



A TOOLKIT ON ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN RWANDA

A TOOLKIT ON ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN RWANDA

This toolkit has been prepared by Haguruka
In partnership with Chemonics International
Through USAID-*Duteze Imbere Ubutabera*

This toolkit has been developed and designed by
Advocate Dr. Tite Niyibizi, Ph.D.

Table of Contents

Chapter 0. Toolkit outline.....	6
0.1. Why this toolkit?	6
0.2. Toolkit objectives.....	7
0.4. Toolkit structure.....	8
Chapter 1: Legal framework and access to justice for the persons with disabilities.....	9
1.1. Definition of key concepts	9
1.1.1. Access to justice	9
1.1.2. Peoples with disabilities	10
1.1.3. Categories Peoples with disabilities in Rwanda.....	13
1.1.4. Peoples with disabilities in Rwanda.....	14
1.2. Access to justice for persons with disabilities under international human rights obligations	15
1.2.1. Access to justice for persons with disabilities under the Convention on the Rights of Persons with Disabilities	16
1.2.2. Access to justice for persons with disabilities under other international and regional human rights instruments	18
1.2.3. Protocol to the African charter on human and peoples' rights on the rights of persons with disabilities in Africa	20
1.3. Access to justice for persons with disabilities under Rwandan law	21
1.3.1. The right to non-discrimination	21
1.3.2. The right to equality before and equal protection of law for all persons.....	22
1.3.3. The right to due process of law	22
1.3.4. Right to a legal representation.....	23
1.3.6. The right to seek and receive information and right to be communicated in the language you understand	24
1.3.7. Right to liberty and security of person	25
Chapter 2: Barriers to access to justice faced by persons with disabilities in Rwanda	26
2.1. Barriers faced by Persons with Disabilities in the Administration of Justice.....	26
2.1.1. Legal Barriers.....	26
2.1.1.1. Limited scope of the definition of disability in national Law ..	26
2.1.1.2. Failure to include denial of reasonable accommodation as a form of disability discrimination in national law	28
2.1.1.3. Denial of legal capacity	29
2.1.2. Attitudinal Barriers	30
2.1.3. Limited access to information and Communication Barriers ...	31
2.1.4. Limited access to legal aid services	34
2.1.5. Physical Barriers	36

2.1.6. Economic Barriers and extra cost of pursuing justice	37
2.2. Role played by different justice actors in the creation of barriers to the enjoyment of PWDs' rights.	38
2.2.1. Challenges faced by Persons with disabilities during the different stages of the criminal process	38
2.2.2. The Role of the Police, investigator and prosecutor	41
2.2.3. The Role of Lawyers and legal aid providers	42
2.2.4. The Role of Courts	43
2.2.5. Role of abunzi and local leaders	44
2.2.6. Particular Situation in Relation to Physical and Sexual Violence against Women	45
2.2.7. Treatment of Persons with Disabilities in Detention	45
2.2.8. Access to justice for Children with disabilities	46
Chapter 3. Ensuring Access to Justice for Persons with Disabilities	49
3.1. Overcoming Legal Barriers.....	49
3.1.1. Amending the law n° 01/2007 of 20/01/2007 relating to protection of person with disabilities.....	49
3.1.2. Review the Legal capacity for persons with disabilities	50
3.2. Overcoming Attitudinal Barriers and Improving Capacity of Legal Professionals	52
3.3. Overcoming Information and Communication Barriers	54
3.3.1. Recognition of a sign language as an official language	54
3.3.2. Improvements of accessibility of legal information and court documents	55
3.4. Overcoming Physical Barriers	56
3.5. Overcoming Economic Barriers.....	57
3.6. Check list for legal aid providers for person with disabilities	57
4. Learning activities.....	61
4.1. Day 1 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities	61
4.2. Day 2 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities	61
4.2.1. Overcoming Barriers to Access to Justice	62
4.2.2. Handout: Scenarios: Access to Justice	63
4.3. Day 3 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities	64
4.3. 1. Physical and Sexual Violence against Women.....	64
4.3. 2. Video: Deaf and Disabled Abuse	65
Conclusion	66
5. References	67
- Ministerial Order n° 20/18 of 27/7/2009 determining Modalities of Classifying Persons into Basic Categories Based on the Degree of Disabilities.....	67

Chapter 0. Toolkit outline

0.1. Why this toolkit?

For the last 25 years, the Government of Rwanda has made significant progress in the realization of women's and girls' rights in different sectors including education, health, and justice to name a few. The respect and promotion of the rights of persons with disabilities have also been progressively realized with the ratification of international and regional human rights instruments and subsequent adoption of laws, policies, and programs. However, little has been done in terms of assessment of laws, policies and barriers which prevent people with disabilities, particularly women and girls with disabilities' effective access justice.¹

People with disabilities have the same rights as all other people. People who feel wronged or mistreated in some way usually turn to justice systems – including to civil, administrative, and criminal law - for redress.² Beyond seeking legal protections or remedies, there are numerous ways in which individuals with disabilities can participate in the justice system, including witnesses, victims, or by taking on other roles such as police, investigator, prosecutor, judge, arbitrator, mediator or prison staff. Besides one may serve as a defendant in a criminal case.

