



ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES:

Challenges and Barriers to the Implementation of the Persons with Disabilities Act of 2010 in Tanzania

*Dr. Ines Kajiru^{1**} & Ms. Isabela Warioba^{2*}*

Abstract

It is indisputable that persons with disabilities (PWDs) are still facing several challenges, including discrimination and the denial of their rights. In 2006 the United Nations adopted the Convention on the Rights of Persons with Disabilities to address these challenges. The right to access to justice in the context of disability is specifically addressed under articles 12 and 13 of the Convention as well as the Constitution of the United Republic of Tanzania. Tanzania ratified the Convention in 2009 and domesticated it a year later through the enactment of the Persons with Disabilities Act of 2010.

Despite this legislative development, PWDs in Tanzania still face barriers including inaccessibility of information and communication and inappropriate access to physical environments such as courtrooms, buildings, counsel tables, and public service offices. This paper describes challenges in the practical implementation of Tanzania's disability law, arguing that some of these challenges arise because magistrates, judges, lawyers and advocates lack a background in disability law. The authors conclude that there is need to include disability law and human rights frameworks as compulsory courses at universities in Tanzania, as a means of strengthening practical implementations of the law in future.

Key words: Disability, Access to justice, Barriers and Human rights.

¹ ** PhD in Law (University of KwaZulu-Natal), LL.M in Commercial Law (M.U), LL.B (M.U). Lecturer, Faculty of Law, Mzumbe University. Email: inkajiru@mzumbe.ac.tz and ikajiru@gmail.com.

² * PhD in Law candidate (University of Antwerp), LL.M in Human Rights and Democratisation Africa (Centre for Human Rights, UP), LL.B (M.U). Assistant Lecturer, Faculty of Law, Mzumbe University, Advocate of the High Court and Subordinate Courts thereto save for Primary Courts. Email: imwarioba@mzumbe.ac.tz and belawarioba@gmail.com.

1 Introduction

Internationally, people with disabilities are more likely to be victims of crime than other people without disabilities.³ The extent to which people with disabilities' reports of crime and abuse are dealt with effectively by the criminal justice system has increasingly come under enquiry. Skinnider argues that individuals with impairments must be given every opportunity to obtain legal assistance when required and must have unhindered access to the courts and due legal processes.⁴ Fina, Cera and Palmisano define access to the justice system as a process that encompasses people's 'effective access to the systems, procedures, information, and locations used in the administration of justice'.⁵ Such a broad definition ensures that the conceptualisation of access to justice is framed to address 'a wide range of scenarios in which persons with disabilities, and others, make claims about their rights, seek to enforce their entitlements, or claim justice'.⁶ This article addresses the problem of access to justice for persons living with disabilities in Tanzania. Impairment and handicap are included in the definition of disability as it is indicated later below in this article.

In 2006 the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD) which addresses access to justice for PWDs in articles 12 and 13. Article 13 of the Convention specifically addresses access to justice, directing State parties

to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of specified accommodation, in order to facilitate their effective role as direct and indirect participants.⁷ It further prescribes positive measures to be taken for the fulfilment of the rights of persons with disabilities in relation to justice. For example, State parties are to promote appropriate training for those working in the field of administration of justice, including police and prison staff.⁸ As a signatory to this Convention, Tanzania is obliged to incorporate and adhere to this provision in its Constitution and related laws. Therefore, to ensure that PWDs are accommodated in the national legal framework, the Tanzanian government ratified the Convention in 2009 and domesticated it a year later through the enactment of the Persons with Disabilities Act of 2010. Despite these legislative developments, evidence exists that the rights of PWDs are still being denied in Tanzania.⁹ This article illuminates some of the specific challenges that PWDs face in their efforts to gain access to justice regardless of legislative efforts in Tanzania. These include denial of access to physical environments such as courtrooms, state buildings, and counsel tables.¹⁰ PWDs are also not afforded easy access to legal information and communication and to public service officers. As this article demonstrates, government officials such as the police, magistrates, judges, lawyers and advocates who are responsible for the implementation of the law seem to have no knowledge or background of disability law.

3 Hoong Sin, C., Hedges, A., Cook, C., Mguni, N., et al *Disabled People's Experiences of Targeted Violence and Hostility* 2009 Research Report 21, Manchester: Equality and Human Rights Commission.

4 Skinnider E., *The Responsibility of States to Provide Legal Aid* A paper presented at The International Centre for Criminal Law Reform and Criminal Law Policy Beijing, March 1999, pp. 14-15.

5 Fina Cera & Palmisano (eds) *The United Nations Convention on the Rights of Persons with Disabilities – Commentary* 2017, p. 282.

6 *Ibid*

7 Art.13 (1) CRPD.

8 Art. 13(2) CRPD.

9 Shughuru, P. J., *Sexual Violence and Access to Justice for Persons with Disabilities in Tanzania and South Africa* A dissertation submitted in partial fulfilment of the requirements for the degree of Master of Law University of Pretoria 2012, pp 17-19.

