

Beyond Legislation: Implementing the Employment Provisions of the Persons with Disabilities Act of Uganda 2006

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Abstract: Given the lack of social safety nets for persons with disabilities as well as other people in Uganda, employment is critical to people's socio-economic well-being. Uganda adopted a three-prong policy approach to disability employment embodying anti-discrimination, employment quotas and affirmative action. A combination of these policies can reduce barriers and increase access to employment for persons with disabilities. However, some of Uganda's well-intended disability policies have not been implemented due to a significant implementation gap. This paper examines barriers to implementing the employment policies enshrined in the Persons with Disabilities Act of Uganda 2006. It analyses the experiences of selected western countries that are implementing similar policies and draws some lessons applicable to Uganda. It is argued that, while Uganda has shown a strong political will by passing disability laws, their implementation should be more strenuously followed up. Future directions for implementation are discussed.

Keywords: Employment; Implementation; the Persons with Disabilities Act 2006; Uganda; Disability Rights; Development; Convention on the Rights of Persons with Disabilities; CRPD

I. Introduction¹

Persons with disabilities (PWDs) constitute one of the most marginalised and socially excluded groups in any society.² It is a recognised fact that employment is critical to the broader social integration of PWDs as well as their enjoyment of

1 An earlier version of this article was presented at an international conference on disability and development, Oslo, October 11-12, 2012. The author would like to extend appreciation to Dr Tamar Heller, Dr Sarah Parker Harris and Dr Michael Ashley Stein for their constructive criticisms of previous drafts of this article.

2 Raymond Lang, Maria Kett, Nora Groce and Jean-Francois Trani, 'Implementing the United Nations Convention on the Rights of Persons with Disabilities: Policies, Principles, Implications, Practice and Limitations' (2011) 5 *European Journal of Disability Research* 206-220.

social and political rights.³ In Uganda, discriminatory practices coupled with inaccessible work environments make it difficult for PWDs to access/retain employment.⁴ As such, a majority of PWDs who are of working age are unemployed;⁵ participate less in employment; are more likely to be self-employed; and survive mostly by subsistence farming and petty trade.⁶ This situation is exacerbated by disadvantages they encounter in other social domains such as education. The census report of 2002 indicates that 90 % of children with disabilities drop out of primary education, and only 2 % of PWDs complete post-secondary education. Thus, most PWDs lack employable skills.

Uganda has enacted some progressive, forward-looking disability laws; it has also mainstreamed disability rights into the national constitution and ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocols, on 25 September 2008.⁷ Uganda is also committed to implementing the Action Plan for the African Decade of PWDs, now extended to 2019.⁸ Thus Uganda has long demonstrated a positive political will towards disability legislation, at national and international levels.

Despite the fact that in many developing countries progressive human rights-based disability policies exist, and disability rights are often mentioned in many national constitutions or other mainstream legislations, disability rights are often honoured in the breach.⁹ This situation is mirrored in Uganda where relatively many well-intended disability policies have been enacted, but are often not implemented. However well written or well intentioned, when not implemented, a policy at best sits on the shelf and fails to achieve its statutory goals.¹⁰ As such, this paper seeks to contribute towards a deeper understanding of the barriers impeding

3 International Labour Organization (ILO), 'Employment of People with Disabilities: The Impact of Legislation' (Report) (2004).

4 Ministry of Gender, Labour and Social Development (2011)

5 ILO (n 2) 3.

6 Johannes G Hoogeveen, 'Measuring Welfare for Small but Vulnerable Groups: Disability and Poverty in Uganda (2009) 14 *Journal of African Economies* 603-631.

7 Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD); Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) UN Doc A/61/611; UN Enable, Convention and Optional Protocols Signatures and ratifications <<http://www.un.org/disabilities/countries.asp?navid=12&pid=166>> accessed 7 May 2013.

