investigation is being done.

Looking at minors and disability from this perspective, effective access to justice by these is limited not because of an individual's impairment and vulnerability, but because of barriers confronted by them, which might include physical, attitudinal, and procedural barriers. As is to be shown below, barriers to accessibility are generally widely recognized in policy and legislative frameworks in Uganda. Barriers to accessibility have significantly impeded PWDs and accessibility to the justice system. It is important to note from the definitions that, the UNCRPD affirms a paradigm shift from medical model that reinforced an internalized oppression which made Minors and PWDs less likely to challenge their exclusion from mainstream of society<sup>28</sup>. The UNCRPD therefore, reinforces a social model in which, disability is understood as an unequal relationship within a society in which the needs of people with impairments are often given little or no consideration. It maintains that PWDs are "disabled" by the fact that they are excluded from participation within the mainstream of society including justice system as a result of physical, organizational and attitudinal barriers<sup>29</sup>. As was noted in the preceding chapter, PWDs experiencing sexual violence are not all the same, some live with impairments that are multifaceted and which defy a single categorization such as physical, sensor, cognitive and mental health. Given the circumstance, this research covers and PWDs as a generic group; it cuts across a range of impairment categories, including people with physical and sensory impairments, people with intellectual disabilities and those experiencing mental ill health. Similarly, the phrase persons with disabilities(PWDs) and minors will be used throughout this research in disregard of inconsistencies throughout the literature reviewed. In Ireland for instance, the

---

<sup>26</sup> Section 2, Children's Act cap 16 Uganda

<sup>27</sup> The world's youth 1996

<sup>28</sup> G Carason: the social model of disability.

<sup>29</sup> G Carson "the social model of disability"

concern by disability movement is to put the person first, before the disability but in other countries, such as the UK disabled people (DP) is more commonly referred to:

Inconsistencies are equally to be found in Uganda's PWDs protection framework. In South Africa for instance, while the National Policy on Disability, repeatedly refers to PWDs as disabled people, people with disabilities as well as persons with disabilities simultaneously, the same equally applies to Uganda, where the national council for disability(NCD) employs such terms persons with disabilities, disabled people and people with disabilities simultaneously.

#### **2.1.1. The impact of medical model of disability on Minors and PWDs' effective access to justice.**

The medical model of disability is rooted in an undue emphasis on clinical diagnosis<sup>30</sup>, the reality of the matter is that under the guise of objective scientific enquiry a particular image of persons with disabilities is being furthered, and it is an image full of negative implications, the very nature of which is destined to lead to an inhibiting and discriminating environment against Minors and PWDs. The medical model of disability views disability as an individual's deficit. The status of being disabled has therefore been viewed as the natural cause for PWDs being unable to accessing justice system. Looking at disability from this angle does inevitably restrict society's responses to the need to fix an individual's impairment through medicine or rehabilitation. Consequently, it places the lives of PWDs to professionals who control not only the form of medication (if treatment is necessary) but also the form of life, and I would add, most fundamentally when and how a person with disability will react against sexual abuses. Under the medical model, individuals with disabilities occupy a sick role; consequently, they are excused from the normal obligations of society including denial to assuming an active role in their life<sup>31</sup>. This certainly impacts on their role as potential active participants in the justice system in situations they fall victim of sexual violence.

Over the past few decades, the world witnessed an important change in the way disability is perceived. Instead of looking at what is wrong with the person, focus has shifted to the failure

---

<sup>30</sup> National plan policy on Disability (2004)

<sup>31</sup> S Brisenden "Independent living and the medical model of disability"1993.international journal, disability, handicap and society.

of social environment to accommodate the needs of persons with impairments. Accordingly, disability is recognized as a consequence of the interaction of the individual with an environment that does not accommodate that individual's differences and limits or impedes the individual's accessibility to the benefits the society offers to the rest. This new approach is referred to as the social model of disability. As noted above, the UNCRPD endorses this model and takes it forward by explicitly recognizing the intersection between individual and the surrounding social environments.

### **2.1.2. Human rights-based approach to disability**

Fundamental to human rights is the principle that all human beings are equal in dignity and rights and that they are entitled to their human rights without distinction of any kind. Therefore, persons with disabilities are rights-holders who can, and should, determine the course of their lives as much as any other member of society. In a human rights-based approach to disability, limitations imposed on persons with disabilities by the social and physical environment are regarded as violations of their basic human rights<sup>32</sup>. From access to justice point of view, a human rights-based approach acknowledges that if whatever is necessary for a person to live in dignity, then it is a right that can be claimed and the government can be held accountable<sup>33</sup>. Sexual violence to minors and PWDs constitutes one such denial of dignity, and as such, they are entitled to effective remedies through effective and guaranteed access to justice system.

### **2.1.3. Minors, Disability and national laws**

The UNCRPD does not preclude the use of definitions in national laws, as such varying laws in Uganda provide for definitions. Unlike many specialized laws, the Ugandan constitutions do only refer to "disability" without particularly defining disability or persons with disabilities as such. Arguably, this is not by mistake, as the highest law of the land, constitutions represent among other things the values and principles that the country stands for. Constitutions send out an important message about the status of persons with disabilities within the national legal order leaving it to particular laws to define disability or persons with disabilities in a

---

<sup>32</sup> A human right base approach to disability: the legal framework for survivor assistance in 24 states parties (accessed on 26 December 2015).

<sup>33</sup> Advocacy workbook' Landmine survivor network (2004) 16, (accessed on 05 January 2016).

manner that suit the particular context. In this regard, the Constitution<sup>34</sup> refers to disabilities in its non-discrimination provisions, which provides that, the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including disability whereas.

Uganda has dedicated disability and minors' legislations that is the Persons with disability ACT 2006 and the children's Act cap 59 which provide for the rights and protection of minors and PWDs.

there are also in existence several pieces of laws that deal with disability and minors issues particularly in areas of access to justice and sexual violence like The 1995 constitution of the republic of Uganda as amended, the penal code act<sup>35</sup>, to mention but a few. For example the penal code act under section 129(A) subsection 7 defines disability to mean a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting to limited participation. One major critique with this definition is that, it reinforces a medical model of disability by putting much emphasis on the individual's inability rather than focusing on social environments that often manifest itself in perpetrator's behaviors and actions that tend to deny the victim's ability to exercise free and genuine choice, that is, to enjoy his or her human rights to physical and mental integrity and sexual autonomy.

In this connection, one would note that, the Persons with Disabilities Act, despite being the more recent than the UNCRPD itself, it conflicts with the UNCRPD on disability .

## **2.2. Disability, minors and access to justice**

Human rights instruments and their monitoring bodies at the international level have established and consistently emphasized the rights to effective access to justice in times of human rights violation. The UN-Human Rights Committee has particularly emphasized the need for states parties to ensure accessible and effective remedies for violation of human rights while further emphasizing the need for the states to pay particular attention to particular groups of people considered vulnerable such as PWDs. The committee in particular stated that,

---

<sup>34</sup> The 1995 constitution of the republic of uganda

<sup>35</sup> Cap 120

In addition to effective protection of rights, states parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of persons<sup>36</sup>.

It is important to note that, the emphasis comes at the top of the fact that persons with disabilities are often invisible victims of sexual violence<sup>37</sup> whose needs and experiences of the criminal justice system are largely undocumented<sup>38</sup>. As noted in the preceding section, persons with disabilities are one category of people most vulnerable to sexual violence, as such the criminal justice system ought to pay a considerable attention to persons with disabilities as their needs are the outcomes of a protracted past social exclusion affecting largely their accessibility to what the society considers essential. As access to justice constitutes no exception to this exclusion, this section discusses the concept access to justice and assesses its parameters so as to set the context into which, the Uganda's policy and legal framework will be scrutinized in the next chapter.

### 2.2.1. Defining access to justice

There is lack of consensus regarding a proper definition of access to justice<sup>39</sup>. Two approaches have nevertheless been used to describe the concept, narrower and the broader approach<sup>40</sup>. The narrow approach regards access to justice as being concerned with the means for securing vested rights, particularly through the use of courts and or tribunals<sup>41</sup>. Accordingly, emphasis has been to put measures in place to overcome obstacles faced by vulnerable groups such as PWDs<sup>42</sup> in making effective use of the criminal justice process for redress<sup>43</sup>. However, criticisms have been leveled against this approach, for its procedurally-based scope<sup>44</sup>.