10 *Ibid*

It is argued that there is a need to pay greater attention to improving access to justice for PWDs, including the need to provide training for all public and private officials that provide services to a population that may have significantly different needs. Targeting those delivering services may be a more efficient and effective way to improve access to justice than by attempting to draft laws and regulations that seek to address all possible circumstances. Most importantly, there is still much work to be done when it comes to designing educational programs that train persons with disabilities to access and navigate justice systems independently.

1.1 Definition of terms

As far as disability is concerned, there is three folded distinction into it, just to mention, impairment, disability and handicap.¹¹ To start with **“an impairment”**: is defined as any loss or abnormality of psychological, physiological or anatomical structure or function.¹² A **“disability”** is defined as any restriction or lack that results from an impairment of the ability to perform an activity in the manner or within the range considered normal for a human being.¹³ However, **“a handicap”** is defined as a disadvantage for a given individual, which can result from impairment or a disability, which prevents the fulfilment of a role that is considered normal for that individual.¹⁴

Activists in the disability movement argues that there is a developed confusion between the term ‘disability’ and

‘impairment’. According to the disability movement activists, impairment refers to physical or cognitive limitations that an individual may have, such as the inability to walk or speak, whereas, disability refers to socially imposed restrictions, that is, the system of social constraints that are imposed on those with impairments by the discriminatory practices of society’.¹⁵ Based on the above definitions, therefore, one can be in the position to conclude that; albinism should fall under disability category.

The United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities is of the view that, the term ‘Disability’ is given a great number of different functional limitations occurring in any population, in any country of the world.¹⁶ While the term ‘Handicap’ means the loss or limitation of opportunities to take part in the life of the community on an equal level with others; it describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.¹⁷

Considering the above arguments, this article first presents a discussion on existing international conventions, regional treaties and legislation that protect PWDs and allow them access to justice. It then moves on to deal with barriers that PWDs are facing in access to justice.

11 Barbotte E, Guillemin F, Nearkasen C et al., *Prevalence of impairments, disabilities, handicaps and quality of life in the general population: a review of recent literature* Bulletin of the World Health Organization, 2001, Vol 79, pp 1047–1055.

12 Barbotte E (note 9 above).

13 *Ibid*

14 *Ibid*

15 *Ibid*

16 UN Standard Rule available at <https://www.un.org/.../disabilities/standard-rules-on-the-equalization-of-opportunities-> (accessed on 10 September 2018).

17 Hill., *Country Disable Group. What is disability?* Available at <http://hcdg.org> (accessed on 24 February 2017).

2 Acknowledging the Human Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD)¹⁸ is an international human rights treaty of the United Nations that is intended to protect the rights and dignity of PWDs. The Convention requires all State Parties to protect, promote and ensure full enjoyment of human rights by persons with disabilities and urges their recognition everywhere as persons before the law with the right to enjoyment of their legal capacity on an equal basis with others in all aspects of life.¹⁹ The CRPD is a key instrument in the global movement to view persons with disabilities as people with a right to medical treatment, charity and social protection and to acknowledge them as equal members of society.

Article 13 of the CRPD specifically addresses the right of PWDs to have access to justice and State Parties are required to guarantee this right on an equal basis with others in order to ensure that PWDs fulfil their role as fully acknowledged participants in society.²⁰ Thus, State Parties are to provide appropriate training for those working in the justice administration field with specific reference to prison staff and the police to help ensure that PWDs have effective access to the justice system.²¹ Article 7 of the UDHR urges effective remedy for all people whose fundamental human rights have been violated in any way and it states that this right should be granted in the constitution of a country and its laws and

that it must be entertained by competent national tribunals. Article 8 of the UDHR strengthens article 7 by stating that, in all legal matters, effective remedy must be entertained by a competent authority. Similarly, article 2 of the International Covenant on Civil and Political Rights (ICCPR) sets out a range of procedural due processes for unhindered access to justice for all. This Covenant provides for non-discrimination, particularly on the basis of status or social origin. It is also articulated in article 26 that all persons are equal before the law and entitled to equal protection of the law without favour or discrimination.²²

According to the Human Rights Committee (HRC), State Parties have the obligation to ensure the effective protection of people's rights against violations.²³ Commenting on article 2(3) of the ICCPR, the HRC requires that State Parties should 'adopt judicial, legislative, educative, administrative and other appropriate measures in order to fulfil their legal obligations'.²⁴ Thus, State Parties are required to take steps across a wide range of government control measures to ensure that all human rights are appreciated and protected. In this regard, State Parties must ensure that individuals have accessible and effective remedies to vindicate those rights that have been violated'.²⁵ The term 'accessible' underpins the context of equal and effective protection and remedies that the UDHR provides and is reinforced in the ICCPR.

As far as the administration of justice is concerned, article 14 of the ICCPR recognises the importance of fair trials,

18 CRPD Landmark UN Convention on the rights of Persons with Disabilities, entered into force May 2008.

19 Schulze M., *A Handbook on Persons with Disabilities: Understanding the UN Convention on the Rights of Persons with Disabilities* (2009), 30.

20 CRPD Art. 13(1).

21 *Ibid* Art 13(2).

22 ICCPR Art. 26.

23 United Nations 'General Comment No. 31' Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004) para. 8.

24 *Ibid* 7.

