

*“No blame for being vulnerable: access to justice of disabled girls in
Uganda on the example of sexual violence”*

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15/10/2017

*To Lynda Nakaible,
Who only wanted my friendship in return*

Table of Contents

Introduction	4
Characteristics of the violation.....	6
Challenges in access to justice	9
At the personal level.....	9
At the family and community level	11
At the police station	12
At the court.....	13
At the state’s level	16
Recommendations.....	18
Conclusion.....	21
Bibliography	23

Introduction

“I wouldn't judge my daughter given her state. I can't say that she loved the man, she is no condition to do so, so I can't blame her for being vulnerable. I have to just take care of her and make sure nothing of this sort happens again.”¹

Villa² was only 14 years old when a police officer defiled her in one of the slums of Kampala, while her mother was away. Suffering from cerebral malaria, she was taken advantage because of her mental disability. Even though she was seemingly trying to block the door, she was not able to defend herself. She sustained an injury on her hand, which made it clear for her mother that she had been defiled. Mother of Villa was determined to report the case to the local police station as soon as possible. Even though the justice that she was so desperately looking for was promised, at the end it was not delivered. The police officer who defiled her daughter was not charged with sexual assault with a minor. He was not brought before the court or made to pay any kind of compensation. The only consequence that followed was his transfer to a police station in a different district. The mother tried following up on the case, but eventually got tired of the lack of response of Ugandan justice to her complaints. Villa was not found HIV positive or pregnant after the assault and seems not to have any recollection of what exactly happened to her. After a while she came to terms with her past, unlike her mother. Some people blamed her for leaving her daughter alone at home. They suggested locking her up as a necessary precaution against sexual assaults. Now, the mother of Villa is afraid to move anywhere. She constantly watches her daughter, as the state cannot do it for herself.

Article 23 of the Convention on the Rights of the Child specifically addresses children with disabilities and recognizes them as right holders of no difference to other children. It is the state's responsibility to ensure dignity and “*promote self-reliance and facilitate the child's active participation in the community*”³. Taking their special conditions into consideration, states are obliged to provide extended assistance free of charge *whenever possible*. Article 19

¹ The author conducted series of interviews via e-mail and Skype with relevant children's rights organizations in Uganda. Lynda Nakaibale, who is a community worker for the organization Joy for Children, agreed to pass the questions to one of the mothers whose disabled girls were defiled in one of the slums of Kampala. The interview took place on 19 April 2017.

² Name of the daughter was changed on purpose to avoid any identification issues.

³ Convention on the Rights of the Child, 1989, [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>], Accessed: 15/03/2017

of the Convention highlights the state's responsibility to protect children from any kind of violence by introducing legislative, administrative, social and educational measures. Once rights are violated, children and their legal guardians have the right to seek *judicial involvement*⁴ supported by the state's investigation. Uganda has signed and ratified a variety of international treaties along with its national protection provisions. There seems to be though a very little understanding of what the challenges of disabled children are. It leads to a range of misconceptions about their role in the society. How can disabled people enjoy their rights being respected if their acts are ridiculed at the very beginning? People with disabilities have to grapple not only with subtle signs of discrimination on a daily basis, but also with criminal assaults of a particular ferocity. Joining up even one more dot of additional vulnerability makes state's provisions powerless and void in the reality.

Up to 70% of disabled girls experience sexual violence⁵ before reaching the age of adulthood in Uganda⁶. These numbers are doubling those of sexual harassment of non-disabled girls⁷. Due to their physical or mental conditions, they easily fall prey to assaults, as they are not fully capable of identifying risk behaviours, defending themselves and finally reporting what happened to them. Perpetrators usually come from their close circles, including family, relatives, neighbours or the members of the community. This is why, it is so difficult for their guardians to protect them from the abuse, as they never know when and where the attack will come from. The seek for justice becomes thereby even more difficult, when the perpetrator happens to be a breadwinner. The other factor aggravating the position of disabled girls is lack of specific measures facilitating their access to rights they hold. As in the case of Villa, criminals manage to get away with no justice being done. Where should a victim seek redress if the law enforcer happens to be the perpetrator?

In order to answer the question, the author conducted interviews via Skype, e-mail and Whatsapp with representatives of Equality Now, Barefoot Law and Joy for Children organizations as well as two local community workers, who provided insights of the problem from different angles. The author also managed to contact one of the disabled victims of sexual abuse in Kampala and asked her mother questions via e-mail. Her inability to seek redress in

⁴ Ibid, art.19

⁵ According to the World Health Organization and the International Society for the Prevention of Child Abuse and Neglect, sexual abuse is: " *the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society*."

⁶ Devries, M. Karen, *Violence against primary school children with disabilities in Uganda: a cross-sectional study*, BMC Public Health, 14, 2014.

⁷ Plan International, *Protect us! Full report*, 2016, [<https://plan-international.org/publications/protect-us#download-options>], Accessed: 10/03/2017

the Ugandan justice system sparked the research of different obligations for the state coming from international and national legal documents. In order to understand better the scope of abuse, the author summarized the interviews with practitioners and studied a variety of legal, socio-cultural and behavioural reports concerning rights of disabled girls in Uganda. Finally, a set of feasible recommendations for the state is proposed.

