

Legal Frameworks for ICT and Disability

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is the first international human rights treaty requiring that ICT tools and systems should be accessible as a necessary condition for persons with disabilities to fully enjoy their fundamental rights without discrimination. It places significant obligations on countries to create equal opportunities, ensure accessibility and inclusion of persons with disabilities.¹³ Article 9(2)(g) of the convention calls on countries to take appropriate measures to ensure accessibility of ICT, including the internet, for persons with disabilities. Member states are also required to ensure that private sector service providers, including through the internet, provide information and services in accessible and usable formats for persons with disabilities.

Uganda and Tanzania have ratified both the Convention and its Optional Protocol while Kenya has only ratified the Convention.¹⁴

In January 2018, the African Union Assembly adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, which recognises the right of persons with disabilities to barrier-free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public.¹⁵ Across the continent, only six countries have signed the Protocol - Burkina Faso, Central African Republic, Gabon, Rwanda, South Africa and Togo but none of the member states has ratified it.¹⁶ As such, the Protocol is yet to come into force as it requires at least 15 member states to have signed and ratified.¹⁷ Unfortunately, Kenya, Tanzania and Uganda are among member states that are yet to sign the Protocol.

Under Article 2, states are required to take “effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to access “Information, communications, sign language and tactile interpretation services, braille, audio and other services, including electronic services and emergency services.” Under article 2(d), states are enjoined to ensure that persons with disability have access to quality and affordable mobility aids and assistive devices or technologies”.

Article 19(1) of the Protocol provides that “Every person with a disability has the right to freedom of expression and opinion and the right to access information.” It requires member states to put in place policy, legislative, administrative and other measures to ensure these rights.

Across the region, the rights of persons with disabilities are provided for in national constitutions and specific laws. For example, Kenya’s constitution outlaws discrimination on the grounds of disability, under article 27(4). It also provides that a person with a disability shall be entitled to treatment with respect and dignity, access educational institutions and facilities, have reasonable access to all places, public transport and information, and access materials and devices including for communications (article 54). Moreover, Kenya’s National ICT Policy of 2016 outlines, under article 13, strategies for “an accessible ICT environment in the country in order to enable persons with disabilities to take full advantage of ICTs.”

¹³ *Convention on the Rights of Persons with Disabilities*, <https://bit.ly/2Of87Js>

¹⁴ *CRPD and Optional Protocol Signatures and Ratifications*, <https://www.un.org/disabilities/documents/maps/enablemap.jpg>

¹⁵ *Article 11 of the Africa Protocol on Rights of People With Disabilities*, <https://bit.ly/2OGhEID>

¹⁶ *Protocol of the ACHPR on Rights of Persons with Disabilities* <https://bit.ly/2Ofbb8r>

¹⁷ <https://www.achpr.org/pressrelease/detail?id=426>

Article 13 of the Tanzania constitution of 1997 as amended prohibits all forms of discrimination before the law. Further, article 11 requires the government to make appropriate laws and policies for the realisation of a person's right to work, to self-education and social welfare irrespective of, among others, disability. Tanzania has adopted a number of laws, policies and standards on promoting the rights of persons with disabilities, including their right to productive and decent work, access to information and to ICT. Tanzania adopted a National Policy on Disability in 2004, ratified the CRPD in November 2009, and enacted the Persons with Disability Act in 2010.

In Uganda, Article 35(1) of the constitution states that, "Persons with disabilities have the right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential." Uganda passed a Persons with Disabilities Act in 2006, which defines disability as 'a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation'. Similar definitions are contained in the 2010 Tanzania Persons with Disability Act¹⁸ and the Kenya 2003 Disability Act.¹⁹

National Laws on Access to Information and ICT for Persons With Disabilities

In East Africa, various laws prescribe standards to ensure accessibility and usage of information, the internet and other related ICT.

Section 21 of the Uganda Persons with Disability Act mandates the government to develop and use sign language, tactile, and sign language interpreters in all public institutions and at public functions; and to braille public information such as government documents and government newspapers. The section also requires television stations to provide sign language inset or subtitles in at least one major newscast programme each day and in all special programs of national significance. Meanwhile, telephone companies are required to provide special telephone devices for the hearing-impaired.

In Tanzania, section 55 of the 2010 Persons with Disability Act requires all television stations to provide sign language insets or subtitles in all newscasts, educational programmes and other programmes covering national events. Section 39 of Kenya's Persons with Disability Act of 2013 provides the same requirement of television owners.

Additionally, section 10(4) of the Tanzania Access to Information Act of 2016 stipulates that a person who, because of illiteracy or disability, is unable to make a written application for access to information, may make a request orally, and the information officer to whom the request is made "shall reduce the request into writing in the prescribed form and provide a copy of the written request to the person requesting". Additionally, section 17(1) provides that the information requested should be provided in a format that is friendly to a requester with disability.