25 *Ibid* 15.

the right to equality before the courts, and tribunals.²⁶ According to the HRC, article 14 of this convention covers all matters related to civil law²⁷ and reiterates that a State is obliged to give effect to these rights. The State is therefore under obligation to establish effective channels for information dissemination about its laws and citizens' rights. It should provide assistance to all people who wish to pursue a legal matter and it should thus establish an overarching affordable legal system.

The ICCPR contributes significantly to a rights-based access to justice context, particularly as article 2 obligates State Parties to provide judicial remedy for the violation of human rights.²⁸ Moreover, the International Covenant on Economic, Social and Cultural Rights (ICESCR) endorses access to justice in the preamble which reads as follows:

in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights which includes appropriate means of redress, or remedies...and appropriate means of ensuring governmental accountability.²⁹

According to the HRC, the ICESCR provides guidance on interpretations concerning the application of domestic

remedies for human rights violations, stating that remedies may be judicial or administrative. However, in terms of the latter, remedies must be 'accessible, timely, affordable and effective.'³⁰ In this regard, the ICESCR contributes to the international framework of access to justice. Moreover, article 5 of Convention on the Elimination of all form of Racial Discrimination (CERD) clearly elucidates the need for the equal treatment of all people before tribunals and in the administration of justice. The Convention on the Elimination of Discrimination against Women (CEDAW) refers to equal treatment 'in all stages of procedure in courts and tribunals' in article 15(2). Likewise, the African Charter on Human and People's Rights (hereafter the African Charter) entitles every individual in a ratifying state to have their cause heard and tried within a reasonable time by an impartial court or tribunal.

In Tanzania, the Person with Disability Act of 2010 defines accessibility to the justice system under section 3 as 'the process of enabling or allowing a person with disability to have access directly or indirectly to benefits of public social services in all spheres of society'. The definition includes access to information, communication and the physical environment such as tactile and sign language, interpretation for deaf and deaf-blind persons, audio tapes, Braille, large print, low vision facilities, computerized information and programmes and making the physical environment in buildings, public transport, roads and streets accessible for PWDs.³¹

26 ICCPR
27 United Nations 'General Comment No. 32' Human Rights Committee CCPR/C/GC/32 (2007) section III.
28 United Nations 'General Comment No. 31' Human Rights Committee CCPR/C/21/Rev.1/Add. 13 (2004) para. 7.
29 United Nations 'General Comment No. 9' Committee on Economic, Social, and Cultural Rights E/C.12/1998/24 (1998) para. 8

30 Ibid para. 9
31 Section 3 of the 2010 Act

The Act adds that the word ‘inclusion’ means ‘the process whereby people or society value and respect diversity as part of life, hence [it minimizes] barriers to accommodate PWDs to participate in and contribute to that society’.³² The Act endorses principles that guide the right of PWDs to the provision of services and goods. This right includes accessibility, full and effective participation, the inclusion of persons with disabilities in all aspects of society, equality of opportunity, non-discrimination, and the recognition of their rights and needs.³³

However, regardless of the fact that international human rights instruments as well as the Tanzanian legal framework create a vigorous rights-based approach and give recognition to the principles of equality, accessibility, affordability, timely and effective access to the justice system,³⁴ PWDs in Tanzania remain the most disadvantaged minority group as they live on the margins of Tanzanian society and face numerous barriers in accessing justice.³⁵

3 Barriers in accessing the justice system in Tanzania

Discrimination based on disability occurs when those with disabilities are treated less favourably in the process of access to justice.³⁶ According to section 3 of the Tanzanian Disability Act ‘discrimination’ means any distinctions, exclusion or restriction on the basis of disability which has the purpose, effect or impairing or nullifying the recognition,

enjoyment or exercise on equal basis of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.³⁷

Such treatment involves, among other things, arbitrary denial of access to justice for PWDs or restriction of reasonable physical accommodation and communications.³⁸ Barriers to justice often involve combined forms of inaccessibility and other forms of discrimination.³⁹ In this section, this article unpacks the most predominant barriers to the justice system that PWDs experience with specific reference to: (1) legal barriers; (2) physical barriers; (3) information and communication barriers; (4) economic barriers; and (5) attitudinal barriers.

3.1 Legal Barriers

Legal barriers to justice for PWDs include gaps in legal frameworks as the rights of PWDs may not be enshrined in the law, or policies or practices may be contrary to the provisions of the CRPD.⁴⁰ Additional barriers may be created where a state’s legal framework is confusing or complicated, or where there are overlaps or incompatibilities between national laws and their implementation.⁴¹ The Tanzania Parliament took a step forward by enacting its disability anti-discrimination law in 2010. The Persons with Disabilities Act of 2010 of Tanzania implicates all forms of discrimination and mistreatments against PWDs, while at the same time provides for the rights and

32 *Ibid*

33 *Ibid*

34 Curran L., & Noone MA., *Access to Justice: A New Approach Using Human Rights Standards* International Journal of the Legal Profession 2008 Vol 15, No 3, p. 203.

35 LHR Human rights Report 2016, p.133.

36 UN-DESA. From exclusion to equality: Realizing the rights of persons with disability, Handbook for parliamentarians on the convention on the rights of persons with disabilities and its optional protocol. Geneva: SRO-Kundig, 2007.