8 ILO (n 2) 3.

9 Lang *et al* (n 1) 3.

10 Karen Hardee *et al.*, 'The Policy Circle: A Framework for Analyzing the Components of Family Planning, Reproductive Health, Maternal Health, and HIV/AIDS Policies' Policy Working Paper Series No. 11 (Futures Group POLICY Project 2004).

effective implementation of the Persons with Disabilities Act 2006 (PWDs Act), specifically its employment provisions.¹¹ The first part of the paper presents an overview of the policy context and of the employment situation of PWDs in Uganda. It then examines barriers inherent in the PWD Act, as well as other barriers that impede implementation. The paper also discusses the implementation experiences of selected western countries and their possible lessons for Uganda.

Background

In 1991, when disability was first included in its national census, Uganda had a national disability rate of 1.1 %. Ten years later, the disability rate increased to a national average of 4 %, with northern Uganda having the highest rate of 4.8 % due to the effect of the protracted rebel war in the area.¹² When compared with the WHO's estimate that 10 % of every population is disabled, Uganda has a low disability rate. However, such statistics should be interpreted with caution, as the actual disability rate could be higher.

Uganda is credited as a role model of disability rights in Africa and has a vibrant disability movement.¹³ In addition to disability-specific laws, mainstream national laws also guarantee the participation of PWDs in society. The favourable legislative environment in the country is attributable to the conducive political climate ushered in by the current regime. Notably, the regime promoted the rights of various special interest groups, including PWDs. As a result, a national umbrella organisation of disabled persons, the National Union of Disabled Persons of Uganda (NUDIPU), was founded in 1987. NUDIPU successfully lobbied and represented PWDs in the Constituent Assembly of 1994, a body that debated and passed the Constitution of the Republic of Uganda 1995.¹⁴ Even though NUDIPU was represented by only one delegate at the Constituent Assembly, compared to other special interest groups such as those representing women (39) and the Youth (4),¹⁵ its representation has historical significance for disability policy. Subsequently, explicit provisions were included in the 1995 Constitution that recognised the rights of PWDs to respect and human dignity,

11 The Persons with Disabilities Act 2006 (Uganda) ('PWD Act').

12 Uganda Bureau of Statistics (UBOS), 'Population and Housing Survey' (Kampala, UBOS 2006).

13 *Lang et al* (n 1) 3.

14 The Constitution of the Republic of Uganda 1995 ('The Constitution').

15 Ali Mari Tripp, 'The Politics of Constitution Making in Uganda' in Laurel E Miller (ed), *Framing the States in Times of Transition: Case Studies in Constitution Making* (US Institute of Peace Press 2005).

among other rights.¹⁶ By including disability rights in its Constitution, Uganda recognised disability as a socio-political issue and persons with disabilities as citizens entitled to the same constitutional rights as all other Ugandans.

In spite of the generally conducive legislative environment, PWDs in Uganda still face high levels of exclusion, marginalisation and discrimination, owing to deep-rooted structural, cultural and attitudinal barriers. For example, the long history of conflict has meant that PWDs from Northern Uganda experience the most deeply entrenched marginality, exclusion and discrimination.¹⁷ According to NUDIPU,¹⁸ disability and poverty are impossible to disentangle.

In view of the poor living conditions and persistent discriminatory practices against PWDs, there are growing concerns that Uganda formulates policies in the name of advancing the rights of PWDs, without taking commensurate actions to ensure the success of such legislation.¹⁹ This reality was also reiterated in the report of a disability scoping study which pointed out that Uganda is at crossroads in terms of disability policy and practice, owing to a significant implementation gap that impedes effective delivery of services to PWDs.²⁰ Against this backdrop, this paper focuses its analysis on the employment provisions of Uganda's most comprehensive disability specific statute: The Persons with Disabilities Act 2006. Prior to this analysis, it is important to understand the employment picture of PWDs in the country.

II. The Employment Situation of Persons with Disabilities in Uganda

Uganda's unemployment rate stands at 5 % in the general population.²¹ National statistics do not explicitly include the unemployment status of PWDs. Neverthe-

16 The Constitution art 35 (1).

17 Raymond Lang and Ambrose Murangira, 'Disability Scoping Study for DFID Uganda' (Report) (DFID 2009) <http://www.ucl.ac.uk/lcccr/downloads/scopingstudies/dfid_ugandareport> accessed 22 September 2012.