---

<sup>36</sup> UN Human Right Committee, General comment 31, para 15

<sup>37</sup> ME Bazz and M Stern "the complexity of violence: A criminal analysis of sexual violence in the Democratic Republic of Congo.

<sup>38</sup> Bazz and Stern supra.

<sup>39</sup> AE Nekas ' Justice system respond to may 2008 Xenophobic violence in South Africa and its impact to access to justice for migrants: A case study of Great Johannesburg (2010) University of Witwatersrand.

<sup>40</sup> Nekas supra

<sup>41</sup> Nekas supra

<sup>42</sup> Nekas supra

<sup>43</sup> Nekas supra

<sup>44</sup> Nekas supra



The broader approach seeks a firm conjunction of procedural and substantive aspect of justice. Accordingly, access to justice requires a construction that best ensures just, equitable and inclusive legal and judicial outcomes. From the perspective of PWDs as a vulnerable group, the broader approach seeks to guarantee accessibility of PWDs to law-implementing processes and institutions. Access to justice in this regard will be better understood as a broad concept, encompassing PWDs effective access to the system, procedures, information, and locations used in the administration of justice.

One definition that substantially seems to embrace the broader approach of access to justice defines the concept as; Access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts, this includes the ability of people to seek and obtain a remedy through formal and informal justice systems and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.

This definition acknowledges that, PWDs have often been denied fair and equal treatment before courts, tribunals, and other bodies that make up the justice system, as the system has failed to ensure a barrier-free access. Such barriers do significantly limit the ability of PWDs to use the justice system for redress in situations of sexual violence. It should be noted beforehand that, access to justice as shall be referred to elsewhere in this research is restricted to PWDs and minors right to a just, equitable and inclusive remedial system through the formal criminal justice system.

The researcher has nevertheless identified some key elements from the above definition, it is important to note that the cumulative effects of these elements would result in an inclusive, participatory and barrier-free criminal justice system. The elements include; existence of normative legal framework that guarantees access to justice for PWDs, sufficient legal awareness by persons with disabilities who are victims of sexual violence, accessibility to the built environment and effective administration of justice.

### **2.2.2. Existence of normative legal framework that guarantees Minors and PWDs access to justice.**

The normative legal framework presupposes the existence of the set of rules and laws, (both substantive and procedural,) available institutions that are by law established as responsible bodies for justice delivery and the actors therein, including police officers, prosecution officers and judges/magistrates. Different pieces of laws exist in Uganda that do, or at least, are intended to guarantee access to justice for minors and PWDs. However, full guarantees of accessible justice system for PWDs remains a challenge in Uganda. In Uganda, the 1995 Constitution as amended provides for Equality and freedom from discrimination for Minors and PWDs<sup>45</sup> are in the fore front seeking to guarantee accessible justice for all including minors and PWDs.

### **2.2.3. Victim's knowledge of the law**

This concerns victim's awareness and or understanding of the laws, rights and obligations accruing to and for them throughout justice delivery process, it also entails awareness of the available institutions and the way each operates in the justice system and the intersections between them. In this regard, it is vital for persons with disabilities to be informed how the criminal justice system works, and most fundamentally how to access it<sup>46</sup>.

### **2.2.4. Access to the built environments**

This concerns physical accessibility to infrastructures such as police stations and courthouse. As Uganda Human Rights Commission stated, physical barriers to access are often the result of thoughtless construction. The World Report on Disability as well, addresses the impact of inaccessible environment for PWDs, it states that; inaccessible environments create disability and fear in minors by creating barriers to participation and inclusion. In this regard, when police stations and courthouses are inaccessible by PWDs, the result is a total denial of their rights to among others, the right to equality, dignity and freedom from abuses. Physical inaccessibility therefore tends to justify the assertion that, disability is imposed by the society (social construct) with most of its effects being inflicted on persons by the social environment rather than individual person's impairment. In addressing accessibility

---

<sup>45</sup> Article 21

<sup>46</sup> Edward et al supra

issues, the national norms and minimum standards for the building of courthouses and police stations to ensure barrier-free access must be developed.

### **2.2.5. Effective administration of justice**

There is a valid presumption that the state and all its organs are responsible through legislative and other measures to assist the courts to ensure its accessibility and effectiveness. However, much still remains for the actors in the justice sector to consider special circumstances of Minors and PWDs who constitutes a category of vulnerable group with greater demand of particular attention. In this connection, administration of justice concern the role played by the actors in the justice system. It is important to note that, like many other jurisdictions, Ugandan criminal justice system involves the police service, prosecution service, the court and the correction service. Nevertheless, issues that raise concern about the effectiveness of the criminal justice system particularly in delivering justice to Minors and PWDs, includes lack of opportunity for PWDs to fully and effectively participate in the justice delivery process. Participatory justice process requires effective physical accessibility and communication guarantees to all persons including children and persons with disabilities.

In this connection, effective administration of justice also concerns individual skills of police officers, prosecution officers, and judges to soliciting the best out of minors and PWDs, thus ensuring equitable access to justice for PWDs. It further requires a process that is free from harassment and intimidation, supported by a proper understanding of the minors and PWD's needs.

### **2.3. Key barriers to accessing justice**

PWDs accessibility to the justice system depends on the level of barrier-free environment. It is important to note that often the built environment are planned, designed and constructed without regard to the need of PWDs<sup>47</sup>. Nevertheless, the list of barriers is long; it is a combination of structural, physical, and attitudinal barriers to mention, which prevent full participation by minors and PWDs in the justice system. It is the aim of this

---

<sup>47</sup> Attitudinal barriers for people with disabilities. <<http://www.ncw.youth.info/attitudinal-barriers-for-people-with-disabilities>

research to identify barriers that PWDs experience in their way to accessing justice for sexual violence.

### **2.3.1. Structural barriers**

This refers to the organizational structure of the criminal justice system, the division of labour between institutions and their intersections. Organizational structure significantly affects communication between and outside agencies. In this regard, communication is particularly essential in terms of identifying not only PWDs and minors but also their needs. In the context of PWDs, proactive component is essential not only for effective access to justice for PWDs but also to the longer term reduction of sexual violence for PWDs. Assessing the effectiveness of the criminal justice system especially from the perspective of its structural set-up, the author concedes with assessment that, inter-agency coordination is vital to any successfully criminal justice system that is oriented towards effective access to justice for PWDs.<sup>48</sup>

### **2.3.2. Physical barriers**

Access to courthouses and police stations are supposedly everybody's entitlement. However, for PWDs, getting into these facilities means a confrontation with many stairs, heavy and narrow doors, narrow paths, and unusable witness box, all potentially impeding access for PWDs. Access to justice for all, therefore demands assurance that litigants who are Minors and PWDs are entitled to free and uninterrupted access to justice institutions. It is astounding that, justice infrastructures that encompass courthouses and police stations are often designed around the capabilities of non-disabled persons, for they were throughout history, designed with an image of strength hence, rich of features inhibiting access for PWDs.

The Architectural Barriers Act, the Americans with Disabilities Act, Uniform Federal Accessibility Standard and the United States Court Design Guide in the United States of America, represents the world's most progressive accessibility framework and therefore, highlights the best response to accessibility problem. The framework details accessibility standards and demands inclusion of accessibility features such as ramps, accessible doors and stairs, elevators, and restrooms etc. not only for new buildings but also into those going through

---

<sup>48</sup> EF WOOD: Towards barriers – free courthouse: Equal access to justice for minors and persons with disabilities'

renovation. This latter quality makes the framework always potentially relevant in addressing the historical exclusion of PWDs from the justice system. It further establishes the Architectural and Transportation Barriers Compliance Board to monitor and coordinate compliance with the set standards. Nevertheless, its jurisprudence especially in *Hill v. Shelby County*<sup>49</sup> highlights the potential role litigation can play in addressing accessibility problem. The case challenged physical inaccessibility to courthouse on the basis of the constitutional rights to due processes and the right to equal protection. the case involves the courts located on the second floor of the building without elevator or other means for automatic lifting the Disabled plaintiff. Although the plaintiff complaint was dismissed, the court took judicial notice of the fact that lack of elevators without appropriate alternative means, potentially impedes access to courts for PWDs.

#### **2.4. Criminal justice system**

The term criminal justice system (CJS) could be defined as constituting all activities and agencies pertaining to the prevention, investigation, prosecution, sentencing and all post-trial processes. CJS concerns the violation of criminal law and strictly interpreted, deals with the enforcement and procedures of criminal law. Two main objectives of the CJS have been identified as constituting crimes control and assurance of the due process. However, police, prosecuting authorities, courts, and the correction services constitute major components of the criminal justice system<sup>50</sup>. Some argue, it does also consist of the informal justice and policing structures. However, throughout this research Criminal Justice System neither concerns the informal justice system nor deals with sentencing and any post-trial processes.