37 2010 Act.

38 UN-DESA (note 34 above).

39 Boshe P., *Accessibility for Persons with Disability in Tanzania: An Assessment of Policy and Legal Frameworks* Open University Law Journal 2013 Vol 4, No. 1, pp. 100-114.

40 Holness W, & Rule S., *Barriers to Advocacy and Litigation in the Equality Courts for Persons with Disabilities* Potchefstroom (2014) Vol17, No. 5, p. 187.

41 *Ibid*

duties of the same. Despite the existing law, PWDs in Tanzania still encounter legal barriers and this has remained unattended for quite sometimes with no proper mechanism to curb them. There is a lack of proper implementation and enforcement of the law. Thus, PWDs in Tanzania are not able to participate fully in legal proceedings in court as many public officials are unable to deal effectively and appropriately with PWDs.⁴² Moreover, anecdotal, primary and secondary evidence has shown that officials such as magistrates, judges, lawyers and other public officials are often incapable of dealing effectively and appropriately with PWDs when they seek recourse in the justice system.⁴³ For example it is very difficult to a Magistrate or Judge to communicate with a deaf person or a person with intellectual disability. Indeed, many lack the necessary knowledge about the special accommodation needs of PWDs, how to serve clients with disabilities, and how to interpret legislation, regulations and policies that refer specifically to PWDs.⁴⁴ This knowledge gap affects the quality of services rendered to PWDs which results in severely limited access to information and communications for this groups of people.⁴⁵

Police officials who are part and parcel of the process to ensure that justice is obtained are often not equipped with the knowledge or skills to deal with PWDs.⁴⁶ This problem is exacerbated because these public officials lack appropriate training which would enable them to understand the specific needs of PWDs.⁴⁷

Additionally, PWDs are expressly barred from serving as witnesses or jurors in Tanzanian courts as information on how to serve their needs is not available in accessible formats.⁴⁸ For example, there is no court in Tanzania that is equipped with personnel who are proficient in sign language to assist people who are deaf, there is no easy-to-read material for persons with cognitive disabilities or large print for persons with low vision, and there are no assistive technologies to accommodate PWDs in the country's courts.⁴⁹ These omissions render the enforcement of the law to end discrimination against PWDs extremely difficult.

There is primary evidence such as newspaper reports that PWDs have experienced negative encounters with law enforcement.⁵⁰ It may therefore be argued that they may fear to report crimes committed against them as they may not be sure if they will be taken seriously.⁵¹ Another obstacle is the limited dissemination of information regarding their rights to PWDs, and they are thus vague about their rights and are not sure when they should report an incident and what constitutes a crime.⁵² While reporting a crime can be complicated, inconsistencies in police policies and practices have also been cited as barriers to the justice system for PWDs.⁵³

The Act recognises that the denial of reasonable accommodation is a form of discrimination and it is thus highly

42 Tanzania 2017 Human Rights Report available at <https://www.state.gov/documents/organization/277299.pdf> (accessed on 27 December 2018).

43 Shughuru (note 7 above).

44 *Ibid*

45 UN-DESA (note 34 above).

46 Tanzania: The Justice System fails people with developmental disabilities; Daily News. Available at <https://allafrica.com/stories/201103030896.html>> (accessed on 23 December 2018).

47 *Ibid*.

48 Tanzania Human Rights Report (LHRC) 2014. Available at <https://www.humanrights.or.tz/assets/attachments/1504097078.pdf> (accessed on 18 October 2018).

49 Shughuru (note 7 above).

50 UNICEF *Every Child's Right to be Heard* Available at https://www.unicef.org/french/adolescence/.../Every_Childs_Right_to_be_Heard.pdf (accessed on 18 October 2018).

51 *Ibid*

52 Tanzania 2016 Human Rights Report available at <https://www.state.gov/documents/organization/236626.pdf> (accessed on 17 September 2018).

53 *Ibid*.

prohibited.⁵⁴ PWDs have right to be legally accommodated without any discrimination and failure to do so it is against this provision.

However, under article 13(2) , the State is under obligation to provide training to those who are working in the administration of the justice system so that they are equipped to ensure effective access to justice for PWDs.⁵⁵ In the same way, the 2010 Act requires access to the service by PWDs and non-disabled persons should be integrated and that persons with appropriate expertise and skills should be available to give advice to the body on means of ensuring that the service provided by the body is accessible to persons with disabilities.⁵⁶

However, section 62 of the Persons with Disabilities Act of 2010 establishes legal remedies and sanctions to uphold the prohibition of disability-based discrimination in a way that cross-cuts across all rights and areas.

To this end, it can therefore, be argued that discriminatory practices against PWDs persist in the justice system in Tanzania as there is a lack of reasonable accommodation for them in various settings (such as the courts and prisons) and standard practices and procedures have not been adjusted to accommodate their needs. This is a travesty of justice as article 9 of the CRPD obliges all member states to take appropriate measures in ensuring that PWDs are afforded equal and non-discriminatory access to justice. Yet, PWDs in Tanzania are not accommodated in the courts and are exempted from other legal proceedings such as administrative hearings. This

marginalisation of PWDs in Tanzania denies them their fundamental right to be heard.