¹⁸ 2010 Persons with Disability Act, <https://tanzlii.org/tz/legislation/act/2010/9-0>

¹⁹ 2003 Kenya Persons with Disability Act, <https://bit.ly/2Da155x>

Similarly, the 2016 Kenya Access to Information Act, in Section 28(3)(a), makes provisions for illiterate persons or persons with disabilities to make information requests with the assistance of information officers and makes it an offence to refuse to assist a requester who is unable to reduce an oral request to writing.

Tanzania's Universal Communications Services Access Act of 2006, which established the Universal Communication Services Access Fund, stipulates universal service obligations under section 13(1)(b)(v) to provide customers with disabilities with the same quality of services as all other customers so as to have access to the same level of universal service. Likewise, Section 5(L) of the Uganda Communications Act of 2013 mandates the Uganda

Communications Commission (UCC) to promote research into the development and use of new communications techniques and technologies, including those which promote accessibility to communications services for persons with disabilities.

Uganda's 2005 Access to Information Act provides for the rights of persons with disabilities to request and access information. Under section 11(3), persons with a disability, are among those exempted from making the mandatory written information requests as they can do it orally. Additionally, under section 20, information officers are required to take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by a person with a disability²⁰ at no extra charge.²¹

Challenges in Digital Accessibility

Although Kenya, Tanzania and Uganda ratified the CRPD, and have all enacted legislation and policies that aim to increase digital accessibility, there remain huge challenges in access to and use of ICT by persons with disabilities. Below are some of the key challenges.

Poor Implementation of Enabling Laws and Policies

Despite having some progressive laws and policies, there has been laxity in implementing them. Although access to information laws in Uganda, Kenya and Tanzania require information to be provided in friendly formats, this requirement only addresses the demand side and places no obligation to the supply side to engage in proactive disclosure in accessible formats. Secondly, in the three countries, only a handful of television stations have incorporated signage interpreters. In Kenya, according to a study, only 13 out of the 18 free-to-air channels were providing sign language interpretation during newscasts.²² In Uganda, media managers are reported to have expressed reservations about provisions in the amended Persons with Disability Act 2018 which requires all newscasts on public and private television stations to have a Ugandan sign language interpreter.²³

²⁰ Section 20(5) Uganda Access to Information Act 2005, <http://askyourgov.ug/assets/uganda-ati-act-2005.pdf>

²¹ Section 20(7) Uganda Access to Information Act 2005

²² Ngigi Samuel (2018), *From Exclusion to Inclusion: Integration of Kenya Sign Language During Television Newscasts in Kenya* - Vol.42, 2018

²³ *The Independent*, *Media managers express reservations over the new PWD law*, <https://bit.ly/2OKA5fd>

Inaccessible Government Websites and e-Services

Several government ministries, departments and agencies in the region have embraced digital technologies, setting up an online presence and providing online services including filing of tax returns and online banking. In Uganda and Kenya, the National Information Technology Authority²⁴ and Communication Authority of Kenya²⁵ respectively, have developed guidelines for the management of government websites that set out requirements for accessibility for audio, visual and speech impaired users, as well as compatibility with assistive technologies and devices. Unfortunately, these guidelines remain unimplemented and unenforced.

Lack of Appropriate ICT Knowledge and Skills by Persons with Disabilities

Besides lack of access to assistive devices, many persons with disabilities do not possess the requisite knowledge and skills in the use of the specialist devices they need. A 2018 study by the Uganda Communications Commission found that about 76% of persons with disabilities were not aware of the low-cost assistive technologies like manual Perkins Braille, hand-held magnifiers, hand frames/slates and communication boards.²⁶

In Kenya, a 2017 study on civic participation for persons with disabilities in the country by Article 19 East Africa found that due to lack of access to information, persons with disabilities were not able to effectively participate in decision-making and policy development processes at national and county levels.²⁷

Lack of Disaggregated Data

Like the CRPD, Goal 17 of the SDGs stresses the need to increase the availability of high-quality, timely and reliable data that is also disaggregated by disability, in order to strengthen the means of implementing social development programmes. Additionally, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa requires countries to ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. It enjoins states to disaggregate statistics and data on the basis of disability, gender, age and other relevant variables, including by ensuring that the national population census captures data on disability. A lack of disaggregated data, including on the extent of use of ICT by persons with disabilities, severely affects efforts to improve their access to appropriate services, information and resources.