As will be explored in the present toolkit, in Rwanda persons with disabilities face considerable obstacles in terms of access to justice. Barriers can be encountered with a country's normative framework – or national laws – where they do not adequately give effect to the rights of persons with disabilities. Barriers can also be faced in terms of a country's institutional framework for justice, which includes law enforcement and court systems. It has been noted that negative attitudes and false beliefs or assumptions on the part of relevant actors, such as lawyers, judges, prosecutors, court bailiffs, and correction officials may result in persons with disabilities being considered and treated as less credible at all stages of legal processes, including when reporting a crime, in terms of whether one can serve as witness or in making legal decisions, seeking remedies for alleged violations of their rights, or otherwise participating in legal proceedings. In some cases, lawyers lack the training to work with or best serve clients with disabilities and this

¹ LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019, p.38.

² Janet Lord, et al, *Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities* (2009), p.2.

can affect the quality of service obtained by the client.³

In Rwanda, there are some provisions of laws that do not comply with the International Convention on the Rights of persons with disabilities.⁴ Some researches and assessment conducted in this area, have recommended the adoption of the sign language among official languages⁵ and subsequent training of justice actors including judges, lawyers, prosecutors, correction officers, and court bailiffs to name a few on sign language. Secondary. There is a need for the judiciary to upgrade the IECMS with the view of accommodating the needs of a person with vision impairment and making court documents more accessible to persons with disabilities.⁶ Researches also revealed that women and girls face double discrimination, based on gender and disability.⁷

This toolkit has, at the heart of its content, mechanisms to break out barriers faced by people with disabilities in the administration of justice, ensuring access to justice for persons with disabilities and preventive mechanisms to physical and sexual violence against women with disabilities.

0.2. Toolkit objectives

The ultimate goal of the toolkit is to capacitate everyone who has an interest in disability or responsibility for addressing issues of access to justice for persons with disabilities because of the nature of their work.

³ United Nations, Toolkit on disability for AFRICA, Access to justice for persons with disabilities, <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 10/07/2020

⁴ Rwanda Law Reform Commission, Harmonization of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, Draft report, February 2020, p.81.

⁵ Rwanda Law Reform Commission, Harmonization of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, Draft report, February 2020, p.7.

⁶ LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019, p.12.

⁷ Handicap international –humanity & inclusion, Women with disabilities face double discrimination, available at <https://reliefweb.int/report/world/women-disabilities-face-double-discrimination>, accessed 10/07/2020.

0.3. Who is the toolkit for?

This toolkit is designed for persons with or without disabilities employed in government institutions and civil society especially the non-government organisations that deal with peoples with disabilities, Rwanda Investigation Bureau, National Public Prosecution Authority, the Judiciary, Rwanda Correctional Services, Ministry of Justice, National Rehabilitation Services, National Human Rights Institutions, administrative entities, development agencies, universities, and the private sector. This toolkit aims to widen and enhance the knowledge and skills for better access to justice for persons with disabilities in Rwanda.

0.4. Toolkit structure

Apart from the toolkit outline and a conclusion, this toolkit is divided into four chapters.

- The first chapter discusses access to justice for persons with disabilities legal framework.
- The second chapter debates barriers to access to justice faced by persons with disabilities in Rwanda.
- The third chapter focuses on how to improve access to Justice for Persons with Disabilities.
- The fourth chapter discusses the learning activities of the content of this toolkit.

Chapter 1: Legal framework and access to justice for the persons with disabilities

This chapter discusses key provisions in both national and international legal frameworks concerning access to justice for persons with disabilities. The first section below considers the definition of key concepts. The second section discusses key provisions in the regional and international legal frameworks about access to justice for persons with disabilities. The third section examines the key provisions under Rwandan laws.