The primary purpose of this paper is to bring people's attention to the very core of protection from sexual abuse, regardless of the state of a victim. Girls fall pray not only to their perpetrators, but also to the inefficient, corrupted and male-dominated judicial system largely underpinned by the wide gulf of inequality. It is therefore of utmost importance to protect those, who are the world's most vulnerable, yet unable to speak for themselves. Numbers are staggering high among children in Uganda, but we tend to forget that some of them are at even higher risk than the others.

Characteristics of the violation

7.1 % of the Ugandan population suffers from some kind of a disability, which accounts for approximately 2.1 million people. In 2014, 31% of them were children⁸. In a developing country, like Uganda, being a disabled person equals facing challenges of every-day survival. Due to limited resources, impoverished communities consider disabled people to be an additional burden, which expenses for do not pay off. At the same time, they have little prospects of breaking the circle of dependence, as they are not considered to be useful in any working environment and not reliable for the banks to lend a loan⁹. Their words or actions are not taken into account in any decision-making process, either for the family or even themselves. In highly religious communities, little attention is brought to their empowerment, since their humanity is being questioned also by their loved ones, who often see their birth as a curse or a spur of a bad luck.

“We are always regarded as a curse in our families. We are also neglected by our biological parents, especially our fathers, who always say that in their families there are NO disabled persons. At times, we are abandoned on streets, by the road sides etc. We are not

⁸ Devries, M, Karen, *Violence against primary school children with disabilities in Uganda: a cross-sectional study*, BMC Public Health, 14, 2014

⁹ Sarker, D. , *Combating the discrimination of disabled people in microfinance lending*, Center for Financial Inclusion, [<https://cfi-blog.org/2015/05/26/combating-the-discrimination-of-disabled-people-in-microfinance-lending/>], Accessed: 15.09.2017

given good clothing. We are not given assistive devices such as wheelchairs, white canes, hearing aids etc. We are always raped or defiled and after conceiving we are single mothers.¹⁰

According to recent WHO studies, children with disabilities are three to four times more prone to violence than their non-disabled counterparts¹¹. Other research shows that up to 13,7% of interviewed disabled children experienced sexual violence¹². Girls with disabilities are particularly exposed to the sexual violence with 1 out of 4 reported to have experienced a defilement¹³. Both figures might be even higher in the case of Uganda. Omnipresent taboo of female sexuality makes it very difficult to research the topic, as many cases are not reported¹⁴.

Violence against girls with disabilities, especially one of sexual character, is exacerbated by the inter-sectionality of factors of discrimination. This “*complex set of beliefs that encourage male sexual aggression and support violence against women*”¹⁵ seems to be widely spread in the Ugandan society. Women are often blamed for a sexual aggression, as they are supposed to follow necessary precautions according to the state’s authorities¹⁶. In a patriarchal society, where gender norms are greatly entrenched in people’s mentality, it is difficult for victims to seek help. Children are even more prone to the sexual assault, because they might not have a full understanding of what is happening to them. Their fragility, dependence on adults and lack of education are exacerbated by their exposure to multiple risks factors, such as social norms, traditions and poverty. Girls with disabilities are even more likely to have their body integrity violated because of the context of the extreme vulnerability.

Because of lack of specific educational programmes, especially in rural areas, most of them have to stay at home and be taken care of by a relative or a caregiver. It is dangerous for them to leave home, as they risk being violated on the street. Therefore, their vicious circle of isolation and exclusion is perpetuated, as they are dependent on someone else’s help with no prospects of personal development. Thus, most of girls with disabilities are abused in a

¹⁰ Testimony of Modesta Tezkyabbiri, disabled social worker based in Entebbe. Interview was conducted on 4 October 2017 via Whatsapp messages.

¹¹ Hughes, K. , *Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies*, WHO, 2012

¹² Plan International, *Protect us! Full report*, 2016, [<https://plan-international.org/publications/protect-us#download-options>], Accessed: 10/03/2017

¹³ Ibid

¹⁴ *The Uganda National Plan of Action on child sexual abuse and exploitation (2008-2012)*, ECPAT-Uganda, 2008, [https://www.unicef.org/uganda/National_Plan_of_Action_on_CSEC.pdf], Accessed : 04/10/2017

¹⁵ Buchwald, E. , *Transforming a rape culture*, Milkweed Editions, 2005

¹⁶ *Rape and the culture of victim blaming in Uganda*, [<https://rosebellkagumire.com/2013/10/16/rape-and-the-culture-of-victim-blaming-in-uganda/>], Accessed: 25/03/2017

domestic environment. They cannot defend themselves effectively, since their physical and emotional levels of defence are lower. According to research, most of the perpetrators come from close environment of a victim. Most of the time they are either the caregivers, who are supposed to take care of them or close relatives¹⁷. Therefore, a victim might be financially or socially dependent on the perpetrator. Therefore, they might find themselves in a even more vulnerable situation if they decide to report it. They risk having the violence escalated or being left out.