²⁴ Guidelines for development and management of government websites, <https://www.nita.go.ug/publication/guidelines-development-and-management-government-websites>

²⁵ GoK (2004) Kenya E-Government Strategy <https://bit.ly/2OIkyMJ>


²⁶ UCC (2017) Access and Usage of ICTs by PwDs in Uganda <https://bit.ly/34hzMPF>

²⁷ ARTICLE 19 Eastern Africa, Closing the gap in civic participation for persons with disabilities in Kenya: A national level analysis concerning the implementation of Article 21 of the Convention on the Rights of Persons with Disabilities,

Expensive Assistive Technologies

Assistive technology enables and promotes the inclusion, participation and engagement of persons with disabilities.²⁸ Indeed, article 20 of CRDP calls for effective measures to facilitate access to quality assistive devices and technologies, delivered at affordable costs and in the manner and at the time of choice of persons with disabilities. In Kenya, Tanzania, and Uganda, the majority of people that need these technologies do not have access to them and many are not aware of such technologies and their functionalities. Screen readers, text-to-speech software and Augmentative and Alternative Communication (AAC) devices can cost more than \$1,000 each, and not everyone is aware of the financing or grant opportunities in their country.²⁹

The shortage of assistive technologies leads to discrimination against persons with disabilities and denies them rights such as to information, education and employment, further entrenching their exclusion.³⁰



²⁸ CRDP 208 note

²⁹ What is the digital divide and how it does affect persons with disabilities <https://bit.ly/33mQMmI>

³⁰ Interview with Fredrick Msigallah, Advocacy and Capacity Building Officer at Comprehensive Community Based Rehabilitation in Tanzania (CCBRT); and Amon Anastaz, Advocacy Officer and lawyer at CCBRT

Conclusion

Despite the advances in expanding usage of information and communication technologies in East Africa, a large section of persons with disabilities faces digital exclusion. While Kenya, Tanzania, and Uganda have enacted various progressive laws and policies to advance the rights of persons with disabilities, including those on access and use of ICT, these have largely remained on paper as key provisions are not being implemented nor enforced.

The lack of comprehensive disaggregated data on persons with disabilities, including the specific challenges that they face in accessing information and using ICT has negatively impacted on the design and implementation of interventions that would improve their access. In turn, assistive technologies are out of reach for large numbers of persons with disabilities. Accordingly, concerted efforts are needed by government ministries, communication regulators, telecom operators and other ICT companies, among others, to meaningfully improve usage of ICT for this community.

Recommendations

Many of the obstacles and challenges faced by persons with disabilities in accessing information, education and employment can be mitigated through equitable access to ICT. Legislators, public policy makers and regulators need to take decisive steps in terms of the development, production, cost and availability of certain requirements and equipment.³¹

Government

The government, alongside the communications regulator, should champion deliberate actions to conduct a gap analysis to establish the unmet ICT needs of persons with disabilities, as well as collect, on a regular basis, disaggregated data on persons with disabilities.

Government should ensure that the relevant state agencies as well as communication service providers adhere to the provisions within the CRPD and the national constitutions that relate to the rights of persons with disabilities.

Promote access to affordable assistive devices and technologies beyond tax exemptions and relying on donations, including by providing incentives to providers of accessible technology solutions including software, hardware and applications through subsidisation,³² research and development.

Ensure that all e-government, e-services and emergency services comply with international web accessibility standards and are accessible for persons with disabilities including having accessible interfaces and content in line with the web content accessibility guidelines (available, affordable, adaptable and accessible).³³

³¹ ITU, *Regional ICT Accessibility Assessment Report for the Americas Region*, <https://bit.ly/2OKCxm1>

³² <http://erepository.uonbi.ac.ke/bitstream/handle/11295/99022/MA%20Project%20Report%20Rose%20Njuguna.pdf?sequence=1&isAllowed=y>

³³ The guidelines are available at: <https://www.iso.org/standard/58625.html>

Communication service providers

Communication service providers should ensure that their sales outlets have accessible handsets and other mobile devices embedded with accessibility features for persons with different kinds of disabilities.

The communication service providers should endeavor to make all their services and applications accessible, and to offer special or discounted rates for persons with disabilities such as text-only plans for the deaf and hard-of-hearing.

Television/video licensed providers

Licensed service providers should ensure that they deliver accessible services such as audio description, audio subtitles, closed captions and signing across all programmes in order to ensure access for persons with disabilities.

Licensed service providers should encourage their content creators to deliver programmes with accessible services for persons with different disabilities.

Licensed service providers ensure that emergency information and public safety announcements are transmitted using accessible services.

Licensed providers ensure that there is fair and equitable representation of persons with disabilities in television and video programmes.



CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technology in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA works to enable policy makers in the region to understand ICT policy issues, and for various stakeholders to use ICT to improve governance and livelihoods. CIPESA currently approach her work through four different but interrelated thematic areas, namely; promoting online freedom, ICT for democracy and civic participation, open data and the right to information, and contributing to internet governance debate at national, regional and global levels.

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