1.1. Definition of key concepts

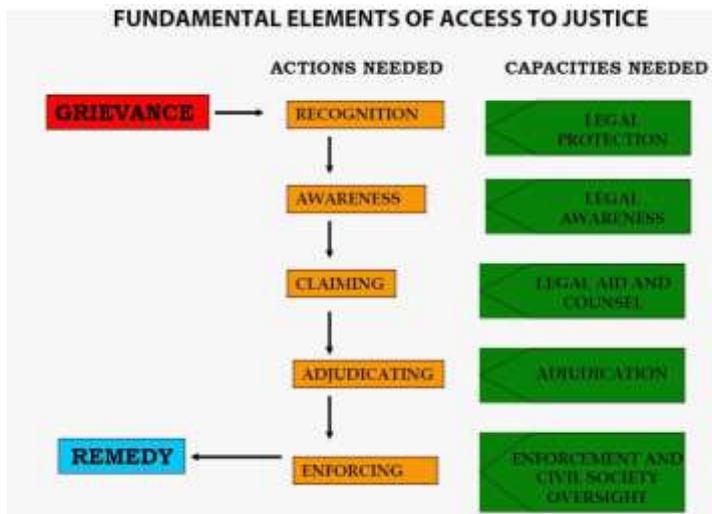
1.1.1. Access to justice

The United Nations Development Programme (UNDP) defines access to justice as *“the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”*⁸

A comprehensive concept of access to justice covers” different stages of the process of obtaining a solution to justice problems. It starts with the existence of rights enshrined in laws, and awareness and understanding of those rights. It embraces access to dispute resolution mechanisms as part of justice institutions that are both formal (ie, institutions established by the state) and informal (eg traditional or religious authorities, mediation, and arbitration). Effective access includes the availability of, and access to, counsel and representation. It also encompasses the ability of such mechanisms to provide just, fair, impartial, and enforceable solutions.”⁹

⁸ UN Women, UNDP, UNDOC AND OHCHR, A Practitioner’s Toolkit on Women’s Access to Justice Programming, Available at https://www.unodc.org/pdf/criminal_justice/WA2J_Consolidated.pdf, accessed on 18 June 2020.

⁹Julinda Beqilaj, Lawrence Mc Namara and Victoria Wick (2017). *Op cit*, p.14



Figures 1 on fundamental elements of access to justice¹⁰

1.1.2. Peoples with disabilities

To begin to understand disability is it useful to understand the difference between “impairment and disability”. Impairment is defined as: a *“physical, intellectual, mental or sensory characteristic or condition, which places limitations on an individual’s personal or social functioning in comparison with someone who does not have that characteristic or condition”*. While the disability is defined as: the disadvantage and exclusion that arise as an outcome of the interactions between people who have impairment, social and environmental barriers they face due to failure of society to take account of their rights.¹¹ There is a net difference between impairment and disability. In this context, impairment is individual. In contrast, the concept of disability is social. In that perspective, having an impairment does not necessarily limit or exclude people when the conditions are favourable.

¹⁰ UNDP, Access to Justice: Practice Note, available at https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/access-to-justice-practice-note.html. Accessed on 18 June 2020.

¹¹ World report on disability, available at https://www.who.int/disabilities/world_report/2011/chapter1.pdf?ua=1, accessed on 15/07/2020.

1.1.2.1. The Medical Model of Disability

This refers to an understanding of disability as a narrow, medical problem that needs to be “fixed” or an illness that needs to be “cured.” This perspective implies that a person with a disability is somehow “broken” or “sick” and requires fixing or healing. While persons with disabilities require medical care like other persons. Defining disability simply as a medical problem that needs a medical solution ignores many barriers that prevent persons with disabilities from full participation in society. Many of these barriers are created by society and cannot be “fixed” or “cured” by doctors. It is problematic to view disability only through the lens of the medical model because it facilitates individuals, societies, and governments to avoid the responsibility of addressing the human rights obstacles that exist in the social and physical environments.¹²

1.1.2.2. The Charity Model of Disability

This concept of disability portrays persons with disabilities as objects of shame and charity, helpless dependents who are unable to live independently. As passive recipients of social welfare, they are viewed as a burden on family and society instead of contributing members in their community. Such approaches have long dominated legislative frameworks and policy and continue to foster negative attitudes towards persons with disabilities. The medical and charity models are narrow perspectives that do not reflect a comprehensive understanding of persons with disabilities as holders of rights and as active participants in their communities. It is for this reason that disability advocates, disability rights scholars, and others have worked to develop other models and approaches to disability issues.¹³

1.1.2.3. The Social Model of Disability

This model focuses on eliminating the barriers created by the social and physical environment which inhibit the ability of persons with disabilities to exercise their human rights. This includes, for instance, promoting positive attitudes and perceptions, modifying the built environment, providing information in accessible

¹² HUMAN RIGHTS. YES! Part 1: understanding human rights of persons with disabilities, available at <http://hrlibrary.umn.edu/edumat/hreduseries/HR-YES/part1.html>, accessed on 28/07/2020.