#### **2.5. Sexual violence against Minors and PWDs**

As noted above, sexual violence against Minors and PWDs has gained recognition internationally as a human rights issue. However, there is often a tendency to conflate sexual violence and rape. As stated by Triffterer<sup>51</sup>, sexual violence is a term broader than rape, thus implying that rape remains a category of sexual violence particularly that which involves penetration. Olsvik, on his part, suggested that sexual violence can take the form of both physical abuse, such as unwanted sexual touch and rape, and emotional abuse, such as

---

<sup>49</sup> 599 F.supp (N.D 1984)

<sup>50</sup> W Darkeford and K Freindman" History of criminal justice System' EDDJ professional development series, module 1 p5 (accessed on 26 December 2015)

<sup>51</sup> O Tarrifter commentary on Rome Statue of international Criminal Court (2008) 712 in Amnesty International.

obscene comments and peeping. In this connection, the human rights of equality and non-discrimination in the enjoyment of physical and mental integrity require a measure of weight given to the free and full agreement to sexual contact of all parties to that contact, regardless as to whether the same do or do not involve penetration. In this regard it is important to stress that individual's sexual autonomy as an aspect of the rights to physical and mental integrity constitutes the reason for criminalization of sexual violence in all its forms and manifestations.

Unfortunately, despite the proliferation of sexual violence against PWDs, yet the question has not received adequate attention from researchers and policy makers<sup>52</sup>. As a result, several initiatives including the Sexual Violence Research Initiative (SVRI)] has been established to address this shortcoming. Nevertheless, on 25 February 2008 the UN Secretary General launched a campaign Unite to End Violence against Women with the focus to raising awareness and increase political will and resources for preventing and responding to all forms of violence. Although the campaign focuses on women, the author is of the view that, the initiative holds potentials for PWDs and minors who are equally vulnerable to sexual violence and that the reference violence against women certainly includes women and girls with disabilities. In 2006, a report of the UN-Secretary-General's in-depth study on violence against women was released, which among other things, establishes the "intersection" between, being a woman with disability, and the potentials it holds towards sexual victimization. In this respect the report clearly stated that; the different manifestations of violence and women's personal experience of it are shaped by many factors, including disability<sup>53</sup>.

There are in place several other initiatives at the international level addressing sexual violence worldwide. In 2000 for instance, the UN-Security Council adopted a resolution<sup>54</sup> addressing sexual violence in armed conflicts. Accordingly, the resolution calls on parties to armed conflict to take special measures to protect women and girls from all forms of sexual abuse and or violence. Although relevant for PWDs protection against sexual violence, the resolution is limited in scope, as such; it is not applicable outside of the armed conflicts situation. Another resolution was adopted in 2007 by the UN-General Assembly. This latter

---

<sup>52</sup> Moving the agenda forward<<http://www.suri.org/forum2011Report.pdf>

<sup>53</sup> The secretary General's in-depth study on violence against women mandated by General assembly resolution.

<sup>54</sup> *ibid*

resolution is of particular importance for its recognition that sexual violence against women and girls persist in every country in the world, thus making it equally relevant to Uganda. This resolution among other things, strongly condemns all acts of violence irrespective of whether these acts are perpetrated by the State, by private persons or by non-State actors, nevertheless, the resolution call for elimination of all forms of violence in the family, and community at large. It further emphasizes the need to criminalize all forms of violence, and calls on states to make them legally punishable.

#### **2.5.1. Sexual violence for Minors and PWDs under the UNCRPD and the UNCRC**

In its preamble, the UNCRPD recognizes the high risk of sexual violence that women and girls with disabilities face<sup>55</sup>. Nevertheless, article 16 therein makes freedom from violence a human right issue, breach of which PWDs are entitled to remedies. Unlike the preamble which draws a particular attention to women and girls, Article 16 of the UNCRPD seeks to protect Minors and PWDs as a generic group which also affirms the authors approach which does not attempt to categories PWDs without denying the fact that some categories are exceptionally affected by sexual violence and subsequent inaccessible justice. Of interest to this research are the parameters that article 16 covers with regards to states obligations toward free-sexual violence environment for Minors and PWDs and the guarantees of the effective remedies where sexual violence occurs.

The UNCRPD calls on states parties to legislate laws that guarantee free-sexual violence life for PWDs; this would also mean laws that assure Minors and PWDs of their access to justice in time of sexual violence. The UNCRPD also recognizes the importance of education both for PWDs and for those in the justice sector necessary to ensure PWD's access to justice<sup>56</sup>.

Moreover, the UNCRPD obliges states parties to take preventive measures to protect not only PWDs but their families and caregivers essentially by disseminating information not only on how to recognize a sexual violence but also how to report instances of sexual violence, the author firmly believes that these measures if implemented would certainly improve access to justice for PWDs. The convention further, demands effective laws and policies that

---

<sup>55</sup>The Preamble of the UNCRPD

<sup>56</sup>Art 13 supra

would ensure prompt identification of sexual violence instances, effective investigation and prosecution of perpetrators of sexual violence .

The CRC committee also says children with disabilities are five times more vulnerable to sexual abuse therefore it calls upon states to take necessary steps to prevent abuse and violence against children. From the UNCRPD and the UNCRC, four elements could be identified that cater for protection of PWDs from sexual violence and those tending to guarantee their accessibility to justice system. The elements includes the need for a normative legal framework, sufficient legal knowledge for implementing the legal provisions that are already in place, assurance of accessible built environment, and effective administration of justice by those .in the justice sector.

#### **2.5.2. Sexual violence for PWDs and minors under other UN-treaties**

Viljoen and Biegon stated that, let the obvious be underlined, the UN instruments are as well Africa's. It is therefore important to consider relevant provisions as entrenched in different UN-instruments that addresses sexual violence and access to justice for PWDs and minors. The United Nations has a commitment that stems from the UN-Charter, which re-affirms the faith of the people of the world in fundamental human rights and in the dignity and worth of the human person. The UN has adopted within its framework, different instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political rights (ICCPR), and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to mention some. In the Universal Declaration, the UN clearly spelt the rights which belong to all persons. These include the right to security of person,

Which, as will be stated in the subsequent chapter, covers the protection against sexual violence? As regards access to justice<sup>57</sup>, the Universal Declaration affirms the rights of all persons to equality before the law as well as equal protection of the law, it further precisely state that, everyone is entitled to effective remedy for acts that violate the fundamental rights. Equally framed provisions are entrenched under Article 2(3) (a) of the ICCPR, and Article 2(b) of the CEDAW.

---

<sup>57</sup> Art 16(2) supra



### 2.5.3. Sexual violence for Minors and PWDs under African Human Rights Framework.

As Viljoen and Biegon argued, African human rights system addresses PWDs and Minors inadequately and in a fragmented manner<sup>58</sup>. However, they recognized the potential mechanisms that can be exploited to protect PWDs, in this regard they argued, The African Charter<sup>59</sup>, African Children's Charter, African Women's Protocol and the African Youth Charter all potentially implicitly include persons with disabilities within their ambit. The African Charter, despite its failure to mention persons with disabilities in article 2, a non-discrimination provision, yet it protects every individual, every human being, every citizen, and all peoples from all forms of abuses of their rights.

Further, under article 18, the Charter calls on states parties to undertake special measures of protection for Minors and PWDs, in this sense, states parties including Uganda, have obligation to protect Minors and PWDs from sexual violence, as they are often victims of sexual violence in an exceptional scale. The African Children Charter, without doubt, covers children with disabilities as it uses the expression "every child" throughout the text. In addition, unlike the African Charter, the African Children's Charter explicitly guarantees the children with disabilities of the right to special measures of protection that would ensure children, of the freedom from physical or mental injury or abuse, including sexual abuse.

On the other hand, the African Women's Protocol equally contains a provision guaranteeing the right to special measures of protection for women with disabilities. As for freedom from sexual violence in particular, the Protocol explicitly obliges states parties to ensure the right of women with disabilities to freedom from violence, including sexual abuse. However, the African Youth's Charter requires states parties to „enact and enforce legislation that prohibit all forms of violence, including sexual abuse. Similarly, the African Youth's Charter, contains a provision for physically and mentally disabled persons. Accordingly, states parties including Uganda are required to recognize PWDs rights which include the right to freedom from sexual violence<sup>60</sup>.