3.2 Attitudinal Barriers

Attitude is a complex term to define. However different researchers have tried to define it in different way.⁵⁷ According to Eagly and Chaiken, attitude is “a psychological tendency that is expressed by evaluating a particular entity with some degree of favour or disfavour”.⁵⁸ Or it can be defined as a learned dispositions directing thoughts, actions and feelings”.⁵⁹ Longoria and Marini define attitude as “any belief or opinion that includes a positive or negative evaluation of some target (person, event or an object) and that predisposes us to act in a certain way toward the target”.⁶⁰ As if the above is not enough, Agnes and Laird describe attitude as one’s bodily manner, posture, and nature that show feelings, thoughts, opinion and mood.⁶¹

In that regards, many researchers are of the same view that there is a significant relationship between attitude and behaviour.⁶² Thus, Allport stated that *an attitude characteristically provokes behaviour that is acquisitive or generous, favourable or unfavourable, affirmative or negative toward the object or class of objects with which it is related*.⁶³ Therefore, numerous definitions of attitude implies that attitudes are built

54 Section 37 of the 2010 Act.

55 CRPD.

56 Section 36 (a) and (b) 2010 Act.

57 Hsu, T. H., *Attitudes of Taiwanese Employees Toward Their Supported Coworkers with Intellectual Disabilities*, PhD Thesis University of Northern Colorado, 2012. p 45.

58 Eagly, A. H., & Chaiken, S. *The psychology of attitudes*, Fort Worth, TX: Harcourt Brace Jovanovich, 1993, p. 1.

59 Tervo R.C., Palmer G. & Redinius P., *Health professional student attitudes towards people with disability* Clinical Rehabilitation, 2004, Vol 18, No. 8, pp. 908–915.

60 Longoria, L., & Marini, I., *Perceptions of Children’s Attitudes towards Peers with a Severe Physical Disability* Journal of Rehabilitation, 2006, Vol 72, No. 3, p. 540.

61 Agnes, M., & Laird, C., *Webster’s new World dictionary and thesaurus* (2nd ed.), Cleveland, OH: Wiley Publishing, 2002.

62 Hsu (note 55 above).

63 Allport, G. W., *Attitudes* 2008 in Roberts, C & Jowell R., (Eds) *Attitude measurement*, Los Angeles, CA: Sage, 2008, at p. 21.

on and influenced by a wide range of factors. Arguably, attitude may guide and determine people's opinions or judgments, or may directly influence human behavior.

Thus, over the years, attitudes toward persons with disabilities were negative and served as invisible barriers for persons with disabilities to participate in society.⁶⁴ Negative stereotypes and mythology create deep-rooted injustice toward people with disabilities.⁶⁵ As such, negative attitudes contribute greatly on the success/failure of persons with disabilities as they pursue any opportunities and partake in community life.⁶⁶ There are indications that after the CRPD came into force attitudes towards disability are progressing. The CRPD places great importance on the inherent dignity of persons with disability and appeals to Nations to increase knowledge and understanding of the rights of persons with disability, and to encourage respect for the dignity and rights of persons with disability. It also challenges stereotypes, prejudices and harmful practices toward persons with disabilities and the need to promote awareness of the strengths, potential and contributions of persons with disability".⁶⁷ It is however worthwhile to note that negative attitudes toward disability persist globally as is the noticeable connection between personal experience of disability and attitude.⁶⁸ Thus, Nowicki stated that, as long as negative attitudes towards individuals with a disability persist, the absolute impartial acceptance of people with

disabilities is unlikely.⁶⁹

In Tanzania, attitudes that discriminate against PWDs are based on the misconception that their medical or physical disabilities also translate into social disabilities.⁷⁰ According to Shughuru, understanding people's medical challenges is not enough; in fact, it is essential to understand that PWDs have social and emotional needs that will be denied if environmental and attitudinal barriers are created that exempt them from natural and fully functional social participation.⁷¹ Acknowledging the fact that PWDs can enjoy full and free participation in public and social life will remove these barriers.⁷² The traditional approach towards allowing citizens to have free access to justice and the law is a process that involves several public officials.⁷³

For example, in criminal cases it is the police that are involved in the very early stages of investigations and they play a very important role in determining the way in which alleged offences are handled and whether cases proceed further along the criminal justice system.⁷⁴ The police are thus the initial custodians of the justice system and they are required to uphold a disposition of fairness and equality when they deal with PWDs who have become victims of crime and who thus seek and require legal redress.⁷⁵ In dealing with PWDs, any successful case that is brought to the courts depends to a large extent on

69 Nowicki, E. A., *A Cross-sectional Multivariate Analysis of Children's Attitudes Towards Disability* Journal of Intellectual Disability Research, 2006, Vol 50, pp. 335- 348.

70 Shughuru (note 7 above).

71 Ibid.

72 An understanding which has also been adopted by the Convention on Persons with Disabilities.

73 DeMarco, D.K., *Disabled by Solitude: The on the Rights of Persons with Disabilities Convention and Its Impact on the Use of Supermax Solitary Confinement* University of Miami Law Review 2012, Vol 66, pp. 523-65.