Should the perpetrator come from the family, it poses a great burden on a victim, since the family itself might turn against her. Due to negative social perceptions of girls with disabilities, it is difficult to seek help afterwards. They are considered to be “useless” and “asexual”, which shades doubts over their complaints. Some of them cannot even express themselves, as they might have communication or mobility barriers that effectively prevent them from reporting the crime. Families might prevent them from doing so, as they might be afraid of bringing more shame on already stigmatised family. As a result, a victim is left with no compensation, but she might be in for severe consequences. Many of them are exposed to sexually transmitted diseases, including HIV, and unwanted pregnancies, which further aggravates their situation¹⁸. Even if the case is brought to the police station and then to the court, rates of prosecution are extremely low¹⁹.

“Uganda has relatively good laws, but the justice just does not work for victims. At the end, how much is a disabled girl’s testimony valued?”²⁰

Despite national and international provisions guaranteeing their right to state education, most of disabled girls undergo home education or no education at all, as their families cannot send them to a special school, since they are not available or they must pay. Most educational institutions do not have teachers trained to deliver classes to disabled children²¹, but a range of problems starts with such practical issues as ramps or electronic devices. The Convention on the Rights of the Child, that Uganda is a member-party of, promotes a far-reaching

¹⁷ Human Rights Watch, *As if we weren’t human: discrimination and violence against women with disabilities in northern Uganda*, 2010

¹⁸ Guzu, B. , *Experiences of gender based violence against women and girls with disabilities (a case study of Uganda)*, UN Committee Of the Convention on the Rights of Persons with Disabilities, 2013

¹⁹ Holmes, C. , *The Justice-seeking power of women who experience sexual violence in Uganda*, SIT Graduate Institute, 2015

²⁰ Testimony of Peninah Igaga, legal officer of the Barefoot Law Uganda. Interview was conducted via Skype on 4 April 2017.

²¹ Guzu, B. , *Experiences of gender based violence against women and girls with disabilities (a case study of Uganda)*, UN Committee Of the Convention on the Rights of Persons with Disabilities, 2013

consolidation in the realm of education or public health for all the children²², as the segregation leads to further exclusion and discrimination of disabled children. Unfortunately, they are usually denied the access to education of any kind.

Challenges in access to justice

In Uganda, girls with disabilities experience similar obstacles in seeking justice to non-disabled girls, but some characteristics of the violation and factors exacerbate their vulnerability in the justice system. They encounter problems already at the personal level, because of their fragile situation and perception of inferiority accompanying them since birth. Once they overcome their personal limits, it becomes even more difficult to seek redress in a formal setting. Their families, communities as well as authorities actively oppose to their inherent right to justice, while contributing to the violation and perpetuation of their vulnerability. Having no other alternative, disabled girls are marginalised when given no substantial aid or services. Therefore, inaction of the state is therefore a primordial factor in the violence against disabled girl in the judicial system.

At the personal level

Girls with disabilities of any kind are more exposed to mental health issues, because of social perception of their handicap and internalized inferiority. They are more prone to severe depressions as a result of the treatment received from both relatives and members of the community. Their particularly low self-esteem creates a vicious circle of dependence further perpetuating their status. It is particularly common among girls in rural areas, where there is a strong commitment of all members of the community to contribute to work. Social status is built on the contribution to common good. Since they cannot participate in the way their peers do, they are put at the fringes of the social-bonding activities. Reaching the age of puberty entails raising an issue of sexuality, which makes disabled girls question themselves. Due to their corporal fragility, they feel less of a woman, especially if there are not capable of giving birth, which seems to be a primordial female role in the patriarchal society²³. Their disregard

²² Article 23, Convention on the Rights of the Child, 1989, [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>], Accessed: 01/04/2017

²³ Otiso, M. Kefa, *Culture and Customs of Uganda*, Greenwood Publishing Group, 2006, p.81-83.

of themselves might be also associated with bullying at school, where most of them are mocked as “asexual” or “ugly.

“At times, we ourselves have self-pity and just keep quite.”²⁴

Most of them cannot even attend a school, which leaves them largely illiterate and uneducated, contributing to a feeling of inferiority. Therefore, they lack any information on the rights that they are entitled to, including non-discrimination or freedom from violence. This is why some of them cannot even understand the nature of sexual abuse and the fact that it should not happen to them in any case. Some of those who actually do, are afraid of reporting it.

“Many children suffer psychological damage simply because of the way they are treated as children with disabilities. Many of these when born and their fathers realize they are disabled, they disappear and leave the mother alone with the children. Most children have grown without their fathers. The mothers struggle on their own to take care of there children and also get fed up and mistreat them. Being locked in the house, this child never has friends and if he/she has siblings, they never play together. This affect the child psychologically as they grow.”²⁵

All victims of sexual abuse suffer from lower self-esteem and depression after being assaulted²⁶. It is directly linked to human being’s perception of one’s sexuality, as something intimate, private and deeply related to dignity. It is not surprising that girls with disabilities might encounter even greater difficulties to overcome obstacles posed by their fragile mental health. All the aforementioned factors of risks and vulnerability combined expose disabled girls to sexual violence, particularly from people close to their environment. Caregivers are likely to take advantage of intimate care activities, such as washing or feeding, to defile girls. They do not report abuses to their families, as they consider them to be associated with their disability.