¹³ Ibidem

formats, interacting with individuals with disabilities in appropriate ways, and making sure that laws and policies support the exercise of full participation and non-discrimination.¹⁴

The social model recognizes the various ways in which the social environment creates barriers for persons with disabilities and impacts the enjoyment of their human rights. For instance, where a person who uses a wheelchair is confronted by a staircase, the result is a disability. Also, persons who are blind have challenges in accessing the information on the internet. When society ensures that websites are fully accessible to screen-reading technology, a person who is blind can access all the information on the website, but when a website is not accessible to that technology, then that person experiences the social impact of disability. Under the social model, disability is not inherent in the person, but rather is part of an individual's interaction with society, and therefore society should not define someone by their disability.¹⁵

1.1.2.4. Human Rights based approach to disability

From this perspective, disability is a complex concept. How disability is defined and how the concept of disability is expressed strongly impacts the understanding, attitude, and approach of others toward the human rights of persons with disabilities. The human rights-based approach has the following key features:

- (a) Enhancing respect of persons with disabilities;
- (b) Ensuring accessibility;
- (c) Addressing non-discrimination, equality of opportunity and gender equality;
- (d) Promoting and ensuring the rights of children with disabilities;
- (e) Promoting and ensuring participation and empowerment of persons with disabilities;
- (f) Strengthening accountability.

The CRPD in its article 1 explains the concept of disability:

Article 1 of CRPD

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with

¹⁴ Ibidem

¹⁵ Ibidem

others"

The Government of Rwanda has ratified the CRPD and domesticated other international instruments in Rwandan laws. In this regard, the Article 2 of Law N° 01/2007 of 20/01/2007 relating to the protection of disabled persons in general, defines the concept of disability as:

"Disability shall mean the condition of a person's impairment of health ability he or she should have been in possession, and consequently leading to deficiency compared to others".

"A disabled person is any individual who was born without congenital abilities like those of others or one who was deprived of such abilities due to disease, accident, conflict or any other reasons which may cause disability".

This definition reflects medical model. Rwanda has not brought its -domestic legislation into line with the Convention on the Rights of Persons with Disabilities.¹⁶ To adopt the "social construct model" definition of disability as it would emphasize priorities of social attitudes, communication and inclusion, and dismantling barriers to access. The modification of article 2 of the law Law n° 01/2007 of 20/01/2007 relating to protection of disabled persons in General and article 4 of the law n°02/2007 of 20/01/2007 relating to the protection of disabled former war combatants is recommended.¹⁷

1.1.3. Categories Peoples with disabilities in Rwanda

According to article 2 of Ministerial Order n° 20/18 of 27/7/2009 determining Modalities of Classifying Persons into Basic Categories Based on the Degree of Disabilities,¹⁸ persons with disabilities shall be classified under the following categories:

¹⁶ NUDOR, Rwanda Alternative Report on the implementation of the Convention on the Rights of Persons with disabilities to be submitted to the Committee on the Rights of Persons with Disabilities, July 2018, p.25 available at <https://www.nudor.org/wp-content/uploads/2019/06/Rwanda-alternative-report-on-the-implementation-of-the-CRPD-Final-Signed-by-NUDOR.pdf>., accessed on 10/july 2020.

¹⁷ Rwanda Law Reform Commission, Harmonization of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, Draft report, February 2020, p.81.

¹⁸ (O.G. n° 35 of 31/8/2009);

1. Physically disabled persons;
2. Sight-impaired persons;
3. Deaf-and-dumb persons or persons with either of these disabilities;
4. Mentally disabled persons;
5. Persons with disabilities not specified in the above categories approved by the Medical committee.

Based on the degree of disability ascertained by the Medical Committee established by relevant authorities, persons with disabilities in each category of disability specified above are classified into the categories below in light of international disability standards:

- Category 1: Disability between 90 and 100%
- Category 2: Disability between 70 and 89%
- Category 3: Disability between 50 and 69%
- Category 4: Disability between 30 and 49%
- Category 5: Disability less than 30%.

After classification into one of the above different categories, the Medical Committee shall issue them a card that indicates the disability, degree of disability, and the signature of the Medical Committee President.¹⁹

1.1.4. Peoples with disabilities in Rwanda

In Rwanda, poverty, disease, accidents, lack of medical care, and congenital causes account for the majority of disability.²⁰ The 1994 genocide also contributed to an increase in impairments not only as a direct result of the violence, but also because of the breakdown of health, vaccination, and rehabilitation services, as well as ongoing mental health conditions.²¹ In the most recent National Population Census, the population of Rwanda is estimated to be 10.5 million. Approximately 446,453 (50.5% female and 49.5% male) Rwandans identify as Persons with

¹⁹ Article 3 of Ministerial Order n° 20/18 of 27/7/2009 determining Modalities of Classifying Persons into Basic Categories Based on the Degree of Disabilities, (O.G. n° 35 of 31/8/2009);

²⁰ Republic of Rwanda Ministry of Local Government. Census of people with disabilities in Rwanda, 2011. http://uphls.org/IMG/pdf/REPORT_CENSUS_PWD_01Janv11.