74 Gudjonsson, G., *Interviewing adults with intellectual disabilities* 2011. Available at <https://www.emeraldinsight.com/doi/abs/10.5042/amhid.2011.0108> (accessed on 23 November 2018).

75 Ibid.

64 Offergeld, J., *Inclusion & Civic Participation, Poverty & Exclusion, UN Convention on the Rights of Persons with Disabilities* 2012.

Available at <http://disabilityandhumanrights.com/2012/02/23/public-attitudes-towards-persons-with-disabilities-and-their-role-in-achieving-an-inclusive-society/>. (accessed on 23 December 2018).

65 Shapiro, A.H., *Everybody Belongs* UK: Routledge 2000. p 78.

66 Ibid.

67 Offergeld (note 62 above).

68 Ibid.

the thoughtful and insightful manner in which the police handled the case. In this context, their relations with the victims and perpetrators, the issuing of reliable reports, and their handling of witnesses are vital components in ensuring that justice is served.⁷⁶ It is unfortunate that, in Tanzania, police officers lack awareness of the needs of PWDs and that their handling of victims with disabilities often endorses the stereotypical attitude that persons with disabilities are vulnerable, incapable and lack the capacity to be competent and credible witnesses of crime.⁷⁷ Moreover, it is difficult for the police to distinguish between different disabilities, with particular reference to intellectual and mental challenges, and many are not able to recognize when persons with disabilities require additional support.⁷⁸

It has also been argued that Tanzanian lawyers, magistrates, judges and other public officials still harbour negative attitudes and false beliefs or assumptions regarding the performance abilities of PWDs.⁷⁹ This has resulted in PWDs being treated as less credible during the legal process – for example when reporting a crime, serving as a witness, making legal decisions, and seeking remedies for alleged violations of their rights.⁸⁰ To a large extent society lacks a grounded understanding of PWDs and, predominantly because of harmful cultural beliefs, negative attitudes persist in surrounding the disability phenomenon.⁸¹

76 Holmes & Rule (note 38 above).

77 African Peer Review Mechanism *The United Republic of Tanzania Report No. 17*, 2013. Available at https://www.aprm-au.org/wp-content/uploads/admin/pdfFiles_CRR_No17-Tanzania_EN-1.pdf (accessed on 25 November 2018).

78 Ibid.

79 African Peer Review Mechanism (APRM) *Tanzania Country Self-Assessment Report 2009*. Available at www.aprmtoolkit.saiia.org.za/fr/component/docman/?/108-atkt_tanzania_csar_en-docx (accessed on 25 November 2018).

80 Ibid.

81 Kajiru I., *The Clash Between Harmful Cultural Beliefs and Human Rights: A Case Study of Atrocities against People Living with Albinism in*

This article is of the view that, attitude is one of the hardest barriers to eliminate and yet, removing this barrier costs nothing. Ignorance about people with disabilities result in behaviours that interfere with creating societies that include everyone. As such, persons with disabilities are still exposed to and exploited by discrimination and prejudice. Thus, addressing the ignorance about PWDs may be the first step in reducing unfavourable attitudes. In pursuit of co-rectifying the deeds of the past, society as a whole needs to change its attitude towards persons with disabilities both at an individual and universal level. However, one can in be in the position to say that, PWDs first need to be categorized, described and identified before attitudes can be changed and improved.

3.3 Information and Communication Barriers

Communication barriers are things/situations that make it hard for an individual with disability to receive or give information.⁸² PWDs may encounter these barriers in several ways, for example, when they find small print size in information in application forms and brochures or when they cannot find a person whom they can communicate or when symbols are not clear or easy to comprehend.⁸³ In some cases, it can be voice announcements that are not also shown visually and lack of access to services such as captioning and sign language interpreting.⁸⁴ All the above-mentioned factors may deny PWDs right

Tanzania PhD Thesis, University of Kwa-Zulu Natal, South Africa 2018, p. 137.

82 Careerforce., *Describe communication with people with a communication disability in an aged care, health, or disability context*. Available at <https://www.careerforce.org.nz/wordpress/wp-content/uploads/WB26982v1.pdf> (accessed on 23 November 2018).

83 Snyman, J. A., *Barriers and constraints faced by Travelers with disabilities* 2002. Available at https://www.nwu.ac.za/bitstream/handle/10394/6527/Snyman_JA_Chapter3.pdf (accessed on 23 November 2018).

84 Ibid.

to communicate and receive information.

According to UNICEF, Communication and information obstacles to access to justice are evident in cases where PWDs do not speak the central language or the language used in justice system proceedings.⁸⁵ However, as stated earlier in this article, there is no doubt that CRPD focuses on addressing the root causes of the inaccessibility of the justice system, poor communication and lack of other services for PWDs as article 9 of this instrument requires State Parties to take appropriate measures to develop, disseminate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and other services for PWDs. Moreover, State Parties are obliged under the CRPD to eliminate all obstacles that hinder effective accessibility to communication and to take appropriate measures to promote other appropriate forms of assistance to support PWDs to ensure their access to information.⁸⁶

In Tanzania, however, access to justice system for PWDs will only be achieved once physical access, sign language, legal aid, interpreters in courtrooms, and fair procedures that accommodate the needs of PWDs become a reality.⁸⁷ Should only one of the above features be omitted, the entire process will remain invalid.⁸⁸ Although article 21 of the CRPD recognises the right to information and communication, such opportunities are not available to all PWDs in Tanzania.⁸⁹ Section 3 of the