18 The National Union of Disabled Persons of Uganda (NUDIPU) cited in *Lang and Maurangira* (n 17).

19 Fulgencio Kayiso, Promoting Pluralism Knowledge in Uganda, 'The Politics of Identity: Assessing the Influence of Ethnicity, Regionalism, Religion and Gender in Uganda' (2009) <<http://www.hivos.net/Hivos-Knowledge-Programme/Themes/Pluralism/Countries/Uganda/Resources/The-Politics-of-Identity-Assessing-the-influence-of-ethnicity-regionalism-religion-and-gender-in-uganda>> accessed 10 June 2013.

20 *Lang et al* (n 15) 3.

21 UBOS, 'Labour Market Survey' (Kampala, UBOS 2007).

less, other studies show that the majority of PWDs who are of working age are unemployed.²² In general, PWDs participate less in employment and are more likely to be self-employed than non-disabled people.²³ As such, employment is the least mentioned source of income among households headed by a PWD (21 %), followed by subsistence farming (25 %) and petty trade (27 %). The government of Uganda offers some vocational training programs to equip PWDs with employable skills and promote their access to employment. However, these programs are limited in scope and no longer meet current labour market requirements.²⁴ Every citizen of Uganda, as well as PWDs, has a constitutional right to engage in a lawful occupation and to practice their profession.²⁵ In order to remove barriers that preclude PWDs from participating in employment, Uganda enacted both mainstream and disability-specific laws. These include (among others), the Employment Act of 2006; the Persons with Disabilities Act 2006; the National Employment Policy 2006; the National Disability Policy 2006; and the National Equal Opportunity Policy of 2006.

In spite of the existence of a relatively advanced disability legislative framework, competing ideologies that undermine the employment rights of PWDs still endure. For example, during the 2002 population census, contrary to what is affirmed in legislation, disability was equated with inability to work and defined as: 'any condition that prevented a person from living a normal social and working life'.²⁶ The *normal working life* view of disability adopted during the census of 2002 might be related to the fact that agriculture forms the backbone of Uganda's economy and employs the majority (70 %) of the working age population.²⁷ Thus an "able-body" might have been presumed as a requirement for work: 'since there are no unemployment benefits in Uganda, all *able-bodied* persons attempt to work' (emphasis added).²⁸ Such an assumption is contrary to the current focus on the principle of equality of opportunity embodied in anti-discrimination laws. Moreover, understanding disability from this point of view reinforces the incorrect assumption that PWDs are necessarily unable to work.

22 ILO (n 2) 3.

23 Hoogeveen (n 5) 3.

24 Government of Uganda, 'Uganda's Initial Status Report 2010 to the CRPD' (Advanced Copy) (United Nations, 2010).

25 The Constitution, article 40 (2).

26 UBOS, 'Population and Housing' (n 8) 3.

27 Ibid.

28 Ibid.

III. The Employment Provisions of the Persons with Disabilities Act 2006

The PWD Act was enacted pursuant to the Constitutional provision that mandates Parliament to make appropriate laws to protect the rights and interests of PWDs in Uganda.²⁹ President Museveni assented to the Act on 24 May 2006. Part III of the PWD Act makes comprehensive provisions regarding employment of PWDs. It embodies three approaches to disability employment, namely: anti-discrimination; employment quotas; and affirmative action. These policy approaches – especially the anti-discrimination model – have been adopted in many western countries (such as the United States of America, United Kingdom, Australia), and are integral parts of the United Nations' CRPD and regional bodies like the European Union.

Prohibition of Discrimination

Part III section 12(1) of the PWD Act prohibits discrimination of a qualified person on grounds of disability, in the entire employment processes including application, hiring, promotion, dismissal, compensation, job training and employment benefits. The Act clearly prescribes what constitutes discrimination in employment processes.³⁰ For example, an employer cannot conduct any test or examination with the intent of establishing the nature, severity of, or whether a job applicant has a disability or not.³¹ The PWD Act further prohibits discrimination of an employee on grounds of testifying in a discrimination case or opposing an act of discrimination against other employees with disabilities in the workplace.³² The PWD Act does not, however, define what a *qualified* person means with respect to section 12.