²⁴ Testimony of Modesta Tezikyabbiri, disabled social worker based in Entebbe. Interview was conducted on 4 October 2017 via Whatsapp messages

²⁵ Testimony of Douglas Muwonge, Social Development Specialist based in Entebbe. Interview was conducted on 7 October 2017 via Whatsapp messages

²⁶ Bryant-Davis, T. , *Surviving sexual violence: a guide to recovery and empowerment*, Rowman & Littlefield Publishers, 2011, p.10.

At the family and community level

Providing that the victim overcomes her own limits, the problems with access to reporting the violence might start already at home. Since many perpetrators come from their close environment, a victim of sexual abuse might be largely stigmatized by her family or legal representative. Girls with disabilities, especially in rural areas, are largely dependent as they have limited access to necessary medication or any kind of social support. Therefore, poverty is an additional factor exacerbating their vulnerability.

“Most children with disabilities are not provided with nutritional attention they deserve and end up being malnourished. Some have problems with feeding themselves and it is up to caregivers who may not provide meals regularly or timely.”²⁷

Their mobility might be limited, as usually they are not provided with necessary assisting devices, which are expensive. It is another factor inductive to violence, as they have no possibility of acting on their own. It leaves them at mercy of their family and community, as they have no prospects of employment or higher education. Due to deeply rooted taboo of female sexuality²⁸, her family might prevent her from reporting the abuse to the local authorities in the fear of being pointed at.

“It is a big challenge to change the views on sexual violence in Uganda. Girls, either disabled or not, are usually blamed for a sexual assault and largely stigmatized within the communities.”²⁹

Therefore, family members try to trivialize and minimize the problem. As a result of lack of education, most girls are being washed straight after, which makes their bodies left with no traces of crime. Disability of a family member is already a cause of embarrassment, since many families try to keep them isolated and hidden from the community members³⁰. Female family members are more likely to be concerned about the issue and they might try to seek justice directly with the perpetrator, as contact with official authorities might bring more

²⁷ Testimony of Douglas Muwonge, Social Development Specialist based in Entebbe. Interview was conducted on 7 October 2017 via Whatsapp messages

²⁸ Otiso, M. Kefa, *Culture and Customs of Uganda*, Greenwood Publishing Group, 2006, p.102

²⁹ Testimony of Peninah Igaga, legal officer of the Barefoot Law Uganda. Interview was conducted via Skype on 4 April 2017.

³⁰ UNICEF, *Promoting the Rights of Children with Disabilities*, 2007

attention of the community. However, the mediation process and its results might turn unfavourable for the victim, since most of the time they only have a financial character³¹, which does not prevent violence from happening in the future. Those girls who try to access the justice themselves might encounter high level of social control in the community. Their case is likely to be treated by the community justice, which might leave them neglected and vulnerable as in the case of private justice. Community's leaders introduce informal settlements, which might not be commensurate in comparison to the harm that was done.

According to the Ugandan law, a child's case can be introduced into a court only with the help of "next friend" on behalf of the child³², which makes it impossible for girls to act without the support of their families or legal representatives. On 2 March 2006, Ugandan parliament passed an amendment to the Children Act 1997. Under new amendment, anyone who believes that a child is being abused, neglected or may be under risk may report to the local authorities³³. It became mandatory for medical practitioners, school teachers and social workers who take care of those children to do so. Provided that a girl is given assistance while pursuing justice, in many villages, there is no direct access to the police station or other state's authorities. Some problems that they might encounter have very pragmatic nature, as the lack of gasoline. Even if there are police stations, there is a considerable lack of other legal facilities such as qualified lawyers, who are able to direct a victim and help her with filing a complaint. Many girls, as well as their families, are illiterate and they are not capable of doing it themselves. At the end, because of limited mobility, communication barriers and lack of resources, many disabled girls find themselves unable to access the state's justice and have to make do with basic measures provided by their communities or no provisions at all.

At the police station

Once a girl somehow makes it to the police station, she encounters another variety of obstacles to access justice. Police stations and officers are largely unprepared to deal with cases coming from disabled people in general³⁴. They do not understand their concerns and problems. Deaf children are unable to report their case over the phone, and those with visual impairment

³¹ Guzu, B. , *Experiences of gender based violence against women and girls with disabilities (a case study of Uganda)*, UN Committee Of the Convention on the Rights of Persons with Disabilities, 2013

³² The Civil Procedure Act, [<https://www.ulii.org/ug/legislation/statutory-instrument/71-1/si-71-1.pdf>], Accessed: 10/03/2017

³³ *Children Amendment Act 2016*, Section 4,

[<http://www.mglsd.go.ug/laws/The%20Children%20Amendment%20Act%202016.pdf>], Accessed: 10/03/2017

³⁴ The International Network of Women with Disabilities, *Violence against women with disabilities*, 2011

cannot fill the documents and those with limited mobility might have their physical access to the station denied, since there are no ramps or other facilities. Policemen are not well-equipped, so they do not possess a variety of additional measures to help them report and then testify. Especially in the case of girls, some police officers might create pretextual situations making them seem violent or unable to seek justice³⁵. Therefore, it is easier for them to dismiss their cases, as their behaviour might be taken for dangerous or unjustified.