Persons with Disabilities Act of 2010 recognises the need for accessibility and inclusion of PWDs in all matters of life.⁹⁰

However, regardless of this provision in the Act, the reality has indicated that PWDs are still effectively excluded from seeking remedies against injustices.⁹¹ Section 49 of the Act requires the accessibility informational and communicational, such as the provision of professional sign language interpreters, Braille and other procedural accommodations. However, such things are not available almost in all courts, police stations and other public places. It has equally been found that advocates lack an understanding of how to work with clients with disabilities whilst some of such advocate seem to hold negative perceptions against PWDs.⁹² The lack of information dissemination to PWDs on an equal basis with other people has resulted in their ineffective and marginalised participation in legal proceedings. All people who are blind, deaf, or deaf and blind and people with intellectual and learning disabilities are isolated from the whole process.

The isolation occurs notwithstanding that State Parties are required to ‘design [and] promote accessible ways of information and communications systems’ in order to include PWDs as fully functional and recognized people of society.⁹³ However, PWDs in Tanzania remain excluded in communication services in the justice system. There are no interpreters to interpret sign language in any court, police station or other public or private office. Moreover, Section 55 (a)(b) of the Persons with Disabilities Act of 2010 requires all television companies

90 Section 4 (e) of the Persons with Disabilities Act 2010.

91 Shughuru (note 7 above).

92 LHRC (note 40 above).

93 Article 9 CRPD.

85 UNICEF *Children with disability in South Africa: A situation analysis* (2001-2011). Available at https://www.unicef.org/southafrica/SAF_resources_sitandisabilities.pdf (accessed on 13 November 2018).

86 CRPD Article 9.

87 Larson DA., *Access to Justice for Persons with Disabilities: An Emerging Strategy*. School of Law Hamline University 2014 Vol 3, pp. 220-238.

88 *Ibid*

89 United Nations Committee on the Rights of Persons with Disabilities ‘Communication No. 22/2014’. Available at <https://www.ohchr.org/Documents/HRBodies/CRPD/CRPD-C-18-DR-22-2014.pdf> (accessed on 14 December 2018).

to provide a sign language inset or subtitles in all newscasts, educational programmes and other programmes covering national events. However, the legal framework excludes other kinds of disabilities and does not embrace all access and usage issues associated with PWDs.⁹⁴ The worst scenario, which is generally evident, is the impractical implementation of these laws.

3.5 Physical Barriers

This part intends to discuss the issue of connectivity, usability and accessibility in the facilities that are used by people with disabilities such as in courtrooms, lawyers' offices and all public buildings that PWDs use in the process to find an access to justices. Notably, universal design requires an understanding and consideration of the broad range of human abilities throughout the lifespan. Creative application of that knowledge results in products, buildings and facilities that are usable by most people regardless of their age, agility, or physical or sensory abilities.⁹⁵ According to Yiing, Yaacob, & Hussein built environment should be designed to cater for Persons with Disabilities to promote universal accessibility. PWDs are persons who have long term physical, mental, intellectual or sensory impairments, which may hinder their full participation in society when such impairments interact with other barriers.⁹⁶

Physical barriers can impede access to justice in instances where the offices of the courts, lawyers, service providers and police stations are physically inaccessible.⁹⁷ Persons with disabilities

thus face legal barriers to justice in instances where their rights are not protected under domestic law⁹⁸ and where there is improper infrastructure to accommodate their special needs.⁹⁹ Inaccessibility of proceedings may also be experienced where measures have not been taken to ensure the accessibility of relevant physical environments.¹⁰⁰ For example a South African case of Ms Esther Muller,¹⁰¹ which was instituted in the Equality Court in South Africa, is a case in point. Ms. Muller, a South African lawyer who used a wheelchair, filed a complaint under the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 against the Justice Department and the Department of Public Works because of the physical inaccessibility of the courthouses she needed to access to perform her job as a lawyer. The Equality Court reached a final settlement according to which the two government departments admitted that they had failed to provide proper wheelchair access and that this constituted unfair discrimination against Ms Muller and other people with similar accessibility needs.¹⁰²

The case cited above, reflects the reality of PWDs in Tanzania as they still have no access to the courts and the legal environment does not support their needs. Almost all public and private buildings in Tanzania,—building entrances, courtrooms, counsel tables, and witness boxes, bathrooms, public service offices, and holding pens where criminal defendants may be held while awaiting court appearances—

94 LHRC (note 40 above)

95 The Centre for Universal Design Accessible environments toward universal design. Raleigh, NC: NC State University, 1991.

96 Yiing, C. F., Yaacob, N. M., & Hussein, H., *Achieving sustainable development: Accessibility of green buildings in Malaysia*. Procedia Social and Behavioral Sciences, 2013, pp. 101, 122.

97 The Danish Institute for Human Rights *Access to Justice and Legal Aid in East Africa* 2011. Available at <https://www.humanrights.dk/files/media/>

[billeder/udgivelser/legal_aid_east_africa_dec_2011_dihf_study_final.pdf](#) (accessed on 14 December 2018).

