

Enhancing access to Justice for Children in Uganda: **Double Pain; Disability and Abuse!**

By UCRNN / Freedom House/USAID/Rights and Justice Activity-RAJA

POLICY BRIEF



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Executive Statement:

Despite a series of commitments to the Rights of Persons with Disabilities in Uganda through legislation, policy and political representation at national and local government levels, gaps still remain, in particular how they are implemented, monitored and degrees of compliance. Whereas the revised Persons with Disability Act 2020 was expected to address the policy gaps, it still fell short of compliance with the human rights based approach to programming of interventions in Persons with Disability, children inclusive. Important to note is that specific aspects of Child Sexual Exploitation and Abuse (CSEA) among Children with Disabilities (CWDs) is not clearly addressed in this legal framework. The implementation of existing interventions by state actors; Ministries, Departments and Agencies (MDAs) have exhibited limited innovation, especially in reporting of cases of CSEA among CWDs, subsequently denying majority of survivors of violence and exploitation from accessing justice in the Courts of Law. This has left many affected victims and their families in silent pain which infringes on their rights. The USAID/Rights and Justice Activity through its child justice partners take this opportunity to submit recommendations that advocate for redress in the existing policy framework and proactive program implementation to increase access to formal justice, especially for survivors of CSEA among Children with Disabilities. This brief is a result of voices majorly from Arua and Wakiso districts.

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Double Pain; Disability and Abuse

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Plight of Children with Disability in Context

Despite the United Nations Conventions and Ugandan National Laws and Policies on the Rights of Persons with Disability, implementation and enforcement of most recommended interventions remain glued on paper and if this practice is left unabated, it is most likely that the targets set for both SDGs 4, 8, 10, 11 and 17 and, the Uganda's Vision 2040 will not be met. There is no sufficient evidence regarding the extent of the problem of child sexual exploitation and abuse among children with disability. There is a mis-match between the big hype on cases of CSEA in CWDs and the number of cases reported to the authorities. Moreover, this is worsened by insufficient disaggregated data on the few known and reported cases of CSEA in CWDs.

The observed gaps in implementation, monitoring of CSEA and particularly for CWDs including the lack of compliance with a rights-based approach in the Persons with Disabilities Act (2020). Some of the challenges allude to lack of reception holding areas for the reported cases country-wide as an example, limited innovation among enforcement teams and agencies in implementing existing interventions under the current constrained budget allocations to the line Government MDAs.

Globally, a quarter of the population is reported to experience some form of disability. The World Health Organization (WHO) reports that approximately 15% of the world's population is living with a disabling condition and approximately 20 percent are in low resourced and developmental settings (WHO, 2015) Uganda inclusive.

The vulnerabilities and rise in child sexual exploitation and abuse among children with disabilities especially during and the post-covid era is a matter the RAJA/Child justice sub Group led by Uganda Child Rights NGO Network considers as warranting attention and ultimately Justice.

Disability by definition according to the United Nations Convention on the Rights of Persons with Disabilities (UNCRDP), will consider – whether it be deafness, vision impairment / low vision, physical disability, a learning disability, a communication disorder or a disabling mental health issue, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. The most commonly observed disabilities in Uganda are; loss and limited use of limbs 35.3%, spine injuries 22.3%, hearing difficulties 15.1%, seeing difficulties 6.7% and mental retardation (UBOS 2016).

In Uganda, persons with disability account for a significant portion of the population (12.5percent) , and yet their right to a full, dignified and meaningful life in the society falls short of the provisions in the UNCRDP. For example, about 9% of children with disabilities of school going age attend primary school and only 6% transition to secondary school education. Despite having a global recognition and observance of the barriers in accessing services , such as education, including limited access to formal justice for Children who fall victims of CSEA, particularly the Children with Disability whose right to protection is well prescribed in Art.34 of the 1995 Constitution of Uganda. The existing gaps in the current legal framework provides an opportunity to UCRNN to invoke Art. 35(2) of the same Constitution (Basic education) to lobby Parliament through advocacy for a redress.

The respondents in this review confirmed that it is common for CWDs to be sexually abused in mostly rural areas of the target districts. The review also identified several gaps that need to be addressed in order to understand this vice well. This publication shall dwell on three specific areas;

Communities / families do not report sexual abuse faced by the children with disabilities to the authorities due to lack of appropriate information about the reporting channels,

accessibility to the authorities and evidence to present to the Police among others.