Employment Quotas

The PWD Act does not prescribe a specific job quota rate for PWDs but it does mandate the Minister for Labor to determine the employment quotas for PWDs in consultation with employers' organisations.³³ It requires employers to submit

29 Constitution of the Republic of Uganda, Article 35(2).

30 PWD Act part III s12, 2(a-i).

31 Ibid part III s14 (1-3(a-c)).

32 Ibid part III s15 (1(a-c)).

33 Ibid part III s13(3).

annual reports on the employment of PWDs in their organisations to the Minister for Labor.³⁴ Beyond requiring reports from employers, the Act does not stipulate any other mechanisms for enforcing its quota mandate. Notably, the Act does not stipulate whether job quotas shall be differentiated according to type or severity of disability. This means that PWDs have to compete for the same quota job slots in the labour market, irrespective of the type or severity of disability.

Affirmative Action

The PWD Act mandates two forms of tax incentives to employers in the private sector. First, employers who incur costs for any modifications they make in their work premises are entitled to tax exemptions.³⁵ Second, organisations that employ at least ten PWDs as regular employees on a full-time basis are entitled to a 15 % reduction of all payable taxes.³⁶ Whereas the PWD Act stipulates a tax reduction rate of (15 %) for employing at least 10 PWDs, another law, the Income Tax amendment Act of 2010 as amended, reduced this tax to 2 %.³⁷ It is unclear how the difference in these two laws is reconciled in practice.

The PWDs Act 2006 is Uganda's most comprehensive disability-specific law. One of its goals is to promote the full participation of all PWDs in all aspects of life as equal citizens of Uganda. The three-prong approach to employment policy envisioned in this law could be described as ambitious. Nevertheless, it is a potentially strong approach to removing barriers to participation of PWDs in employment, because the limitations often associated with relying on a single policy approach can be minimised when using a multi-prong policy approach, as embodied in the Act. However, effective implementation is still needed in order for persons with disabilities to realise meaningful employment outcomes. Legislative measures per se are not sufficient unless followed by additional administrative and financial measures.³⁸

34 Ibid part III, s13 (3(a-c).

35 Ibid part III, s13(c).

36 Ibid part III s17.

37 United Nations (n 22) 6.

38 Office of the UN Commissioner for Human Rights (OHCHR), 'Review of the Uganda Legal Framework Relevant to the Persons With Disabilities Act: Comparative Analysis of the PWD Act to the UN Convention on the Rights of Persons with Disabilities 2006' (OHCHR 2009).

IV. Challenges to Implementing the PWDs Act 2006

The Ministry for Gender, Labour and Social Development explicitly acknowledges that: ‘discriminatory practices coupled with inaccessible work environments make it difficult for PWDs to access and retain employment, as they are often the last to be hired but the first to be fired’.³⁹ This is contrary to the goals of the PWDs Act which is to eliminate all forms of discrimination on the grounds of disability. The PWD Act was intended to come into force on 4 August 2006, but its implementation has been slow.⁴⁰ For example, to date, the regulations for implementing the Act are still yet to be issued by the Ministry for Gender, as required under the Act.⁴¹ The non-implementation of disability policies may be attributable to multiple factors, including structural, social, economic, cultural and political factors. In this paper, barriers to implementing the employment provisions of the PWD Act are conceptualised as:

- a) barriers inherent in the Act, and
- b) operational barriers.

Barriers Inherent in the PWD Act 2006

The PWD Act falls short of prescribing a comprehensive institutional framework for its implementation and monitoring of progress. The law merely requires employers to report to the Minister for Labour in terms of their compliance with its quota mandate, and the Minister to report to Parliament on the employment status of PWDs annually.⁴² Reporting requirements per se are inadequate to facilitate effective implementation. As it stands, the implementation framework does not reflect the decentralised system of administration in Uganda. The Local Government Act 1997 has long devolved substantial administrative powers to local governments. Thus, local governments have powers to hire their own employees through independent District Service Commissions. Moreover plenty of job opportunities exist at local government level. To be effective, the Act needed to

39 *Lang et al* (n 5) 3.