²¹ M'kumbuzi VR, Sagahutu JB, Kagwiza J, Urimubenshi G, Mostert-Wentzel K. The emerging pattern of Disability in Rwanda. *Disability and Rehabilitation*. 2014; 36(6), 472±8. <https://doi.org/10.3109/09638288.2013.798361> PMID: 23738617

disabilities, comprising 4.4 per cent of the population.²² In terms of education, the report indicates that 48.6% of persons with disabilities have never attended school and 37.3% have only attended primary school. As a result their high illiteracy rate among persons with disabilities requiring additional support including legal aid services to navigate complex legal processes to access justice.

1.2. Access to justice for persons with disabilities under international human rights obligations

Norms and standards relating to access to justice for persons with disabilities are set out in a series of binding and non-binding instruments at international, regional, and national levels. Rwanda has ratified several international human rights instruments that guarantee the right of access to justice for peoples with disabilities and is therefore obliged to respect, protect, promote, and fulfil these rights. By the Rwandan Constitution, international conventions ratified and published in the official gazette have the force of law as national legislation and are furthermore superior to ordinary laws.²³ This means that the conventions referenced below and the rights therein form part of national law and can be invoked before the courts. The relevant international conventions ratified by the government of Rwanda including the convention on the right of persons with disabilities (CRPD) and its optional protocol, the international covenant on civil and political rights (ICCPR) the African charter on human and people's rights (ACHPR) all of which protect rights relevant to access to justice for persons with disabilities.

By ratifying relevant international human rights conventions, the Government of Rwanda has committed to ensure that national laws and policies comply with the rights contained therein. The UN Committee on the right of persons with disabilities had recommended that the Government of Rwanda "*ensure that domestic legislation adheres to the convention, taking measures to fulfil all its obligations under the conventions and ensuring the human rights- based approach to disability.*"²⁴

²² Republic of Rwanda, Ministry of Local Government. Census of people with disabilities in Rwanda, 2011. http://uphls.org/IMG/pdf/REPORT_CENSUS_PWD_01Janv11.

²³ Article 168 of the Constitution of the Republic of Rwanda of 2003 revised in 2015

²⁴ UN committee on the right of persons with disabilities, concluding observations on the initial report of Rwanda, 3 May 2019, CRPD/C/RWA/CO/1, para 6.

1.2.1. Access to justice for persons with disabilities under the Convention on the Rights of Persons with Disabilities

The CRPD establishes that actual access to justice is important for persons with disabilities and stipulates that states must 'ensure effective access to justice for persons with disabilities on an equal basis with others.

Access to Justice is stipulated in article 13 of CRPD as follows:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages

In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff

The “challenges to guaranteeing access to justice for persons with disabilities should be considered in the context of the CRPD. The CRPD recognises that access to justice – as a right and fundamental freedom – is indivisible from and interdependent with other rights and freedoms enshrined in the CRPD”²⁵

Next to Article 13 that specially provides the right to access to justice, the following provisions of CRPD are of particular importance.

Article 5, Equality and Non-Discrimination, requires State parties to recognize that all persons with disabilities are equal before and under the law, and are entitled without any discrimination to equal protection from and equal benefit of the law (art.5(1)). State parties are to further prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds.

Article 12, Equal Recognition before the Law, requires State parties to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and to take appropriate measures to provide access by persons with disabilities to the support that they may require in exercising their legal capacity.

Article 14, Liberty and security of the person, requires State parties to ensure

²⁵Julinda Beqilaj, Lawrence Mc Namara and Victoria Wick (2017). P 14

that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify deprivation of liberty. The implementation of Article 14 is particularly important because persons with disabilities have been subjected to serious human rights violations while detained or residing in institutions and also because those detained in institutions or isolated in their homes without any contact with the outside world may lack the ability or freedom to pursue legal claims for their own protection. Within the General Obligations of Article 4.1, the requirement to: “adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention” is critical.

Effective access to justice is a precondition to, an enabler of and a guarantee for the full enjoyment of all other rights and fundamental freedoms. It creates an empowering environment in which persons with disabilities can better assert their legal rights, including, for instance: the right to protection of the integrity of the person (Article 17); freedom of expression and opinion and access to information (Article 21); respect for privacy (Article 22); and home and the family (Article 23); the right to education (Article 24); health (Article 25); and employment (Article 27). Such an environment should be informed by the general principle of ‘Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons’ enounced in Article 8 of the CRPD. It imposes a specific requirement on states to ‘foster respect for the rights and dignity of persons with disabilities’; this could be achieved through various awareness raising media campaigns and training programmes about the rights of persons with disabilities. When read together with Article 13, Article 8 requires that access to justice starts with the individual and public awareness of how persons with disabilities are entitled to and can access justice.