Most of disabled girls, depending on the type of their disability, face great challenges with assuming their credibility. It remains rife for the police to have their testimonies questioned, as they do not believe that they might be considered as “*sexual human beings*”³⁶. On the other hand, for some of them this kind of violence might seem justified and widely acceptable, as disabled girls are not considered to have feelings and thus rights³⁷. Therefore, men, including police officers examining the issue, are entitled to perform sexual activities on them. Moreover, high levels of corruption effectively prevent cases from being transferred to the courts³⁸. Police officers are bribed by the perpetrators in exchange for abandoning cases or changing testimonies of a victim. In the case of a crime, they are normally supposed to provide a plaintiff with a Police Form-3³⁹. However, they claim not having it or they charge a victim for it. Once filled, PF-3 has to be examined along with medical expertise provided by a doctor within 48 hours. However, the complexity of the legal procedure usually scares them away, as they are obliged to assist in the trial next to the victim and the perpetrator. This is why they refuse to sign the form and serve as a witness.

At the court

The Constitution of Uganda is the foundation of the Ugandan legal system underlying every judgement taken by the judicial system. It provides a clear definition of a child as a minor under age of 18 with no exceptions⁴⁰. It stresses the basic framework for the protection of children’s rights in the Article 34⁴¹. They are entitled to basic services and protected from *social or economic exploitation*. Paragraph 7 mentions vulnerable children, including those with

³⁵ Ibid

³⁶ Human Rights Watch, *As if we weren’t human: discrimination and violence against women with disabilities in northern Uganda*, 2010

³⁷ Ibid

³⁸ Transparency International Uganda, Annual Report 2014,

[<https://www.dropbox.com/s/08s38kzouqbgowj/TIU%20Annual%20report%202014.pdf?dl=0>], Accessed: 15/09/2017

³⁹ *Revision of Police Form 3 (PF3)*, [<http://jlos.go.ug/index.php/projects/revision-of-police-form-3-pf3>], Accessed: 25/04/2017

⁴⁰ *Constitution of Uganda 1995*, art. 257.

⁴¹ Ibid, art. 34.

disabilities, as holders of special protection rights, which are supposed to be specified in other legal acts. Nevertheless, it does not mention “age” as a preconceived incentive to discrimination in the article 21, which opens space to discussion whether children are under the same umbrella of rights under the supreme act as adults. Moreover, the Constitution does not mention the right to access justice in any of the articles, which poses a question of the rule of law in the society. Even though the Constitution explicitly recognizes *the role of women in the society*⁴², it does not stress their vulnerable position in the access to justice.

The CRC and the Charter on the Rights and Welfare of the African Child were both incorporated into Ugandan domestic law by the virtue of the Children Act 1997⁴³. They were considered to be directly applicable only “*with appropriate modifications to suit the circumstances in Uganda*”⁴⁴. Such conditions include socio-economical obstacles to fully protect Ugandan children. It raised some concerns that the implementation of the children’s rights provisions was not effective since the Ugandan government did not apply them directly⁴⁵. Under the same legislation, children with disabilities were only recognized with the right to enjoy appropriate treatment and basic facilities. Nevertheless, it includes some effective implementation measures, such as the establishment of the Family and Child Court⁴⁶ in every district.

It is more probable to for a judge to follow the national guidelines provided by the Persons with Disabilities Act, which is the primary legislation document providing special protection in favour of disabled people, regardless of their age. The legislative act reaffirms the accessibility rights to information and education and prohibition of any discriminative policies. Nevertheless, it does not include precise measures facilitating access to justice of women and girls whose rights are violated⁴⁷.

The first instance for most Ugandan citizens are Local Council Courts, which are the most numerous in order to be accessible⁴⁸. The former has a wide jurisdiction over crimes involving children. If a victim’s claims are unsatisfied, it can further appeal to the Family and Children Court, which is in between the first instance at the community level and the second at

⁴² Ibid, National Objective XV

⁴³ Children Act 1997, [<http://www.ulii.org/ug/legislation/consolidated-act/59-0>], Accessed: 01/03/2017

⁴⁴ Ibid, Part XI

⁴⁵ UN Committee on the Rights of the Child, *Concluding observations on the initial report of Uganda*, 2008

⁴⁶ Children Act 1997, Part IV

⁴⁷ The Persons with Disabilities Act 2006, [http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_232181.pdf], Accessed: 10/03/2017

⁴⁸ Ibid, p.4

the level of magistrate courts. It can hear any complaints regarding children and criminal offences.