98 Holness & Rule (note 38 above).

99 Ibid.

100 Ibid.

101 *Esthé Muller v DoJCD and Department of Public Works* (Equality Court, Germiston Magistrates' Court 01/03).

102 South Africa Human Rights Commission *Equality Court Victory for People with Disabilities* 24 Feb. 2004. Available at http://www.sahrc.org.za/sahrc_cms/publish/article_150.shtml (accessed on 14 December 2018).

are physically inaccessible for most PWDs.¹⁰³ Regardless of article 9 of the CRPD and section 3 of the Persons with Disabilities Act of 2010, there are limited measures to ensure the accessibility of relevant environments for PWDs. Many are unable to enter police stations, courthouses, and lawyers' offices and few have access to service providers whose work is relevant to the administration of justice.

3.6 Economic Barriers

There is a growing global body of evidence which suggests that a substantial link exists between PWDs and poverty.¹⁰⁴ Thus limited economic income can directly influence a person's access to justice in many ways.¹⁰⁵ For example, it can distress the capacity to engage and pay for quality legal counsel where it is not provided pro bono; it limits the capacity to engage in litigation which can be expensive and lengthy; it can stymie remedies for alleged violations of rights; and it can prevent a person from serving as an officer of the court when doing so will take the person away from gainful employment or the pursuit of a livelihood.¹⁰⁶ Legal aid services are expensive and many PWDs are not economically equated; therefore it is not easy for these people to engage a lawyer.¹⁰⁷ In Tanzania, many PWDs belong to the disadvantaged class and therefore, in many cases, they are not able to engage a lawyer or determine how a lawyer can be of assistance.¹⁰⁸ In many cases, PWDs also have no information and lack the facilities to identify suitable lawyers.¹⁰⁹

Although the government is required under article 9 of the CRPD, to remove all barriers (economic barriers included) against PWDs¹¹⁰ and although section 48 of the Persons with Disabilities Act of 2010 reflects what it is been provided for by the CRDP, there is seemingly no government intervention in devising mechanisms to ensure that PWDs have access to legal and other related services free of charge or at subsidised prices.¹¹¹ The government is obliged to ensure that laws and policies are properly strategised and that the intended recipients of these services are well informed.¹¹² This implies that a proper legal framework and human and financial resources should be in place to ensure that policies are monitored and regulated for their effective implementation.

4 Conclusion

This article has highlighted barriers that affect PWDs' ability to access the justice system, unlike other persons who do not live with disabilities. It has also shown that a gap exists between Tanzania's laws and effective legal practices in matters relating to access to justice to PWDs. The article made a particular reference to the plight that PWDs find themselves in when they need to access the legal system. It is argued that remedies and sanctions that have been designed to uphold the right of PWDs to non-discrimination are ineffective. Since Tanzania has ratified various human rights conventions, it is duty bound to adhere to the CRPD and other human rights instruments.

103 Shughuru (note 7 above).

104 Groce N *Poverty and Disability* 2011. Available at https://www.ucl.ac.uk/lccer/.../WP16_Poverty_and_Disability_review.pdf (Accessed on 12 October 2018).

105 *Ibid*

106 *Ibid*

107 Tanzania Human Rights Report 2016 (note 33 above).

108 *Ibid*

109 *Ibid*

110 ITU Resolution 56 (Doha, 2006) Creation of a new question in Study Group 1 regarding access to telecommunication services for persons with disabilities, Cairo, Egypt, 2006, p. 9.

111 Tanzania Human rights Report 2016 (note 35 above).

112 Paul, L. F., *Enabling Mobile Communications for the Needy: An International Comparison of Solutions and Impacts (With Focus on Europe)* 1 November 2008, 5-6. Available at <http://ssrn.com/abstract=1442828> or <http://dx.doi.org/10.2139/ssrn.1442828>. (accessed on 4 January 2019).

It is undeniable that the time has come for the Tanzanian government to address the debilitating issues that prevent PWDs from accessing the justice system without fear of discrimination. Consequently, appropriate mechanisms and policies should be put into practice to operationalise the country's comprehensive national legal framework so that the justice system will become equally accessible to PWDs and other citizens. Tanzania needs to fully implement the Persons with Disabilities Act of 2010 and the policies that flow from it. Disseminating information and providing education to persons with disabilities on how the justice system operates and their rights as survivors of crime should be prioritised. Moreover, there is an urgent need to train key agencies in disability awareness for their optimal functionality as representatives of the government. Thus, officials such as judges, magistrates, police officers, and other service providers such as court clerks should be sensitised to

the plight and needs of PWDs. The government needs to make sure that there is accessible information for PWDs regarding the process of reporting a crime, that premises are accessible and that communication support such as interpreters in sign language are provided in police interviews and during court proceedings.

Clearly, a legal framework for the effective application of the laws that protect the rights of PWDs has not yet been fully developed in Tanzania. It is for this reason that some magistrates and judges may not be comfortable with rendering decisions on the basis of the CRPD, even though the CRPD has been ratified and domesticated. Thus, this article makes a strong call for the introduction of courses pertaining to the rights of PWDs in all universities as a core subject.