40 See the PWD Act, page 3: commencement date.

41 PWD Act, Part IX (44).

42 PWD Act, Part 13, s3(e); 5.

prescribe a clear and comprehensive implementation framework involving all relevant actors at different levels, with clearly stipulated obligations.

Second, the definition of disability under the PWD Act can pose a potential challenge in practice. Under the PWD Act 2006, disability is defined as ‘a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation’.⁴³ Although this definition recognises that disability results from the interplay of impairment and environmental factors, it places an undue emphasis on *substantial functional limitation*. The likely problem in practice is that, this emphasis narrows the meaning of disability and reduces the scope of discrimination protection offered by the law.⁴⁴ For example, when it comes to determining whether or not one is disabled, by implication, this definition requires that an individual not only has a disability but, also that their disability is *substantial enough to* limit participation in daily life activities. Moreover, it is not clear from the Act what constitutes daily life activities. In effect, people with minor disabilities who are subject to discrimination due to negative stereotypes, may not qualify for discrimination protection under the Act.

Furthermore, the concept of a *qualified* person contained in the PWDs Act, with respect to prohibition of discrimination in employment, is potentially problematic. First, the Act does not define what a “qualified” person means. One possible interpretation is that the PWD must meet the required qualifications of a job in order to be eligible for discrimination protection in employment. This then begs the question, how many PWDs in Uganda can actually meet the *qualified* requirement? As stated before, just 2 % of PWDs in Uganda complete post secondary education. This means that the majority lack essential job qualifications and would not therefore qualify for discrimination protection under the Act. In its current form, the anti-discrimination measures of the Act might mostly benefit an elite group of PWDs, with employable job skills, while the majority risk being excluded for lack of job qualifications.

Another potential barrier inherent in the PWDs Act is omission of the concept of reasonable accommodation. Instead of adopting and requiring reasonable accommodation, the PWDs Act mandates a tax reduction to employers who make *appropriate modifications* in their *work premises or in the physical features* of their work premises. The references to ‘work premises’ and ‘physical features’ imply access to physical facilities in the workplace and yet, in reality, job accom-

43 PWD Act, part 1 (2).

44 OHCHR (n 33) 9.

modation for PWDs is broader than simply ensuring access to physical facilities. Exploiting this provision as it stands, employers can choose to interpret modification of workplace premises in such a manner that neglects other kinds of job accommodation that PWDs need in the workplace. Considering that the PWD Act predated the CRPD, it is understandable that the Act does not provide for reasonable accommodation, which is a broader concept. Having ratified the CRPD, Uganda has the obligation to align its domestic legislation to the CRPD. The concept of reasonable accommodation would be a critical aspect to consider when domesticating the CRPD. In its CRPD Initial Status Report of 2010, Uganda already acknowledges that the PWD Act contains certain inconsistencies, including the omission of reasonable accommodation, and promises to harmonise them when domesticating the CRPD.⁴⁵

Operational Challenges

The delay by the Ministry for Gender, Labour and Social Development in issuing regulations for implementing the PWD Act 2006 (as required under the Act) is a significant barrier to implementation of the employment provisions of the PWD Act. Implementation cannot commence before issuance of regulations. Regulations are necessary to provide rules for interpretation, construction and operationalisation of the provisions of the Act during implementation. Concerns have been voiced that the Ministry for Gender is simply procrastinating its responsibility and therefore delaying implementation of the PWD Act: ‘whenever I follow-up with officials at the Ministry for Gender to give us guidelines for enforcing the PWDs Act, they keep on saying “we are in the process” – the processes that never matures’.⁴⁶

Despite the Ministry for Gender’s slow progress towards the full implementation of the Act, it should be recognised that the Act does not designate any special funds for its implementation. It is also not known whether the Ministry for Gender’s annual budget includes a vote for implementation of the PWD Act. Moreover, neither the Members of Parliament representing persons with disabilities nor Disabled Persons’ Organisations (DPOs) have articulated the lack of funding as

45 United Nations (n 31) 8.

46 Ambrose Murray ‘The Disability Legislation in Uganda. Why the “Implementation Gap”?’ *Norges Handikapforbund* (Blog, 2012) <<http://www.nhf.no/index.asp?mal=3&tid=69625>> accessed 10 June 2013.

being an issue that warrants priority action by government. Hence, the lack of a clear budget line remains a critical barrier to implementation of the Act.