Quite importantly from the perspective of effective access to justice, an Optional Protocol to the CRPD establishes a complaint mechanism where individuals can bring claims regarding alleged violations of their rights established in the CRPD – once they have exhausted the available domestic remedies.²⁶

²⁶ Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities adopted and opened for signature, ratification and accession by General Assembly resolution 61/106 of 13 December 2006, entry into force 3 May 2008. As of November 2016, there were 92 States Parties to the Protocol. Rwanda accessed that protocol on 15 December 2008.

1.2.2. Access to justice for persons with disabilities under other international and regional human rights instruments

Access to justice was first formally referenced in the formative human rights document, the Universal Declaration of Human Rights (UDHR)²⁷; although the term "access to justice" was not specifically used to label this right therein. Several articles of the UDHR enumerate these rights: Article 7 provides that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." Article 8 provides: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law."

The International Covenant on Civil and Political Rights (ICCPR) sets forth this right in Article 14, which states in pertinent part: "all persons shall be equal before the courts and tribunals."²⁸ ICCPR Article 14(2) (f), states with respect to criminal proceedings: "to have the free assistance of an interpreter if he cannot understand or speak the language used in court." ICCPR Article 16 states: "everyone shall have the right to recognition everywhere as a person before the law." In the context of criminal proceedings, the ICCPR sets out a range of procedural due process rights.

The Human Rights Committee, the committee that monitors compliance with the ICCPR, in its General Comment No. 13 recognizes the importance of communication in judicial processes in a language a person can understand:

Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right

²⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/RES/217(III), art. 7 (Dec. 10, 1948).

²⁸International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).

*of defense.*²⁹

This concept provides the requisite reasonable accommodation that allows a defense to persons who are deaf and use sign language to communicate with others, and to persons who are blind and cannot read standard print. The Human Rights Committee in its General Comment 13 further defines what fulfillment of the Article 14 equality before a tribunal under the ICCPR. Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

The African (Banjul) Charter on Human and Peoples Rights (African Charter) entitles every individual in a ratifying state to have her or his cause heard, and to be tried within a reasonable time by an impartial court or tribunal.

Both International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights protect the right of every individual to defend his or her case, including the right to be defended by counsel of his or her choice.³⁰ ICCPR also obliges state to guarantee the right to any individual to have legal assistance assigned to him or her and without payment by him or her in any such case if he does not have sufficient means to pay for it and to have free assistance of an interpreter if he or she cannot understand or speak the language used in court. Thus should include sign language interpretation where required. These fair trial rights must be protected without discrimination.

Rwanda is yet to ratify the protocol to the African charter on human and people's rights on persons with disabilities in Africa which includes detailed protections that ensure access to justice for the rights of persons with disabilities. Article 13 of

²⁹ United Nations, Office of the High Commissioner for Human Rights, CPR General Comment No. 13: Article 14 (Administration of Justice) Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 (Apr. 13, 1984), *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/bb722416a295f264cl2563ed0049dfbd?Opendocument> (last visited June. 26, 2020).

³⁰ Article 14(3) (d) ICCPR and article 7 of the African Charter on human and people's rights.

that protocol provides that:

States parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender- appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.

States parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.

All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognized and implemented without discrimination. States parties shall ensure legal assistance including legal aid to persons with disabilities.

1.2.3. Protocol to the African charter on human and peoples' rights on the rights of persons with disabilities in Africa

The African Commission on Human and Peoples' Rights (ACHPR) has adopted a protocol on the rights of persons with disabilities, to complement the African Charter on Human and Peoples' Rights and address continued exclusion, harmful practices, and discrimination affecting those with disabilities, especially women, children, and the elderly.³¹

The protocol requires States Parties to ensure that people with disabilities are not discriminated against and enjoy equality. The protocol specifically requires States Parties to take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings. The protocol requires also States Parties to take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice. The protocol requires also that all law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognised and implemented without discrimination. The protocol requires also

³¹ African states affirm the rights of persons with disabilities in a new landmark Protocol, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LanglD=E>, accessed on 19/07/2020

States Parties to ensure legal assistance including legal aid to persons with disabilities.”³²

1.3. Access to justice for persons with disabilities under Rwandan law

The rights of Persons with Disabilities are protected along with all other Rwandan citizens principally by the Constitution. The rights of Persons with Disabilities are additionally protected by the National Laws N° 01/2007 on the Protection of Persons with Disabilities in general and N° 02/2007 on the Protection of Former War Combatants with Disabilities. This section discusses the key provisions under Rwandan law that provides for the right to access to justice for persons with disabilities.