In majority of cases, reaching the court for a disabled victim does not mean having her right finally realized though. In case of criminal offences against children, including sexual violence, the state is obliged to provide a victim with legal representation⁴⁹. However, since it is someone automatically appointed, state's persecutors risk not being effective and perseverant in protecting the girl. Moreover, the judge requires evidences of the illegal act, which in the case of sexual violence might be very difficult to obtain. The Penal Code requires either an eye-witness or medical expertise to support the case of the victim⁵⁰. Both requirements might not meet the reality of the sexual abuse, especially of disabled minors. Their vulnerability and fragile position in the community render getting those proves extremely difficult. Moreover, the Court does not provide any additional measures to meet the needs of disabled people. No sign language translators or Braille language documents are available⁵¹.

*“Cases in the Ugandan judicial system suffer from great backlog. It takes a lot of time for those cases to be finally finalized, since the efficiency of investigations is questionable. There is a need to do better than that.”*⁵²

Spanning time of accessing justice has negative consequences on a victim and its entourage. Due to delicate character of the crime and additional vulnerability, the more a victim has to wait, the more difficult it might be for her to come back to real life. Girls, who are already facing social pressures, are more likely to experience severe depression and health complications. Finally, their position in the community is very likely to worsen because of the stigmatizing perceptions of the sexuality by the community members. The Ugandan government seems to acknowledge negative consequences of backlog, which are no different to any other cases. It is now possible to transfer some cases to other magistrates, since the primary solution of moving courts turned out to be ineffective because of general overwhelm of the judicial system⁵³. However, as Peninah Igaga mentions, there has to be a better law

⁴⁹ Children Act 1997, s.6

⁵⁰ According to the Article 131 of the Penal Code of Uganda: “ No person shall be convicted of any offence under this section upon the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.”

⁵¹ Human Rights Watch, *As if we weren't human: discrimination and violence against women with disabilities in northern Uganda*, 2010

⁵² Testimony of Peninah Igaga, legal officer of the Barefoot Law Uganda. Interview was conducted via Skype on 4 April 2017.

⁵³ Judiciary Staff Handbook, [http://www.judiciary.go.ug/files/downloads/The_Judicial_Handbook.pdf], Accessed: 25/04/2017

enforcement, especially in the rural areas, since most of the needs are not met with adequate legal services.

“There is lack of law enforcement and understanding of legal issues among the society. Legal empowerment along with raising awareness are the only solution to the problem.”⁵⁴

At the state’s level

Obstacles for disabled girls in seeking redress have also some roots in the actions of the government. Having their access to public services denied, they are not informed about their rights and ways to seek redress, even if there is lack of approval from the part of their families. Largely underfunded educational system cannot live up to their needs and expectations and leaves them behind. This is why, there is a high demand for better solutions, which would empower those girls with prospects of adequate employment later on, depending on their level of disability. Decent work opportunities effectively minimize the risk of financial dependence and help to define their role in the society. Being a part of it would render them less vulnerable and prone to be defiled.

“Programmes fighting for the rights of people with disabilities can be designed to target local leaders and implementers of government policies and service providers, especially in major sectors like health and education. These programs can be integrated with livelihood support programmes and projects for assisting devices and income generating activities for people with disabilities and caregivers of the children with disabilities.”⁵⁵

Their social affiliation is certainly not denied in the legal provisions. Persons with Disabilities Act highlights the importance of including disabled people in the every day life of communities⁵⁶. All aforementioned national legal frameworks are additionally reinforced by the international human rights instruments, that Uganda is a member-party of. However, the Ugandan state does not have its judicial system expanded on both local and national levels

⁵⁴ Interview conducted on 31 March 2017 via Skype with Christa Stewart, Program Manager “End Sexual violence and Justice for girls”, Equality Now organization.

⁵⁵ Testimony of Douglas Muwonge, Social Development Specialist based in Entebbe. Interview was conducted on 7 October 2017 via Whatsapp messages

⁵⁶ Persons with Disabilities Act, 2006, [http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_232181.pdf], Accessed: 10/03/2017

enough, as the backlog affects the process of seeking justice. This is why, no matter how far-reaching the legislation is, the implementation is still the biggest challenge that both the government has to deal with. Moving courts are a good sign of improvement, but the needs still far exceed the capacities.

In order to better coordinate the efforts, the National Council for Disability was established in 2003 as the main governmental body in charge of monitoring and improving the situation of the disabled people in Uganda⁵⁷. It also assists the State on the implementation of Persons with Disabilities Act and hears the inquiries, communications, concerns and needs from disabled people. Finally, the Council evaluates the government and other state actors on the application of the rights entrenched in the Act and make recommendations. However, the role of National Council of Disability is not strengthened enough to cast a light on ongoing abuses and not accessible enough for those staying out of urban areas. The implementation of provisions of the Disability Act is not being monitored enough in the justice-seeking aspects, and there seem to be no improvements. International legal framework, including the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, also presumes overarching monitoring and reporting systems. Uganda falls short to meet this requirements, despite its commitment to the international community. Lack of effective systems is highlighted by the limited response to calls of the Committee on the Rights of the Child and the Committee on the Rights of People with Disabilities. Article 34 of the CORC invokes the exposure of children to sexual violence⁵⁸. Primarily, it is the State that is responsible to protect minors from all forms of exploitation and take all the possible measures to prevent any unlawful sexual practices.