Perhaps another challenge lies in the fact that disability is regarded as a multi-sectoral issue that cuts across all departments.⁴⁷ In order for the lead Ministry to ensure effective implementation, relevant central government ministries, local governments and private sector entities must fulfil their roles. The challenge is that other sectors are autonomous and do not necessarily view disability as their primary responsibility. Moreover, the current implementation framework lacks a clear institutional mechanism for coordinating all stake-holders' activities and holding them accountable in the event of non-compliance.

Furthermore, the tax incentives mandate of the PWD Act lends itself to easy manipulation. There are no clear guidelines with regard to how to effectively enforce the tax mandate under the Act. Employers tend to exploit this law to their benefit, causing government a substantial income loss, while failing to benefit PWDS. Due to operational challenges in implementing the tax mandate, the tax rate has been reduced to 2 % in the Income Tax Act amendment of 2009 and was nearly revoked by Parliament for the same reason.⁴⁸ Thus in its current form, and without more stringent enforcement measures, the tax provision is at best a windfall to private employers and a loss to the government and PWDs.

DPOs in Uganda have a critical role to play in implementing the PWD Act. However, there are two challenges facing the two foremost DPOs in the country: the National Council on Disability (NCD) and the National Union of Disabled Persons in Uganda (NUDIPU). Firstly, there are unresolved power tensions between the NCD and NUDIPU regarding which body should nominate or elect the five Parliamentary representatives of PWDs.⁴⁹ Secondly, the NCD, which is the body authorised to monitor the implementation of disability laws, including the CRPD, lacks the technical and financial muscle to execute this important function. NUDIPU has more political clout and a relatively better financial standing given its international reputation and nationwide membership establishment. However due to the unresolved power tensions between them, NUDIPU and the NCD do not necessarily operate as unified bodies in all mat-

47 See for example, National Disability Policy Uganda 2006 (Uganda); The National Equal Employment Opportunities Policy 2006 (Uganda).

48 United Nations (n 31) 8.

49 Tobias Peter van Reenem and Helene Combrink, 'The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 Years' (2011) 8 *Sur International Journal on Human Rights* 132.

ters concerning disability. These two bodies can only successfully advocate for the implementation of the PWD Act if they can put aside their tensions and unite on issues critical to the disability community.

V. Implementation Experiences from Other Countries

As stated previously, the PWDs Act embodies three approaches to disability employment: anti-discrimination; quotas; and affirmative action measures. These policy approaches are common to a number of countries. The following section will focus specifically on the anti-discrimination model and quotas in the United States and Germany respectively.

The United States Anti-discrimination Model

The United States (US) has amassed one of the longest experiences in implementing anti-discrimination disability law. Disability anti-discrimination legislation in the US evolved from the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.⁵⁰ The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination in the entire employment processes and requires employers to make reasonable accommodation for *qualified* individuals with disabilities to be able to enter the workforce and retain jobs. Anti-discrimination laws such as the ADA are grounded on the belief that PWDs can compete for jobs on their own merit once provided with equal opportunities.⁵¹ The focus is therefore on removing societal barriers that preclude PWDs from employment. There is mixed evidence regarding the impact of the ADA on employment of PWDs. Some scholars claim that, rather than improving the employment rate, the ADA reduced or failed to increase the employment rate of PWDs.⁵² Other scholars, however, argue that the decline in employment of PWDs in the post-ADA era was due to other factors, not just the ADA.⁵³ Thus the efficacy of the anti-discrimination model embodied in the ADA continues to be debated within the United States.

50 US Commission on Civil Rights, 'Sharing the Dream: Is the ADA Accommodating All?' (2000) <<http://www.usccr.gov/pubs/ada/main.htm>> accessed 7 May 2013.

51 Samuel R Bagenstos, 'The Future of Disability Law' (2004) 114 Yale Law School 1.

52 Andrew J Houtenville and Richard V Burkhauser, *Did the Employment of People with Disabilities Decline in the 1990s and was the ADA Responsible?* (Cornell 2004) <<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1090&context=edicollect>> accessed 15 September 2012.