1.3.1. The right to non-discrimination

The Constitution of the Republic of Rwanda provides for the key human rights principles which are pre requisites for effective access to justice namely non-discrimination, equality before the law and equal protection of the law. Article 16(2) of the Constitution of 2003 as revised in 2015 prohibits discrimination as follows: “*Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law.*”

It is worth indicating that the Law n°68/2018 of 30/08/2018 determining offences and penalties in general, criminalises discrimination based inter alia on disability and also makes the disability status of the victim an aggravating circumstance.

Furthermore, Article 27 of the law n° 01/2007 of 20/01/2007 relating to protection of persons with disabilities in general, provides that: “Any person who exercises any form of discrimination or any form of violence against a disabled person, shall be punished with the heaviest penalty among the penalties provided by the Criminal Code and those of the special laws relating to such a crime”. This provision is not fully aligned with international standards, including on what amounts to a prohibited disability, for example, on the denial of reasonable

³² Article 13 of the protocol to the African Charter on human and peoples’ rights on the rights of persons with disabilities in Africa, available at https://eaccess.s3.amazonaws.com/media/attachments/resources_mainresource/556/AU_Protocol%20on%20the%20Rights%20of%20Persons%20with%20Disabilities_E.PDF, accessed 20/07/2020.

accommodation as a form of disability – based discrimination.³³

1.3.2. The right to equality before and equal protection of the law for all persons

Article 15 of the Constitution of the Republic of Rwanda guarantees equality before the law and equal protection of the law for all persons. In its Articles 3 and 7 of the law n° 1/2007 of 20/01/2007 relating to protection of peoples with disabilities, guarantees the right to any person with disabilities to enjoy equal rights as those of other persons before the Law and has the right to give opinions on issues of national interest and on any issue concerning him or her in particular and he or she shall contribute to national development depending on his or her disabilities. The Rwandan law should be interpreted in the light of CRPD.

To promote equality and eliminate discrimination, the CRPD requires States Parties to take all appropriate steps, to ensure that reasonable accommodation is provided.³⁴ The imposition of an obligation to take reasonable steps to accommodate impairments and disability-related needs was viewed as a critical foundation or precondition for the attainment of equality for persons with disabilities in the CRPD negotiations³⁵. Indeed, the incorporation of a State obligation to ensure that reasonable accommodation is a crucial substantive equality measure since it serves as a facilitator for the exercise of rights of persons with disabilities. The making of modifications or adaptation to ensure the equal enjoyment of rights by persons with disabilities is no longer considered a charitable goal, but it is transformed into a legally enforceable right.³⁶

1.3.3. The right to due process of law

Article 29 of the Constitution of the Republic of Rwanda guarantees the right to due process of law which includes the right to legal representation. The right to fair proceedings and due justice is a central principle in the criminal process. It holds that a judicial decision made without securing the party's opportunity to fully and efficiently have his or her case heard properly by the judiciary is an, in fact,

³³ LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019, p.27.

³⁴ Article 5, para 3 of the CRPD.

³⁵ R. Cera: "Article 5, [Equality and Non-Discrimination]" in V. Della Fina et Al (Eds), *The United Nations Convention on the Rights of Persons with Disabilities, A Commentary*, Springer International Publishing, 2017, p.169.

³⁶ Ibid.

an arbitrary decision, contradictory to basic notions of justice. This is especially true because the suspect's or defendant's liberty, wealth, reputation, and other legitimate interests hang in the balance. Thus, in many judicial systems special safe-guards are laid out as part of the criminal and procedure code. A person must have his or her chance or "day in court" before sentence is passed. Also, limitations are imposed on the police and the court's discretion. Due process rights apply particularly to persons with disabilities since their position within the criminal process is even more fragile. As explained above, persons with disabilities have to cope with greater obstacles in these proceedings which consequently lessen their chance of receiving a fair trial.

Therefore, the investigative, prosecution, and judicial systems are obliged to take steps, in so far as possible, to overcome any requirement, rule or legal assumption that might constitute an impediment to a fair decision regarding persons with disabilities.

1.3.4. Right to a legal representation

The Constitution, in Article 29, reaffirms the right to defense among the fundamental human rights. The person with disabilities enjoys the right to legal assistance. This assistance is provided for by Law N° 20/01/2007 on the Protection of the Rights of Persons with Disabilities in general, in Article 8.