On the other hand, the African Women's Protocol equally contains a provision guaranteeing the right to special measures of protection for women with disabilities.<sup>61</sup> As for freedom from sexual

---

<sup>58</sup> Africa Children Charter art 16

<sup>59</sup> Africa Children Charter Art 17

<sup>60</sup> African Child Charter Art 13(1)

<sup>61</sup> African Child Charter Art 16(1)

violence in particular, the Protocol explicitly obliges states parties to ensure the right of women with disabilities to freedom from violence, including sexual abuse<sup>62</sup>. However, the African Youth's Charter requires states parties to enact and enforce legislation that prohibit all forms of violence, including sexual abuse. Similarly, the African Youth's Charter, contains a provision for physically and mentally disabled persons. Accordingly, states parties including Uganda are required to recognize Minors and PWDs rights which include the right to freedom from sexual violence. Further acts constituting sexual violence includes, sexual exploitation or the coercion of women and children to provide sexual comfort, trafficking in, and smuggling of women and children for sexual slavery or exploitation. It goes further as to mention forced abortions or forced pregnancies of women and girl children, considering the myth that PWDs are incapable parents, the Protocol has laid a foundation for measures at national levels to curb forced abortion for PWDs. Nevertheless, as regards access to justice, member states are obliged to ensure criminal procedures that are sensitive to the needs of the victims and survivors of sexual violence. It clearly proposes that prosecution of persons accused of crimes of sexual violence be undertaken in such modalities including giving of evidence in camera, or by video links ,etc. these measures are often appropriate for PWDs who are often vulnerable to intimidation and abusive legal processes.

## **2.6. Conclusion**

Uganda is acclaimed for its progressive rights-based Constitution. Despite this progress, PWDs are yet confronted by barriers that impede them from taking an active role not only in creating a violence-free community but also from assuming an active role in the justice system. Uganda has to do retain laws, regulations and policies that perpetuate discrimination against Minors and PWDs. They largely reinforce a medical model of disability, the impact of which, PWDs and minors are less likely to challenge their exclusion from the mainstreams of community. In this connection, there are still laws that regard PWDs and minors as incompetent persons, consequently, they cannot even testify for violation of their own rights, let alone taking active role in the investigation of crimes that constitutes violation of their rights. It is therefore significant to note that for PWDs and, the experience of reporting a crime, contributing in the investigation, follow-up and actively participate in the trial process can be a difficult one; often structural and attitudinal barriers can mean that PWDs and a fail to

---

<sup>62</sup> African Women Protocol Art 23

effectively access justice. Barriers in this sense do undermine the role of criminal justice systems in protecting the rights of, and providing redress to PWDs and minors.

## CHAPTER THREE

### Analysis of the laws on sexual violence and access to justice for minors and persons with disabilities in Uganda

#### 3.0. Introduction.

As it is stipulated under the children's act, a child is a person below the age of 18 years<sup>63</sup>

The Persons with Disabilities (PWD) Act 2006 defines disability as “a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation”.<sup>64</sup> Therefore just like any other persons in Uganda, children and PWDs are entitled to equal rights and justice. In respect to this, the Ugandan government has thus implemented laws that are aimed in the protection of children and PWDs rights. These include the Ugandan constitution as amended; the children's act the persons with disability act among others. However, despite these provisions, the enforceability of these rights is still a myth and as a result has led to their violation.

According to Equality action, in 2007 Sanyu a deaf and dumb girl was raped and when the case was taken to police nothing was done about and money for the DNA testing was raised by legal aid organization instead of government hence showing that protection under the constitution is only a myth.

The constitution of the republic of Uganda<sup>65</sup> provides for the rights of minors and PWDs and provides the basis for the enactment of laws and development of a policy that address their concerns. The constitution<sup>66</sup> provides for a fair representation of marginalized groups on all constitutional and other bodies, recognition of rights of PWDs to respect and human dignity and promotion of development of sign language for the deaf.

The constitution is to the effect that the state and society shall recognize the rights of PWDs to respect and human dignity<sup>67</sup>.

Article 21(1)<sup>68</sup> provides that all persons are equal before the law under all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection

---

<sup>63</sup> Section 2, children's act cap 16, Uganda

<sup>64</sup> Persons with Disabilities Act, Article 2 “Interpretation”

<sup>65</sup> Constitution of Uganda *ibid*.

<sup>66</sup> *ibid*

<sup>67</sup> Objective xvi of the 1995 constitution of the republic of Uganda

before the law. Further it states that a person should not be discriminated on the basis of sex, race, age and disability.

Further, Article 32 is to the effect that the state shall take affirmative action in favour of groups marginalized on the basis of sex, race, age, disability or any other reason created by history tradition or custom for the purposes of imbalances that exist between them. And parliament is to make laws to give full effect to this.

Article 35 provides that PWDs have a right to respect and human dignity and Government is to make laws appropriate for the protection of PWDs. the PWDs Act was also enacted and It ensures legal protection and equal opportunities for them and emphasizing a right based approach to disability.

On the other, the rights of children are also provided for under the constitution under Article 34 and 36 which is to the effect that children are those below the age of 16, children are to be protected from economic and social exploitation, offenders under lawful custody are to be kept away from elders and they are supposed to participate in decision making processes of which their views are to be taken into account. This was also backed up by the children's act which basically spells out the rights of children like right to education, protection by the parents to mention but a few.

### **3.1. A legal analysis on Disability and the law**

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

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

The CRPD does not explicitly define “disability” and recognizes it as an evolving concept. However, the treaty states as its aim to protect and promote the human rights and fundamental freedoms of all persons with disabilities, which include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with other barriers may hinder their full and effective participation in society on an equal basis with others.

---

<sup>68</sup>The constitution ibid

The 1995 Constitution of Uganda does not contain a definition of disability. The term is instead interpreted in the 2006 Persons with Disabilities (PWD) Act as “a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation”.

By recognizing that disability is the result of a combination between impairment and external barriers, the PWD Act incorporates an understanding of disability as a social phenomenon. Furthermore, of particular value is the recognition that physical, mental and sensory impairments, all can result in a disability.

However, this definition appears in some aspects to fall short of the notion enshrined in the Convention and therefore in limiting access to the protection offered under the national disability framework inasmuch as:

According to the PWD Act, the impairment must result in “a substantial functional limitation of daily life activities”. The Convention, instead, makes reference to “impairment” without any further qualification, and shift the qualifying criterion to the effect of such impairment (in conjunction with barriers) on the subject’s “full and effective participation in society on an equal basis with others”.

Various studies have highlighted the limits of definition of disabilities construed on the narrow concept of substantial limitation of daily life activities. While there is no case law in Uganda interpreting the meaning of such provision, the experience of the American with Disabilities Act or of the British Disability Discrimination Act which are both based on the daily life activities can be useful in understanding the limitation of such concept.

According to the PWD Act, disability is the result of the combination between the impairment and an “environmental” barrier. No case law is available to interpret what condition would indeed amount to an “environmental barrier”, but comparative literature suggest that the notion of “environmental barriers” mainly refers to physical barriers. The qualification of barriers appears therefore to arbitrarily limit the range of barriers that are considered, and to disregard barriers which are as determinant as physical barriers in limiting persons with disabilities’ participation, such as social, attitudinal or systemic barriers. As an example, the barriers in equal

participation suffered by persons with mental or intellectual disabilities do not appear to find consideration in the definition provided in the PWD Act. It is recommended that such definition be revised to include other forms of barriers or “various barriers” as in the CRPD.

Similar concerns are also raised by different definitions of disability contained in other Acts, such as the 2000 Worker’s Compensation Act, the 2006 Employment Act and the 1985 National Social Security Fund Act. It is important furthermore, that such diverse definitions be reconciled amongst themselves and in line with the CRPD.

### **3.2. The legal analysis on sexual violence against Minors and PWDs.**

Despite being a criminal offence, sexual violence is a human rights<sup>69</sup> issue. This is because sexual violence jeopardizes the body security and violates the rights to one’s autonomy including sexual autonomy. For this reason Article 21 of the 1995 Constitution of the Republic of Uganda may be regarded as of particular importance, it provides that, everyone has the Equality and freedom from discriminations, which includes the right to be free from all forms of violence. This provision is important since it may be read to refer to everyone including Minors and PWDs. The 1995 Ugandan constitution as amended, equally provides that, every person is entitled to respect and protection of his person.