Similarly, by ratifying two relevant conventions, Uganda agreed to provide both international bodies with regular reports on the implementation of both treaties. However, the reports are not being submitted regularly⁵⁹. Uganda has also not ratified the protocol to the Convention on the Rights of the Child and Ugandan citizens cannot communicate their concerns to the Committee. Question of effectiveness of international treaties on the domestic law was brought up once the Ugandan government did not incorporate the CRPD in the same way it did with the CRC⁶⁰. Therefore, it is a question of the court's interpretation of law whether it applies its provisions in a case.

⁵⁷ National Council for Disability, [<http://www.ncd.go.ug/>], Accessed: 23/04/2017

⁵⁸ Ibid, art. 34

⁵⁹ Refworld, [<http://www.refworld.org/publisher,CRC,,UGA,,0.html>], Accessed: 25/04/2017

⁶⁰ Oyaró, L. , *Uganda*, African Disability Rights Yearbook, 2014

Recommendations

In order to tackle the problem and curtail numbers of abused children, there has to be a bigger understanding of what their challenges are and what difficulties they face in accessing the justice. The reflection process needs to be done not only within Uganda, but also by the international community. There seems to be no distinction of the specific situation of the disabled girls worldwide. Therefore, the change of perception has to be promoted on every geographical meridian. Only if all the countries set a high bar for international community to abide by, those who lag behind in implementing protection measures will be obliged to take further steps. Uganda is no exception, as it has strong ties with other regional and global networks. In the highly linked XXI century, it is no longer possible for governments to be deaf for calls of justice.

International actors should better address the unspoken issue of sexual abuses against disabled girls and use the Convention as a tool to influence the Ugandan government. There is a variety of soft-law initiatives, which can prove very effective in raising awareness on the issue. The United Nations adopted the UN Standard Rule on the Equalization of opportunities for Persons with Disabilities⁶¹, setting a target of equal participation in 7 different life aspects, including accessibility to the physical environment, information and communication.

The international legal framework should be further strengthened and anchored in national legal systems. The Committee on the Rights of Persons with Disabilities as well as Committee on the Rights of the Child uphold their respective international treaties. Following the adoption of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Committee on the Rights of the Child can hear individual complaints from children or their legal representatives on the violation of their rights⁶². However, Uganda has not ratified the new protocol. The government should therefore ratify the protocol to further recognize the role of international obligations in the implementation of human rights framework in Uganda and offer its citizens a powerful independent tool to bring the Ugandan government's attention to the issue of seeking redress by disabled people and their younger counterparts.

⁶¹ *UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993*, [<http://www.un.org/esa/socdev/enable/dissre00.htm>], Accessed: 10/02/2017

⁶² Optional Protocol to the Convention on the Rights of The child on a communications procedure, art. 5 states that *"Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party" and mentions the Convention on the Rights of the Child as a possible basis for communications.*

The African Charter on Human and People's Rights has similar provisions to those of the UN conventions, including the Universal Declaration of Human Rights. It mentions the rights of the greatest importance, such as the right of freedom from discrimination for women and children⁶³, equal protection of law⁶⁴, exploitation and degradation⁶⁵. It gives the possibility to African citizens to submit complaints to the African Commission on the violation of their rights once all the domestic remedies are exhausted. Then, it examines the complaint and decide whether to make recommendations to the state, which might include some compensation and measures preventing the violation from happening⁶⁶. The same mechanisms apply to individual and group complaints to the African Committee of Experts on the Rights and Welfare of the Child on the basis of the African Charter on the Rights and Welfare of the Child. Once all the domestic remedies are exhausted, complainants, including child victims and their legal representatives, can file against a state on the violation of children's rights and seek international independent investigation.

The effectiveness of all the abovementioned international legal tools might be largely undermined by insufficient knowledge of ways of redress. Legal empowerment is a key step to prevent any kind of abuses and enable a victim or their representatives to seek justice. However, it is not possible to be aware of its rights, if the education system fails to deliver what it is supposed to promise. Largely unsuitable to disabled children's needs, schools and teachers do not play their primordial role of placing them in a dignified social position. In order to achieve it, they must be provided with basic assisting devices and means adapted to their disability with the help of trained personnel. Depending on the disability, children must have an opportunity to educate themselves also on who they are. Therefore, curtailing their perception of inferiority must be at the heart of all the efforts.

Condemnation of sexual abuses by enhancing and strengthening the judicial system is crucial in easing the heart-breaking suffering of victims. Being the core of a functioning society, courts should be better funded, especially in the rural areas. Impoverished populations cannot have their rights enforced, if the access to legal support is denied. Its inefficiency further contributes to the perpetuation of violence, as the perpetrators are very likely to get away with the crime. Special desk dedicated to the disabled people should be provided in order to facilitate the process of reporting a crime and reduce the imbalance between plaintiffs. Judicial system should also undergo more thorough procedures of accountability and transparency, as states

⁶³ *The African Charter on Human and People's Rights*, art. 18

⁶⁴ *Ibid*, art.3

⁶⁵ *Ibid*, art. 5

⁶⁶ Murray, R. , *The African Commission on Human and People's Rights and International Law*, Hart Publishing, 2000, p.19-20.

cannot allow a vacuum in investigating and reprimanding criminal acts. Being at the heart of social injustice, corruption can also hinder chances of accessing justice of those who are particularly vulnerable because of their social status. This is why, it is so important to combat it at all levels so that the ways of redress of disabled girls do not end in the police station. States cannot allow a vacuum in investigating and reprimanding criminal acts.