53 Houtenville and Burkhauser (n 46).

In relation to the PWD Act, there are some similarities. In the ADA, disability is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment or being regarded as having an impairment.⁵⁴ The United States Congress intended this definition to be interpreted broadly, but the judiciary narrowed the meaning of disability by restricting it predominantly to people with severe disabilities. In effect, narrowing the meaning of disability limited the number of PWDs who qualified for discrimination protection under title 1 of the ADA.⁵⁵ Consequently, colossal legal resources were expended in terms of proving whether an individual with disability qualified for discrimination protection under the ADA or not.⁵⁶ Thus it took the ADA Amendments' Amendment Act of 2008 to restore the meaning of disability to that which was originally intended by Congress.⁵⁷

Like the ADA, the PWD Act limits discrimination protection to *qualified* persons with disability. The PWD Act also emphasises *substantial functional limitation* in daily life activities, in its definition of disability. The definition of disability under the PWDs Act is narrower than the ADA's three-prong definition of disability. By adopting an even narrower definition of disability, Uganda is likely to face similar challenges as the United States did in the initial period of ADA title 1 implementation. Uganda can still avoid similar experiences by embracing a broader definition of disability when domesticating the CRPD. In a separate section, alternative definitions of disability that Uganda could look towards are discussed.

Employment Quotas in Germany

Germany has been implementing employment quota laws for PWDs since 1919.⁵⁸ Germany uses a levy-grant system in which defaulters pay fines and the resulting money is used to support disability employment initiatives.⁵⁹ Uganda

54 The National Council on Disability (NCD), 'Righting the ADA' (Report) (NCD 2004) <<http://www.ncd.gov/publications/2004/Dec12004>> accessed on 10 June, 2013.

55 Ruth Colker, 'The Mythic 43 Million Americans with Disabilities' (2007) 49 William and Mary Law Review a.

56 Glenn Patmore, 'The Disability Discrimination Act (Australia): Time for Change' (2005) 24 Comparative Labor Law and Policy Journal 533.

57 Mike Mitka, 'Federal Government Seeks to Clarify the Americans with Disabilities Act' (2008) 300 Journal of the American Medical Association 889.

58 *Tamako* (n 36) 11.

59 Samuel R Bagenstos, 'Comparative Disability Employment Law from an American Perspective' (2003) 24 Comparative Labor Law and Policy Journal, 649.

also adopted the quota approach under the PWD Act. However, Uganda adopted a “one-size-fits-all” quota approach, that is, it does not differentiate disability by type or severity in its quota job requirement. Germany, on the other hand, sets aside 5 % of quota jobs for severely disabled persons, distinct from all other PWDs. It also requires different quota job slots for private (3.4 %) and governmental organisations (7.1 %).⁶⁰ A strength in Germany’s approach is that it distributes the responsibility for employing PWDs to both public and private entities. Importantly, it differentiates quota job slots in terms of severity of disability, thus catering for people with significant disabilities who are often overlooked by employers when hiring. When effectively enforced, quotas can facilitate entry of PWDs into the labour market; however, quotas also tend to inadvertently portray PWDs as less competitive, since employers are obliged to hire them.⁶¹ An assessment of Germany’s quota system shows that some employers prefer to defy the quota law, and pay the compensatory levy, rather than employ PWDs.⁶² As such, quotas too, are not to be seen as a complete strategy, in and of themselves.

What Uganda could learn from Germany is the reward-penalty approach of enforcing quotas, something that is absent in the PWD Act. Also, differentiating quota jobs by severity of disability can address potential disparities resulting from a one-size-fits-all quota system. None of these policy approaches are necessarily endorsed as a model employment policy per se; it is important that any lessons drawn from these countries take the ramifications on Uganda’s political economy and its cultural context as a developing country into due consideration.