The Penal code Act<sup>70</sup> (Laws of Uganda 2000) constitutes a single legislation that which comprehensively addresses sexual violence. This enactment was meant to deal with all legal aspects of or relating to sexual offences in a single statute. Furthermore, Accordingly, any person who unlawfully and intentionally sexually violates another person without the latter’s consent is guilty of the offence of sexual assault. Nevertheless, despite its general relevance for Minors and PWDs, the Act has enacted comprehensive provisions dealing with sexual offences against persons who are mentally disabled, as such, any sexual conduct perpetrated against a mentally disabled person (an imbecile) is guilty of an offence of being involved in the sexual exploitation of a person who is mentally Disabled. In this regard, it is clear that, the Act addresses the particular vulnerability of persons who are mentally disabled, minors and women in respect of sexual violence or exploitation.

---

<sup>69</sup> Article 7 of the Rome statute

<sup>70</sup> Cap 240

The Uganda Persons with disability Act (2006) seeks to provide comprehensive legal protection for PWDs in accordance with Article 32 and 35 of the constitution to make elimination of all forms of discrimination against PWDs towards equalization of opportunities and for related matters. The act recognizes the right to privacy, family life, participation in public and cultural life, access to social and public services. therefore breach of this obligation is an offence under the Act and upon conviction the offender will be liable for conviction. As noted above, the Act recognizes the disadvantageous impact sexual violence has upon vulnerable persons including Minors and PWDs. it further recognizes the past inefficiency of Uganda legal framework on sexual violence that failed to deal adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences.

Equally important, the Penal code Act<sup>71</sup> defines sexual act to mean

(a). penetration of the vagina, mouth or anus however slight of any person by a sexual organ.

And

(b) The unlawful use of any object or organ by another person on another person's sexual organ, and a sexual organ means a vagina or penis.

Accordingly, any sexual act as defined above, if committed against a person who is mentally disabled and a minor ; the perpetrator(s) therein, will not be expected to plead a defense of consent hence relieving the Minors and or PWD who is a victim of sexual violence of the undue and often protracted judicial process of establishing existence or non-existence of consent. Regarding the definition of sexual act as set out in the Act, the author is of the view that, the Act has broadly and adequately defined these terms, as such, all potential forms of sexual violence have been captured including those that could be perpetrated against Minors and or PWDs.

The Penal Code in large measures, is a gender-based law as such, it still recognizes such offences like rape, elopement and indecent assaults as offences against women or girls thereby leaving Men with Disabilities inadequately protected against sexual violence. This law, refers to Minors as those below the age of 18 years and or PWDs as imbeciles or idiots it.

---

<sup>71</sup> Cap 120



Despite significant shortcomings in addressing sexual violence for Minors and PWDs in the Penal Code, the Persons with Disabilities Act<sup>72</sup> only inadequately address sexual violence for PWDs. This new Act, has nevertheless exacerbated the problem to some categories of PWDs, as for instance, its definition of disability to mean substantial functional limitation of daily life activities caused by physical, mental, or sensory impairment and environmental barriers resulting in limited participation<sup>73</sup>. this promotes isolation of PWDs and the use of careers for PWD's livelihood and wellbeing, both potentially perilous for sexual violence against PWDs. There is also the Law of the Children Act<sup>74</sup> which in addition to prohibiting discrimination against children founded on grounds of disability, it also contemplate a life free from all forms of child abuse. Child abuse is defined under the Act to mean sexually abusing a child.

This Act, despite its limited scope, it is relevant in the current study as CWDs are often the most victims of sexual violence. Furthermore, section 110 of the Act obliges the social welfare officer on reasonable suspicion of a child abuse to undertake whatever necessary stapes in support of the police officer to protect the child from any harm.

### **3.3. The legal analysis on access to justice for Minors and PWDs.**

Article 13 of the UNCRPD provides for Access to Justice and it states that;

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The various entities of the justice system including police and courts are covered by the provisions of Part V of the PWD Act "Discrimination in relation to goods, services and facilities" as clarified by the inclusion of services provided by "any local or other public

---

<sup>72</sup> The PWDs Act 2006

<sup>73</sup> Article 2 of the PWD Act 2006

<sup>74</sup> Cap 59

authority” in the Second Schedule of the Act. Section 25 of the PWD Act prohibits such entities to exclude a person with disabilities from accessing the services, including by refusing to provide the service to the person or by making it impossible or unreasonably difficult for the person to use the service. In addition, the Act provides positive duties for service providers, including both in terms of physical accessibility of the service as well as a duty to provide auxiliary aid or services to enable a person with a disability to use the service.

Legal reform for compliance appears to be required in the area of procedural accommodation, to which there appear to be only modest reference in existing statutes beside the recognition for witnesses with speaking disabilities to give their testimony in writing or in signs. It is recommended that procedural accommodation is regulated in laws to cater for the situation of persons with disabilities in contact with the law in all their roles, be as complainant, defendant as well as witnesses. Legislation forbidding persons with certain disabilities from participating in proceedings as lay persons should also be abolished.

The Constitution of Uganda provides for the rights to accessing the court for any violation, resolution of which requires the application of laws<sup>75</sup>. Thus, it is clear from this provision that Minors and PWDs are entitled to approaching the court for violation of any law that would otherwise be guaranteeing their rights to freedom from sexual violence. The researcher observed that, this is rather a wider approach toward protection of all persons including Minors and PWDs from all forms of violence including sexual violence.

### **3.3.1. Discrimination and access to justice**

Article 5 provides for equality and non- discrimination of persons before the law.

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

---

<sup>75</sup> Article 50 of The 1995 Constitution of the Republic of Uganda as amended.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

The CRPD specifically establishes the obligation on States to adopt positive measures to achieve equality and non-discrimination. In line with this obligation, Article 21 foresees the legitimacy of policy and programs aimed at “readdressing social, economic, educational or other imbalances in society”, which article 32 of the Constitution further regulates by establishing the duty of the State to take “affirmative action in favour of marginalized groups”, including groups marginalized on the basis of disability for the purpose of redressing imbalances which exist against them.

Article 6 of the CRPD states that;

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 21 of the Constitution forbids discrimination including on the grounds of sex and disability. Article 32 “Affirmative action in favour of marginalized groups” establishes the duty of the State to take affirmative action in favour of groups marginalized on the basis of gender and disability with the purpose of redressing imbalances which exist against them. Article 33 “Rights of Women” recognizes the equal dignity of women with men and their right to equal treatment, establishes the State’s duty to contribute to women’s potential and empowerment and recognizes women’s right to affirmative action.

Few provisions in the Ugandan legal framework recognize the specific circumstances of women with disabilities. In the field of political participation, both the 1997 Local Government Act and the 2001 Parliamentary Elections Act reserve seats for women with disabilities. In addition, the PWD Act refers to the need to pay particular attention to the “requirements of the girl child in rural areas” and establishes the duty of Government to promote access to “health services which are relevant to women with disabilities”. Outside these areas there are no other statutes that specifically address discrimination against women with disabilities on the joint grounds of sex

and disability. Any claim for discrimination outside these areas must therefore proceed under separate systems, either on the basis of sex or disability.

Section 130 of the Penal Code which criminalizes the conduct of a person who has or attempts to have a sexual relationship with a woman with a mental or intellectual disability outside marriage. The potential discriminatory effect of such a provision on the right of women with intellectual or mental disabilities to enjoy their sexuality on an equal basis with others is apparent. From the perspective of national law, it clearly conflicts with article 35 of the PWD Act according to which a person with a disability has the right to “experience his or her sexuality and to have sexual and other intimate relationship”. From the perspective of the CRPD, this article should be reviewed to reflect the presumption of legal capacity of all persons with disabilities operated by article 12 of the CRPD. It is recommended that the reference to mental and intellectual disability as a status excluding the capacity to consent to a sexual intercourse be removed, and consent be assessed on an equal basis with others.

Article 7 of the UNCRPD provides for Children with Disabilities and is to the effect that;

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

Children with disabilities are protected from discrimination under the general equality clause contained in article 21 of the Constitution. Further, the PWD Act protects all persons with disabilities (and therefore children) from discrimination in education, health, access to goods, services and facilities.

As already indicated, there is strong link between discrimination and inaccessible justice for PWDs. Article 21 of the 1995 Uganda constitution guarantees the right to equality before the law. Minors and PWDs are therefore equally entitled to accessing the court on equal basis with non-disabled persons. Article 21 is also to the effect that laws are to be

enacted that are designed to protect category of persons including Minors and PWDs from all forms of unfair discrimination in all aspects of life including justice sector.