Children with disabilities are kept in backyards and in the gardens hence out of school while the schools lack the capacity to retain them when they are enrolled. This has resulted into out of school children being prone to violations including children with high medical needs.

Inadequate and dysfunctional structures to support the receiving of complaints and prosecution of perpetrators of abuse to CWDs. Most police stations/outposts do not have a Sexual Gender Based Violence desk to respond to the complaints that may be raised hence referral to major police stations.

The proposed recommendations herein by the Child Justice partners are based on desk reviews and interviews conducted from sparse areas within the districts of Arua and Wakiso. One of the key findings point to the urgent need for innovations and development of a functional reporting mechanism or framework for capturing all cases of CSEA among children with disabilities right from the grassroots to the districts, regional and national levels. It is envisaged that approaches involving intensive mass awareness creation and education on the benefits of accurate reporting of CSEA in CWDs could help to strengthen justice for the survivors and will offer a monitoring tool to support planning for inclusive development interventions for CWDs.

Existing Legal Framework/National Laws and Policies

Uganda enjoys a variety of laws and policies within the social development sector; the following are legal instruments that have provisions for the protection of children (Children with disabilities) from harmful sexual violations, the promotion of education for children with disabilities, the responsibility of duty bearers and the justice system, and the sanctions in case of violations of these children. The team agrees that these provisions are a good starting point for the overall care and protection of CWDs; but cited various flaws in the actualization and implementation of these policies.

- The Constitution of Uganda 1995¹
- The Children's Act as Amended (Cap 59)²
- The National Parenting Guidelines, MGLSD, May 2018³
- The National Child Policy (2020)⁴
- The Penal Code Act⁵
- The Local Government Act Cap 243⁶
- Universal Primary Education Policy 1997⁷
- The National Policy on Disability in Uganda⁸
- The Special Needs and Inclusive Education Policy 2011⁹
- The National Disability Inclusive Planning Guidelines for Uganda 2017¹⁰
- The National Action Plan for Child Wellbeing (2016 to 2021)¹¹
- The National Strategic Plan on the Elimination Against Violence in Schools 2015 / 2020¹²
- The Police Act 2006¹³
- The Criminal Procedure Code Act Cap 116¹⁴

The Special Needs and Inclusive Education Policy 2011;

This Policy makes it mandatory for all schools to have special needs teachers trained and placed in different classrooms. The Inclusion policy promotes the merger of children with and without disabilities to participate and learn together in the same classes with the use of appropriate learning materials and aids for the special needs category. This kind of education identifies and reduces the barriers that may lead to exclusion

as well as responding positively to diversity and difference. However, the lack of systems of support and placement (enrollment) for children requiring Special Needs Education fails the actualization of this Policy.

According to UNICEF, 2016; P9, (**Kaggya, October 2019**) Communication and information means such as lack of sign language and braille as well as a shortage and unaffordability of assistive and mobility devices are big contributors to CWDs not attending school. These and many others fail the proper implementation of this Policy and promotion of Inclusiveness at large.

Children amendment Act; In 2016, the Parliament of Uganda approved the Children Act Amendments to strengthen care and protection of children in the country. In the Children's Act, Cap 59 S.9 (Children with disabilities and children with special needs) it is stated as follows. (5) A child shall not be discriminated against on account of their disability or special needs. Section 42A (2) A person who on reasonable grounds believes that a child has been abused or is in imminent danger which may result in physical injury, sexual abuse, deliberate neglect, or is in need of care and protection may report to a designated child protection organization or authority.

The Penal Code Act; Chapter XIV, Offences against Immorality; Sec 130; Defilement of Idiots or Imbeciles. "Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, commits a felony and is liable to imprisonment for 14 years."

These provisions do not in any way accommodate sexual violations upon any child and therefore have to be implemented in order to safeguard all children; they further go ahead to provide sanctions such as the one above that relates directly to the child with disability

Despite the legislation listed above, In Uganda we still fall short in implementation of the laws and policies with specific regard to; prosecution of offenders, school retention and in creating awareness to the masses so that they treat CWDs as a special category that requires undue attention and protection.

On why perpetrators target CWDs? "Perpetrators of abuse take advantage of the fact that many children with disabilities will not be able to identify them

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Leave No Child Behind.

or report the incident accurately”. (FN, Director/Co-founder Mukisa Foundation/Special Children’s Trust). Other reasons point towards cultural beliefs and myths: there are beliefs in some settings that certain disability conditions such as albinism bring wealth to a man who has sexual relations with them. It is also believed that having sexual relations with a virgin is a possible cure for HIV and people will choose children with disabilities with the mind that these children will not have had sexual relations with any other person.