Nevertheless, it does not mean that the position of disabled girls has to always be undermined. Milmani Law Court in Nairobi in Kenya is a great example of making justice accessible and available to children⁶⁷. The Court has specific facilitation measures to enable minors to speak up for their cases without prejudices. The aggravating situation of disabled girls in Uganda also calls for an international human rights protection system that could enable victims to seek redress in the international court similar to the European Court of Human Rights. So far, it has been rather reluctant to discuss the human rights framework in the region despite its mentions in the founding treaty⁶⁸. The project of East African Court of Justice stands a chance of becoming a powerful East-African court if it finally acknowledges the reception of individual complaints.

Denial of rights in the judicial system is greatly interwoven with social stratification in the communities as well as cultural perception of disability. Seemingly contributing less to the common good, some of disabled girls might not prove efficient in the work on the field, but they can channel their skills into other types of work. It is necessary to raise awareness on the problems of disabled people in general, as not only children are left out on the fringes of the society. There has to be a better understanding of their situation and possible ways of making their lives easier and also beneficial for entire communities. This is where civil society should use its space along with government-supported efforts. Only by sending out the same message, the campaigns might lessen the suffering of disabled people. Persons with disabilities, including children, should also be given a chance to give each other mutual assistance in self-help groups. Largely dispersed individuals stand fewer chances of succeeding in the fight for their rights than those who can count on each other's support.

⁶⁷ Aluanga-Delvaux, L. , *Uniqueness of children's court and how magistrates decide cases*, [<https://www.standardmedia.co.ke/article/2000081894/uniqueness-of-children-s-court-and-how-magistrates-decide-cases>], Accessed: 29/04/2017

⁶⁸ Article 27 of the Treaty for the Establishment of the East African Community states that: " *The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalize the extended jurisdiction.*"

Conclusion

Difficulties in seeking justice by disabled girls can be put in a bigger picture of society. The patriarchal structures foster the idea of acceptance for rape and sexual abuse against all women. Those who cannot defend themselves or have no one standing by are even more exposed to violence. Disabled girls are therefore treated like objects without any respect or understanding for their status. They are being left at home with no prospects of change. If they do not have one, they are left out on the streets.

The CRPD's preamble confirms a state's obligation to protect all people with disabilities from discrimination on the basis of their physical condition, regardless of race, gender or age. Therefore, the provisions of the Convention apply equally to adults and children. It reaffirms the vulnerable position of disabled children in the society and acknowledges the special protection that they should be entitled to. The governments are the frontrunners of the protection measures against all abuses by forging feasible and lasting solutions. However, they fail to draw on its different capabilities across the education, health and judicial sector despite having capacities of reaching those who need the protection the most. Their vulnerable position or the localization cannot serve any longer as an excuse in the era of rising interconnectedness. This is why, the time is ripe for implementing long-lasting solutions based on the rule of law and human rights framework. Uganda has to live up to the expectations of thousands of people, who have no one else to ask for a sense of dignity and respect.

In addition to challenges concerning education, employment or civic life, disabled girls are more prone to violence than non-disabled children as a result of their disadvantages. They fall the easiest prey to violence of sexual character, as their physical or mental conditions further expose them to the attack. As if their situation was not already unfortunate, perpetrators benefit from the vacuum created by the insufficient protection by the state. It does not seem to acknowledge the fact that those girls are also children of tomorrow, thereby the future of the nation.

“ Sensitization of the society on the issue of sexual violence is a key to its end. It is not about going from door to door and asking people to change, but rather a collective effort of the entire society to change its mentality.”⁶⁹

⁶⁹ Testimony of Peninah Igaga, legal officer of the Barefoot Law Uganda. Interview was conducted via Skype on 4 April 2017.

It is high time to finally recognize disabled children as human beings who deserve attention, education and personal development. It is of their *best interest* to be treated equally and with respect. The absence of violence does not mean having their dignity upheld. It requires long term actions and great initiatives to combat the stereotypes. At the same time, shortage of necessary services is an indirect form of violence in the justice system, seemingly unaddressed enough by the Ugandan state. Once their needs are acknowledged by the state, providing disabled children with adequate education is the first step to assure a better future. Schools can be a great place of empowerment and prevention of abuses, including the sexual one. Finally, girls with disabilities of any kind must be able to benefit from one of the most fundamental human right: right to information. Knowledge is everything they need to make their lives less fragile and vulnerable, no matter whether it is transmitted via sounds, images or Braille alphabet. Being able to distinguish the difference between respect and disdain is already a milestone for them to make use of all the rights that they hold. Once they realize it themselves, their vulnerability is no longer an incentive for criminals and not an excuse for the state.

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