Accordingly, in response to a Constitutional demand for legislative measures, the Persons with Disability Act 2006 was enacted in Uganda to promote the rights to equality and avoidance of unfair discrimination. In this connection, it may be noted that, for PWDs, the PWDs Act implies Accordingly, in response to a Constitutional demand for legislative measures, In this connection, it may be noted that, for PWDs, the PWDs Act implies advancement from the discriminatory history Minors and PWDs have all along gone through ,as the Act contains guiding principles including access to justice to all persons in relevant judicial and other dispute resolution forums. "Nevertheless, the Act expressly prohibits any form of unfair discrimination on ground of disability including any contravention of the rules, standards, and regulations governing environmental accessibility .This is particularly important considering the fact that built environments such as Courthouses and police stations needs to meet specific requirement for PWDs to be able to accessing them. It is to be noted that, the PWDs Act entitles every person to accessing the equality court for any conduct that unfairly discriminate against them in which case, the equality court is empowered to make among other orders, an order to comply with the provisions of the Act.

Although the Ugandan constitution guarantees the right to equality before the law, the researcher observes that, the laws that specifically address children and PWDs issues are redundant therefore strict regard should be put in place in order for the equality issue in the constitution to be productive.

#### **3.4. Analysis of the law on access to built environment focusing on Minors and PWDs.**

The UNCRPD<sup>76</sup> obligate states parties to undertake measures to ensure access for Minors and PWDs to physical environments. Nationally, the Uganda Policy on Disability recognizes that, systematic deprivation and disadvantages experienced by Minors and PWDs are largely a result of barriers and restrictive environments ranging from restrictive access to buildings and inappropriate modes of communication . Everyone has the right to an environment that

---

<sup>76</sup>Article 9(1) UNCRPD

is not harmful to their health or well-being. This provision certainly requires accessible built environments in particular courthouses and police stations. Nevertheless, it is unfair discrimination under Article 21 of the constitution of the Republic of Uganda to design and construct structures in contravention of the accessibility standards contained in the regulations thereof as such accessibility in Uganda is not a constitutional human right, and instead a favour often guaranteed in law only as a mere legal right.

The PWDs Act sets a responsibility on all heads of public bodies to ensure that their services are accessible to PWDs as such, the Act is obligatory for the head of police and judiciary to ensure appropriate physical accessibility to police stations and courthouses respectively. It is important to note that, potentially the Act has far reaching consequences for PWDs as it requires that all public buildings currently not in conformity with the Act be aligned with accessibility requirement under the Act.

Uganda Human Rights Commission (UHRC) has identified specific legislative deficiencies that, if corrected, would guarantee access for Minors and PWDs to buildings including courthouses, police stations and other facilities. In Uganda, access and built environments is regulated by the 1995 constitution of the republic of Uganda as amended, the UNCRPD and the people with disability Act. This is the enabling law under which the national laws are built. it is important to note that the regulations are meant to ensure that, buildings are designed and built to be convenient for users including Minors and PWDs.

In terms of physical accessibility, the built environment framework in Uganda has not accommodated the paradigm shift towards a social model of disability. This is because most court houses do not accommodate the disabled like those on the wheel chairs since there are no ramps in most courts to aid their movement in and out of court.

And the researcher still maintains that, the framework fails to mainstream disability.

As regards access and built environment for Minors and PWDs, Uganda litigation has not been a significant route toward the elimination of physical barriers to effective access to justice for Minors and PWDs. The researcher is concerned that, if strategically utilized, litigation could significantly influence access and built environments. As an example, the United States

Supreme Court in 2004 held in *Tennessee v Lane*<sup>77</sup> that individuals are entitled to sue state court systems for failing to comply with the ADA<sup>78</sup>. In this case, George Lane had sued Tennessee for failing to make the county courthouse accessible to persons who rely on wheelchairs. Lane had been jailed for refusing to crawl up the courthouse steps to attend court proceedings the Supreme Court rejected Tennessee's argument that it was immune from suit and held that Congress was within its power in enacting the ADA as a means of protecting the constitutional right of access to the courts.

### 3.5. Conclusion

As noted earlier in this chapter, sexual violence and inaccessible justice for Minors and PWDs is often the result of faulty policies, laws and culture. These laws and policies do often facilitate discrimination, consequently perpetuates victimization for Minors and PWDs into sexual violence. It is also important to note that, the same policies and laws are equally responsible for inaccessible justice for Minors and PWDs.

This research has discovered that Uganda is falling far behind despite the enactment of the Persons with Disabilities Act. As was highlighted earlier, the Penal Code inadequately addresses sexual violence, yet, the Persons with Disabilities Act did not sufficiently respond to these shortcomings in the Penal Code, and instead, it only implicitly addresses sexual violence for Minors and PWDs. These could ordinary be inferred in provisions that impose obligations on the government to establish, operate, manage or maintain settlement for the protection of persons with disabilities<sup>79</sup>, and those imposing the duty to report infringements of the rights of Minors and PWDs. These provisions except broadly and liberally interpreted, only implicitly seek to protect Minors and PWDs from sexual violence.

In this regard, this research is premised on a belief that, Uganda would have done further far reaching developments if a comprehensive law on minors and disability were to be enacted.

---

<sup>77</sup> *Tennessee v Lane* 514 U.S. 509 (2004)

<sup>78</sup> Americans with Disability Acts 42 U.S.C & 12011.

<sup>79</sup> Act 9 of 2010,

## **CHAPTER FOUR.**

### **4.1. Introduction**

Over the years, sexual violence against minors and the PWDs has been on the rise in Uganda. it also remains highly stigmatized in all settings and the level of disclosure vary between individuals.in general, it's a widely under reported phenomenon thus available data tend to under estimate the true value of the problem.in addition, sexual violence is also a neglected area of research thus deeper understanding of the issue is imperative in order to promote a coordinated movement against it. Various institutions both governmental and non-governmental organizations have established campaigns on awareness of the rights of children and PWDs with the aim of curbing down this vice but in vain. This chapter thus highlights some of the challenges on sexual violence and access to justice in Uganda.

### **4.2. Effects of sexual violence and Access to justice on minors and PWDs**

In the enforcement of the rights of the PWDs and minors on access to justice and against sexual violence, various challenges which act as barriers are faced.

One of the major challenges is with the little legislation in Uganda that relates to sexual violence and access to justice for minors and PWDs.

Some of the laws are ambiguous and not specific on their implications to the children and the PWDs. the 1995 constitution of the republic of Uganda is to the effect that children and PWDs rights should be protected and parliament is to enact laws for the protection of their rights, much as this is provided, no specific legislation on sexual violence has been enacted despite its increasing occurrence among minors and the PWDs. This is also because of the ambiguity of the law because it does not provide on the procedure or the persons who should ensure that children and PWDs rights are protected hence creating enforcement difficulties.

Sexual violence is the most common form of violence in Uganda. Every now and then we hear of cases of defilement among children who are as young as 8 years and PWDs. sexual violence is in some cases caused by close relatives, parents and teachers of these children and apparently, parents whose children have been defiled prefer negotiation settlement in form of payment, a



practice that is supported by custom and culture hence a challenge in accessing justice for the children and the PWDs.

In other cases, we find that PWDs are discriminated from their colleagues, for example they are seen as outcast and therefore when sexually abused, no one is bothered to help them so that they can access justice.

When interviewed, one police man told the researcher that parents of PWDs who are victims of sexual violence were reluctant to bring their children to police because they saw them as useless people in society.

The hindrance to the realization of the protection of children from sexual violence is partially caused by officials who are head of children affairs for example districts employ district probation and social probation and social welfare officers who in most cases are community development assistants who have other roles to play such as extension services to mention but a few hence these make them not to effectively focus on children affairs.

Limited skills and communication options between persons with disabilities and different service providers has robbed many persons with disabilities of redress. most police stations and courts in Uganda lack trained people in sign languages therefore those with hearing problems who are illiterate see it of no use to go to police and courts because no one can understand them hence no redress is offered at the end of the day.

For example one interviewed parent of a child with disability who was raped told the researcher that her child could not get redress from the courts of law because the child was unable to communicate with the judge which made the suspect to be released hence a challenge with access to justice.

Most persons with disabilities like many poor Ugandans cannot access justice due to lack of legal representation. Legal representation requires one to part with some money and in most cases the PWDs are poor because of their status and the same applies to minors who often depend on their parents and guardians implying that if the parents cannot afford the services of a lawyer, then one cannot get justice which explains a challenge with sexual violence and access to justice in Uganda.