Selected opportunities though inadequate:

The three-digit code 116; The Child Helpline is an achievement to Ugandan children in case of violations and their preparedness to report to this toll free Line, however the CWDs may not even know how and when to access this, given their limitations. In addition, the Child helpline is not yet fully popularized across the country so as to be accessed by their parents/guardians. (UCRNN, 2021; NGO Complementary report to the Government of Uganda’s Second and Third periodic report)

The Social service work force: This is available through the Community Based Services Department in all the districts of Uganda; however, the sectors most especially the Probation and Social Welfare office is not well financed to carry out their roles in this regard. (National Learning Event on Child Wellbeing Event 2017). The Police too lack the required training to handle both perpetrators and survivors of violence.

Voices from Arua and Wakiso (Focus districts for this review)

“Whenever I am away in the garden or at the market, I am sure that there is someone finding his way to my daughter. This has been going on for many years since her childhood. I once got furious, and

quarreled with all the boys in the neighborhood, until I gave up. She is now an adult still being violated. I cannot do much.” (helpless mother of a 19-year-old female, **Arua District**)

An interview carried out with the PCDO who had been recently elevated from position of PSWO also revealed that she has never received a complaint in this regard coming to her desk; *“CWDs may be abused in the communities and no one takes the initiative to report to the authorities. I have never received such a complaint and neither have the four GBV shelters accommodated a child with disability as a survivor of sexual violence.”* (**Wakiso District**)

“Matters of this nature do not reach the Police. 70 Cases of both defilement and rape were recorded between October 2021 and June 2022, however none of these were in relation to a victim living with disability”. (AW, In-charge, SGBV – **Arua City**)

Children with Disability already go through immense suffering by nature of their disability. Many times they are rejected by their parents and families therefore no sane human being would want to put them to additional suffering, much as shamefully this happens a lot. Duty bearers and Practitioners advocating for justice in their various capacities can only exemplify their commitment to legislation by ensuring that these children are protected at all angles of life and are rehabilitated through the aftermath. The justification for ensuring that perpetrators of sexual violations upon CWDs are apprehended, tried, prosecuted and convicted is one that may deter further violations in this category of most vulnerable children.

Key Messages for Policy makers and Actors

1. All children with disability have a right to stay safe from child sexual exploitation and abuse. There is under-reporting of child sexual exploitation and abuse in children with disability, and a significant gap in the data on disaggregation by disability on incidence or prevalence of the few reported cases. Specific and dedicated research that engages the wider disability community is required to develop

- a functional reporting framework from grass-roots, all through to the national level.
2. There is a need for mass sensitization and awareness of the general population about the general Care and Protection of Children with Disabilities, prevention, complaints procedures, and the type of evidence required during trials of perpetrators, including all kinds of violations and abuse to both boys and girls. This will contribute to increased reporting of cases of CSEA in CWDs, and timely trial of the perpetrators in the formal justice systems.
 3. The national and sub-national level stakeholders responsible for child protection are currently not responsive enough to the needs of children with disabilities. There is a need to engage more political leaders to create political will and financial support in support of local strategies. This accompanied by learning exposures to the PSWOs, Police and all JLOS actors on how to handle CSEA in CWDs will provide them with knowledge and skills related to the type of disability and the specialized tools that are required to communicate with the victim. In this regard all staff are able to handle abused and neglected children; build capacity to sensitize the public via media and to offer life skills training to the CWDs and to their caregivers.
 4. Sensitize communities about the negative cultural and harmful practices, education on the dangers of child abuse, conduct research on issues affecting CWDs and widely disseminate the results for action. This will contribute to ending the stigma and taboo that surrounds sexual abuse especially in the communities that usually build barriers that make it difficult for children with disabilities and their families to disclose their experience of abuse.
 5. Education as a Human Right: Education is a right enshrined in articles 28 and 29 of the Convention on the Rights of the Child. There is a need to form consortia of like-minded NGOs and Disabled Peoples Organizations (DPOs) to harness their efforts to supplement the Government's effort towards increasing access to education for Children with Disabilities. This calls for a need to re-design

the hardware aspect in the sector; current classroom infrastructural designs along with learning aids to provide a conducive environment for CWDs and all types of disabilities. The software aspect includes incorporating the prevention component with a developmental view especially among the boys and men as an intervention at key life stages to prevent the likelihood of child sexual exploitation and abuse offending.