VI. Implications

As discussed previously, the definition of disability under the PWD Act 2006 is narrow. It neither fully accounts for the fact that negative cultural stereotypes, stigma and prejudices are still rooted in many Ugandan cultures, nor for the economic reality of PWDs. As a low-income country, a rigid definition of disability could be costly for Uganda because it might require substantial resources during enforcement. Broader definitions of disability can be found in the CRPD, the

60 WHO (n 47).

61 *Bagenstos*, ‘The Future’ (n 45).

62 Martin Kock, ‘Disability Law in Germany: An Overview on Employment, Education and Access’ (2004) 5 *German Law Journal* 1373 <http://www.germanlawjournal.com/pdfs/Vol05No11/PDF_Vol_05_No_11_1373-1392_Private_Kock.pdf> accessed on 13 June 2013.

ADA Amendments Act of 2008, and also in the Australian Disability Discrimination Act (DDA) 1992.⁶³ In particular, the DDA's definition of disability covers anybody who has a disability *now*, had one in the *past*, may have one in the *future* or are *believed* to have a disability. Like the CRPD, the DDA does not require proof of disability.⁶⁴ A broader conceptualisation of disability is critical for ensuring broad coverage against discrimination in employment for all categories of persons with disabilities.

Uganda's current quota law mandates the same job slots regardless of type or severity of disability. This approach does not guarantee equitable distribution of quota job opportunities among all PWDs, particularly those with significant disabilities. Hence, it does not address a critique of the quota approach that employers tend to favour people with minor disabilities, excluding those with severe disabilities, when hiring.⁶⁵ To be more effective, quotas are typically enforced through a carrot-and-stick method: through rewards and penalties. This serves to stimulate compliance and reduce non-compliance. Beyond requiring employers to report on their compliance with the quota law to the Minister for Labour, the PWDs Act does not stipulate a clear strategy for enforcing its quota provision. When effectively implemented, a reward-penalty approach might reduce current gaps in Uganda's quota enforcement strategy that relies solely upon annual reporting by employers.

Finally, the concept of reasonable accommodation is absent in the PWD Act. The PWD Act employs the term 'reasonable accommodation' only once, and

63 The DDA defines "disability" as one of the following:

- (a) total or partial loss of bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the presence in the body of organisms causing disease or illness;
- (d) the presence in the body of organisms capable of causing disease or illness;
- (e) the malfunction, malformation or disfigurement of a part of the body;
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction;
- (g) a disorder, illness or disease that affects the thought processes, perception of reality, emotions or judgment or that results in disturbed behavior; and includes a disability that:
- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

64 Australian Human Rights Commission, 'Disability Discrimination Act Guide: Who Does the DDA Protect?' (Online undated) <http://www.hreoc.gov.au/disability_rights/dda_guide/who/who.html> accessed 20 September 2012.

65 *Bagenstos*, 'Comparative Disability' (n 54).

does not stipulate it as a requirement for employers.⁶⁶ A related term it uses, *appropriate modification*, limits job accommodation to making changes in physical facilities in the workplace.⁶⁷ Modifications in physical facilities only will predominantly benefit persons with physical disabilities but overlooks accommodation needed by persons with other types of disabilities. Adopting the broader concept of ‘reasonable accommodation’ espoused in the CRPD to which Uganda is a signatory, can address this limitation in the Act. As Uganda looks towards domesticating the CRPD, it will be important to adopt the principle of reasonable accommodation provided in Article 27 of the CRPD. Effective implementation of the PWDs Act will require not only addressing operational barriers but also making critical revisions in certain provisions of the Act itself.

VII. Conclusion

By mainstreaming disability issues into its national legislations as well as enacting progressive disability-specific laws, Uganda took a significant first step towards recognising equal rights for persons with disabilities. The current implementation gap curtailing implementation of disability laws is a serious but not insurmountable challenge. The next critical step is for the government to allocate special funds and other resources towards implementing the PWD Act 2006. Ultimately, addressing the implementation gap requires deliberate political action by government and support by actors in the international arena. The importance of conducting empirical research to fill the dearth of implementation research on disability policy and disability in general cannot be over-emphasised. Such studies are needed to inform policy reforms, document the impact of policy on target beneficiaries and explore innovative strategies for integrating PWDs into the open labour market.

66 PWD Act, part III s12 2(g).

67 PWD Act, part III, s13, 4(b).