For example in most law firms, opening a case is at five hundred thousand shillings therefore one who cannot even get 2500shs a day will not afford the cost of hiring a lawyer hence a problem associated with sexual violence and access to justice.

Government is resource-constrained to provide free legal representation to Ugandans that cannot afford to pay for the services. Nevertheless, lawyers are also expected to provide free legal services to a specific number of marginalized groups each year.

According human rights watch, many women said that their efforts to access justice had failed for crimes like sexual violence. This is due to Immobility and communication barrier which make them to go to local councilors instead of police who encourage them to negotiate and perpetrators do not change hence continued violence. For example Irene who was raped and negotiation was made instead of going to the police.

There is also a lot of stigma associated with sexual violence hence the victims decide to keep quiet instead of reporting to police for example Angela who was raped three times in a week at her home refused to report to the police because of the stigma hence a challenge associated with sexual violence and access to justice, that is to say since most of them refuse to report, it is difficult to get redress for the vice.

PWDs and minors process for reporting sexual violence is not accessible in terms of physical access that is long distance to travel, no ramps or other accessible needs and in terms of communication, there is no sign language interpretation. Therefore because of the stigma, illiteracy and hence no formal language and the fact that most of the family members are the perpetrators discourage PWDs and minors from reporting the vice which is a challenge with the study topic.

For example in northern Uganda, there are only 3 police stations serving six districts protecting a population of more than 1.6 million people which also makes it difficult to report cases of sexual violence hence making it difficult to access justice which is a challenge associated with the study topic.

Also when sexual violence is reported, both the accused and the victims are supposed to be checked by a medical personnel (who are usually bribed) using police form whose report determines

whether the victim will get redress or not because when the suspects report shows no positive result then he is released which means the victim goes without a remedy. According to government report in 2005 to the international monetary fund, northern Uganda has only 13.8 judges hence with the limited justice and law sector in the region, the ability to provide the required level of service is severely constrained and there are few government channels for reporting sexual violence in the region hence a challenge associated with the study topic.

In CEDAW report, the government of Uganda stated that the main challenge in accessing the legal system continues because of slow process of law reform, high costs of litigation, limited staff and resources and delay in developing a comprehensive strategy on access to justice hence a challenge on the study topic.

There are no special provisions for witnesses and victims with mental disabilities implying that general rules of procedure apply. The rules of evidence provide that all persons are competent witnesses unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by virtue of “tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind”<sup>80</sup>. This section further states that a “lunatic” is not incompetent 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”<sup>81</sup>. In presenting evidence, every witness is required to give his or her testimony on oath administered by court<sup>82</sup>.

When respondents were asked regarding this law, they stated that although rules of evidence permit witnesses with mental disabilities to testify, they are perceived by some Judges and Magistrates to be incapable of understanding the nature of an oath. As a result, most witnesses and victims with mental disabilities are in practice denied the opportunity of giving evidence by exercise of a Judge’s or Magistrate’s discretion. In some cases, this resulted in accused persons being let free for lack of evidence to support the charges. This is confirmed by the testimony of a magistrate below

---

<sup>80</sup> Evidence Act, Cap 6, of Laws of Uganda, s. 117.

<sup>81</sup> Evidence Act, Cap 6, of Laws of Uganda, s. 117.

<sup>82</sup> Magistrates Courts Act, Cap 16, of Laws of Uganda, s. 101; Trial on Indictments Act, Cap 23 of Laws of Uganda, s. 40.

I have a file before me where the victim is an “imbecile.” She was defiled. The victim could not talk. We released the suspect and dismissed the charges because the prosecution failed to produce witnesses.

In addition, the adversarial system encourages the opposing party to rely on technical language and the mental condition of a witness or victim during cross examination in order to cast doubt on their evidence. This embarrasses and discourages witnesses from effectively understanding and responding to questions, particularly where such proceedings take place in open court. The following testimony provides a vivid picture of how such a system denies justice:

When I walked in to court, I found so many people. At first, I was scared because this was my first time in court. I was told to stand in front of people and swear. The Magistrate kept on shouting at me and told me that if I don’t talk the truth, he would send me to prison. Then there was this lawyer who asked me so many questions in English which I did not even understand, but he kept on insisting that I should say “yes” or “no”. He angered me when he said that I am mentally ill. Implying that the words used against the lunatic also hinders them from accessing justice.

#### **4.3. Government initiative to protect PWDs and minors against sexual violence and enable them to access to justice.**

Despite the many the challenges on sexual violence and access to justice, the government though to a smaller extent has made efforts to ensure that minority and PWDs rights is protected.

In line with the CRPD’s requirement of States parties to the Convention to take appropriate measures to ensure that persons with disabilities have access on an equal basis with others to the physical environment, transportation, information and communications and services, Part IV of the PWD Act 2006 makes provision for accessibility to buildings, information, public transport, roads and highways. The design specifications are contained in the Regulations of the PWD Act developed in 2009 hence by adopting this into regulations show how the government of Uganda is trying to protect the rights of the children and the PWDs against sexual violence.

The Government of Uganda is aware that most persons with disabilities are adversely affected by the conventional design of infrastructure and other facilities which often hinder access to and utilization of facilities and services. Consequently, the government has committed itself to progressive full realization through Putting in place laws and by-laws for promoting user friendly facilities and infrastructure for the benefit of persons with disabilities, Promoting use of Sign Language, Braille, tactile communication among parents, service providers and communities Media campaigns on accessibility Provision of assistive devices and services to persons with disabilities and Building alliances and networks in information, communication and technology.<sup>83</sup>

All newly constructed public buildings such as schools and health facilities, police and court houses have to cater for the needs of persons with disabilities. Uganda National Action on Physical Disability has developed disseminated and is popularizing accessibility standards.<sup>84</sup> As a result, ramps and elevators (as one of the accessibility requirements where staircases exist) are being constructed in a number of public buildings. However, this has mainly been pursued and realized in districts where the Disability Union is active. For example, Gulu district has put in place and is overseeing the implementation of guidelines and regulations for the construction of public buildings, where all buildings which are constructed for public utilization should be made accessible for everybody, particularly persons with disabilities. These guidelines have enabled persons with disabilities to enjoy equal accessibility to these buildings. Furthermore, the district instructed the district planner to only approve plans that cater for accessibility for persons with disabilities. It is now a requirement for all contractors to present their bills of quantities and designs for all facilities that cater for persons with disabilities to the district planner before their plans can be approved. This was highly emphasized beginning in 2008 after relevant laws came in place.

The Information and Communications Act spells out that information should be accessible to persons with disabilities. It therefore recognizes the use of Sign Language Interpreters and Brailing of public information.

---

<sup>83</sup> The National Policy on Disability in Uganda, 2006

<sup>84</sup> UNAPD and Ministry of Gender, Labour and Social Development (2010); Accessibility Standards – A practical guide to create a barrier-free physical environment in Uganda

Government has also collaborated with other stakeholders in improving accessibility for persons with disabilities. Under the accessibility program, government implored upon organizations like World Vision and AVSI to make public places such as police and court houses and schools accessible to persons with disabilities. Consequently, ramps have been set up to make the court houses accessible.

#### **4.4. Conclusion**

Generally it is every one's duty to ensure that the rights of PWDs and minors are protected. Therefore every member of the community who sees that a child or a PWD is sexually abused has the right to report the matter to police or the local government council of the area<sup>85</sup> and ensure that they are accorded justice

International human rights standards, especially the CRC and the CRPD emphasizes the absolute necessity of protecting children and PWDs against sexual violence but these are not easily established and therefore no respected. Much as it is the duty of parents to protect children and the PWDs, the CRC also reinforces the state's duty to ensure adequate care and protection of children and the PWDs in unusual circumstances<sup>86</sup> like in matters of sexual violence

---

<sup>85</sup> Section 11 of the children act.

<sup>86</sup> Article 18 CRC

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATION

#### 5.0. Introduction

This chapter discusses the summary, conclusion and recommendation by the researcher about the study findings. It also presents areas for further studies to address the gaps that this study has left in the area of study this research has undertaken.

#### 5.1. Summary

This research has interrogated the extent to which laws and policies in Uganda address sexual violence against PWDs and minors and guarantee access to justice for them in sexual violence situations. This research proceeded with the assumption that minors and PWDs experience discrimination in various forms including sexual violence but that there could be various gaps in the laws and policies aimed at protecting them. In chapter four, it was proved that PWDs and minors indeed face discrimination and experience sexual violence. From the preceding, the study presents the following findings.