References:

- ⁱ Disability Inclusive SDGs. https://www.un.org/disabilities/documents/sdgs/disability_inclusive_sdgs.pdf
- ⁱⁱ Situation Analysis of Persons with Disability (2020). <https://www.developmentpathways.co.uk/wp-content/uploads/2020/09/Webready-DP1294-ESP-Disability-Uganda-Sept-2020.pdf>
- ⁱⁱⁱ Persons with Disability Act, 2020. <https://commons.laws.africa/akn/ug/act/2020/3/eng@2020-02-14.pdf>
- ^{iv} WHO global disability action plan 2014-2021. Better health for all people with disability. World Health Organization. ISBN 978 92 4 150961 9. https://apps.who.int/iris/bitstream/handle/10665/199544/9789241509619_eng.pdf?sequence=1&isAllowed=y
- ^v Conventions on the Rights of Persons with Disabilities and Optional Protocol. <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>
- ^{vi} UBOS, 2019. Persons with Disability BRIDGING THE GAP THROUGH STATISTICS. https://www.ubos.org/wp-content/uploads/publications/09_2019DISABILITY_MONOGRAPH_-_FINAL.pdf
- ^{vii} National Action Plan for Child Wellbeing Uganda (2016-2021). <https://www.end-violence.org/sites/default/files/paragraphs/download/National%20Action%20Plan%20for%20Child%20Wellbeing%20Uganda.pdf>
- ^{viii} Uganda's progress report on the implementation of the United Nations Convention on the Rights of the Child (2020). <https://afri-can.org/wp-content/uploads/2016/04/Children-with-disabilities-in-Uganda-The-hidden-reality2.pdf>
- ^{ix} WHO Global Disability Action Plan 2014-2021. Better Health for All People with Disability. https://apps.who.int/iris/bitstream/handle/10665/199544/9789241509619_eng.pdf?sequence=1&isAllowed=y



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FROM THE AMERICAN PEOPLE



The USAID/Rights and Justice Activity (RAJA) is a three-year activity implemented by Freedom House which commenced on September 1st 2020. RAJA seeks to ensure that citizens know, use and shape the law to exercise their civil and political rights in a safe and secure manner. The program aims to ensure that members of vulnerable populations including children who are victims of human rights abuses are supported to access justice, protection and referral services.

One of the areas under RAJA is Child Justice with the project of: “Enhancing access to justice for children in Uganda”. The project implementation is on course in six districts of Wakiso, Lira, Arua, Kyotera, Mukono and Mbale. The project aims at increasing access to legal aid services of child sexual exploitation and abuse including children with disabilities and children affected by HIV/AIDS. The project also aims at strengthening systems at community and national levels (informal and formal) to prevent and respond to child sexual exploitation and abuse through by-laws, community sensitization and legal awareness campaigns.

The Child Justice Subgroup members:



UCRNN: was formed in 1997 as a coalition of child focused organizations including community based, national and international organizations working for the welfare and the rights of children in Uganda. UCRNN plays a role in mobilizing child focused organizations for collective action at national, regional and international level and has been the CSO voice on child rights in Uganda.



Free Child Uganda: was started in 2016 due to demand and shortage of legal representation of juvenile offenders, and inadequate rehabilitation and reintegration programmes in the country. With a rights based, non-institutional approach the organization gives voices to thousands of neglected and delinquent children through legal aid, counselling and facilitating their lease and resettlement of children from government detention centres and remand homes.



FIDA Uganda: was formed in 1974, to provide legal aid services through a strategic network of offices reaching into 20 districts across the country, supported by lawyers, FIDA Uganda Members, Community Legal Volunteers, and local authorities. The organization promotes and defends human rights with a focus on the rights of women and children.



Child Aid Uganda: was established in 2004 by a group of Ugandan children rights activists and professionals in response to the ever increasing needs of HIV/AIDS orphans and other vulnerable children living in difficult circumstances superseding the available interventions from other NGO's. The organization was formed to protect and provide care to orphans and vulnerable children to achieve a purposeful future.



LDC/Legal Aid Clinic: was founded in 1998 and started its activities in 1999 by assisting in imparting practical skills to students of the Diploma in Legal Practice (Bar Course) through its Clinical Legal Education Program and Providing legal aid services to juveniles, indigent litigants and accused persons. In fulfillment of its mandate, the clinic has been carrying out; A Reconciliation Program at Magistrates Courts, Diversion Program for children in conflict with the law, Use of Bar Course students to access to justice for juveniles.