Many who were interviewed said they had tried to seek justice but failed. This is because most of the police are corrupt. Also the local councilors press for mediation instead of going to police which hinders access to justice.

In terms of statistics, data on the prevalence of sexual violence particularly against minors and PWDs in Uganda is not consistent. Laws and policies were adapted in Uganda to address the needs of minors and PWDs most especially on discrimination. Laws have been developed in the field of sexual violence and access to justice like the Penal code act and the 1995 constitution which address the issues of offences against morality and even prescribes penalties for them, then the promotion of equality for all Ugandan citizens respectively which shows that the legislators intended to cover the needs of the minors and PWDs who faced vices like sexual violence. The policies put in place are the national policy on disability 2006 which promotes equal opportunities and enhanced participation and protection of PWDs irrespective of gender, age, and the type of disability.

However much as the laws are in place, they are not dedicated hence hindering any meaningful and effective enforcement and monitoring mechanisms on the protection of the minors and PWDs.

In terms of legislation, Uganda has enacted the PWDs act 2006 and the Children's Act cap 59 but they do not provide full protection to the minors and the PWDs in terms of legal protection from sexual violence. These Acts do not make express provision for sexual violence; consequently sexual violence could only be inferred with such provisions like those tending to guarantee safe settlement for PWDs and minors.

The penal code act of Uganda remains the only law addressing sexual violence in Uganda as it penalizes many conducts of sexual violence. However it also has a gap in that only imbeciles and idiots are the only persons characterized as PWDs which reinforces the medical model of disability by placing much emphasis on the limitations of an individual PWD without regard to the external factors beyond the reach of the PWD in question.

## **5.2. Conclusion**

Despite the fact that these laws are put in place to protect minors and the PWDs, they are inefficient in that most cases are not prosecuted because of the corruption in police, most court houses most especially the high courts are inaccessible to the PWDs since they are storage buildings and reluctance of the medical officers to testify in court make the whole system weak.

Most parents to the victims also don't report these cases and they prefer settlement out of court because of the culture and also the police forms are not readily available as most police officers will require them to be bought.

Nevertheless, despite these shortcomings in the legal and policy frame work in Uganda, opportunities are present giving way to a fresh and build a sustainable, coherent and trusted policy and legal frame work that would adequately address sexual violence and access to justice for PWDs. In this regard, the study proposes the following recommendations:

## **5.3. Recommendations**

The government of Uganda through the ministry of Gender, labour and social development and state ministry of disabilities should take measure to fight stigma and discrimination for example



through awareness raising campaigns about the rights of minors and PWDs. Information should be incorporated on how to respect the rights and dignity of the PWDs and the minors into existing training of police officers, justice officials, health workers and others who interact with PWDs and children on the issue of sexual violence.

Also a comprehensive education program should be established for PWDs and minors. This should be addressed to PWDs, minors, professionals working in disability field; education programs must focus not only on obligations but also on PWDs and minors rights for them to understand their rights.

The national disability council should develop protocols and referred systems for complaints lodged by the PWDs.

The civil society organizations, non-governmental organizations particularly the media sector should be made to act as an oversight and the awareness raising bodies. This way, sexual violence and access to justice for PWDs and minors would be addressed.

Police and court houses should be made accessible to minors and PWDs by training police officers on the child and family protection unit as well as on how to respect the rights of the minors and PWDs. further, language interpreters should be made available at police posts and courts or train them on the basic sign languages.

Provision of ramps for the PWDs should be made available for easy accessibility to the justice and transportation should be provided to the child and family protection unit.

The parliament and the ministry of justice should provide regulations for the PWDs act 2006 to ensure implementation and enforcement of the statute in line with the CRPD or alternatively amend current laws to ensure procedural accommodations in all legal proceedings in order to enable PWDs and minors fully participate in them in compliance with the CRPD and the CRC.

**APPENDICES.**  
**APPENDIX A**

**QUESTIONNAIRE TO POLICE OFFICERS, LAWYERS AND NGOS**

This questionnaire is intended to provide answers to the researcher on the study topic “legal analysis on sexual violence and access to justice for minors and persons with disability”.it is purely for academic use therefore your cooperation is highly appreciated.

The questions are herein as below;

1.What is your profession?

.....

2. How often are cases of sexual violence reported in your office?

.....

3. How many cases are prosecuted and if so how many perpetrators are convicted in year?

.....

4. Who are often the victims of sexual violence according to your report?

.....

.....

5. What challenges do you get when handling cases of sexual violence?

.....

.....

.....

.....

.....

## APPENDIX B

To parents and victims of sexual violence

What is your relationship with the victim?

A. parent.....

B. relative (specify).....

How old is your child or what form of disability is he/she faced with?

.....

What is your perception about sexual violence?

.....

What challenges do you face when reporting the matter to police?

.....

Did you get redress when you reported the matter to police?

.....

Thanks for your cooperation.

## **BIBLIOGRAPHY**

Degener, T & Koster-Dreese, Y (1995) Human rights and disabled persons: Essays and relevant human rights instruments Martin Nijhoff Publishers: London

Grobbelaar, IDP & Tobias, VR (ed), (2011) Aspects of disability law in Africa, Pretoria University Law Press: Pretoria.

Kruger, H (2010) The Law of persons in South Africa

Oxford University Press: Oxford. Naidu, E (2005) On the margins: Violence against women with disabilities Centre for the Study of Violence and Reconciliation: Cape Town.

Oliver, M & Sapey, B (2006) Social work with disabled people: Practical social work Palgrave Macmillan: United Kingdom.

Ougergouz, F (2003) The African Charter on Human and Peoples' Rights: A comparative agenda for human dignity and sustainable democracy in Africa Martinus Nijhoff: New York

OHCHR(2010) Addressing sexual violence against children.

Pinheiro P (2006), Rights of a child.

Noble J, Cover J, Yanagishita M. The world's youth, 1996.

Sebunya C, child abusers face mob justice; aids analysis Africa 1996.

Brisenden. S „Independent living and the medical model of disability (1993) International Journal Disability, Handicap and Society 6 Eze-Anaba, I „Domestic violence and legal reforms in Nigeria:

Prospects and challenges (2007) 14 Cardozo Journal of Law and Gender Feldblum, CR„Definition of disability under Federal Anti-Discrimination Law: What happened? Why? And what can we do about it? (2000) 21 Berkeley Journal of Employment and Labor Law 91.

Fredman, S „Providing equality: Substantive equality and the positive duty to provide (2005) South African Journal of Human Rights 163.

Kibwana, K „Empowering the African woman: A study of the protection of women’s rights under the African Charter on Human and Peoples Rights and a proposal regarding the development of a Charter on the rights of the African Woman (1995) 5 Review of African Commission on Human and Peoples’ Rights 7.

Kusenha, N „Domestic violence and the rights of women: A study of the Tanzanian Experience (2011) 4 Journal of African and International Law 75.

Luis, A „Back to the future? Insanity and foucaults criminal justice (2009) 2 Journal of African and International Law 105.

Nsibirwa, MS „A brief analysis of the draft protocol to the African Charter on Human and Peoples’ Rights on the rights of women (2001) 1 African Human Rights Law Journal 41.

Pedain, AD „Once a sex offender, Always a reoffending risks? (2010) 69 Cambridge Law Journal 428.

Stefiszyn, K „The African Union: Challenges and opportunities for women (2005) 5 African Human Rights Law Journal 358.

Tham, H et al „The emergence of the crime victim: Sweden in a Scandinavian context (2011) 40 Crime and Justice, Chicago Journals 555.

Umozurike, UO „The African Charter on Human and Peoples’ Rights: Suggestions for more effectiveness (2007) 13 Annual Survey of International and Comparative Law 179.

Reports and Papers Schulze, M (2010) Understanding the UN Convention on the Rights of Persons with Disabilities Handicap International: Lyon.

Salmons son, A (2006) 'Disability is not inability: A final report of a baseline study of steps taken towards inclusive education in Blantyre, Balaka and Machinga districts in MalawiIPM:

Stockholm. Anello, B „Inter-sectoral workshop on violence against women with disabilities and deaf women and access to the justice system (1998) <<http://dawn.thot.net/workshop.html>> (accessed 29 July 2012).

Baaz, ME and Stern M „The complexity of violence: A critical analysis of sexual violence in the Democratic Republic of Congo (DRC) (2010).