Article 46 of the Law N° 027/2019 of 19/09/2019 relating to the criminal procedure provides the right of the suspects during interrogation. An investigator or a prosecutor notifies the suspect of his/her right to legal counsel and to have private communication with him or her. The notification is recorded in a statement. If a suspect is unable to get a legal counsel, the investigator or the prosecutor informs the President of the Bar Association for him or her to assign a legal counsel to the suspect. The suspect who is assigned a legal counsel as provided for in this paragraph cannot refuse the counsel without substantial reasons. If the suspect is a child, he or she is entitled to legal counsel. The legal counsel is allowed to consult the case file in Public Prosecution.

It is worth indicating that although the national legislation is only limited to aspects relating to the right to legal representation in courts, article 13 of the CRDP embraces other aspects to the procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants, including as

witnesses, in all legal proceedings, including at investigative and other preliminary stages.

1.3.6. The right to seek and receive information and right to be communicated in the language you understand

Article 38 of the Constitution also provides for the right to seek and receive information in general terms that may be interpreted to include legal information. The Law n° 027/2019 of 19/09/2019 relating to the criminal procedure, in Article 45, provides that the interrogation of suspects by an investigator or prosecutor is conducted in a language the suspect comprehends. The provision guarantees the rights of all the suspects including Persons with Disabilities although the means to do this is not always available.³⁷ Article 45 of the Law N° 027/2019 of 19/09/2019 relating to the criminal procedure provides the right to be communicated in the language understandable by the suspects. In case the suspect appears for the first time, the investigator or prosecutor verifies his/her particulars and informs him or her of the charges against him or her and their legal characterization and it is recorded in a statement. An investigator or prosecutor interrogates a suspect and makes a written record of the statement made by the suspect. Interrogation is conducted in the language the suspect understands well. Convention of persons with disabilities clarify that “Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology; “Language” includes spoken and signed languages and other forms of non-spoken languages;

Right to legal information includes:

- Accessing legal information, be able to understand the court language;
- Be able to access to his case file ;
- Be able to get ready the judgement.

³⁷ For example sign language interpretation for persons with hearing impairment; impartial communication or interrogation in judicial matters involving Persons with intellectual Disabilities may be impossible where family members are relied upon for communications.

1.3.7. Right to liberty and security of person

Article 24 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 provides that “A person's liberty and security are guaranteed by the State. No one shall be subjected to prosecution, arrest, detention or punishment unless provided for by laws in force at the time the offence was committed. No one shall be subjected to security measures except as provided for by law and for reasons of public order or State security.” This provision is equally applied to peoples with or without liabilities against unlawfully and deprivation of liberty. The existence of a disability is not a justification for the deprivation of liberty.

This provision should be interpreted in the light of article 14 of CRPD. Under this provision, States parties should ensure that persons with disabilities enjoy the right to liberty and the right to security on an equal basis with others. States should also ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily. In the case of deprivation of liberty of persons with disabilities, such deprivation should be in line with the law. In no circumstances, can disability be justified as a cause for deprivation of liberty. In the case of lawful deprivation of their liberty, States should guarantee all entitlements per international human rights law. They should be treated as per the objectives and principles of the CRPD. They should be provided with reasonable accommodation.

Chapter 2: Barriers to access to justice faced by persons with disabilities in Rwanda

In Rwanda, persons with disabilities encounter considerable obstacles in terms of access to justice. The first section discusses barriers related to the administration of justice. The second section discusses barriers related to roles played by different justice actors.

2.1. Barriers faced by Persons with Disabilities in the Administration of Justice

2.1.1. Legal Barriers

Legal barriers to justice for persons with disabilities include instances where the rights of persons with disabilities are not enshrined in law, or where law, policy or practice are contrary to the provisions of the Convention on the Rights of Persons with Disabilities (CRPD). As the CRPD has been ratified by Rwanda³⁸ and is part of Rwandan law. Hence, the legal practitioners should be interpreted and fill the existing gaps in domestic law with regards to the access to justice for persons with disabilities in the light of CRPD.

2.1.1.1. Limited scope of the definition of disability in national Law

The definition of disability in national legal texts does not conform to the one in the CRPD. In fact, article 2 of the Law n° 01/2007 of 20/01/2007 relating to protection of disabled persons in General, defines disability as “the condition of a person’s impairment of health ability he or she should have been in possession, and consequently leading to deficiency compared to others.”³⁹ This definition is limited to medical traits such as their specific impairments of a person with disability hence qualified to be a medical model definition. It has the effect of locating the “problem” of disability within the person.⁴⁰ This is also the approach adopted by the law n°02/2007 of 20/01/2007 relating to the protection of disabled

³⁸ Rwanda accessed CRPD on 15 December 2008, See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=145&Lang=EN, accessed on 20/07/2020.

³⁹ Article 2, the law on the rights and protection of Persons with Disabilities in general

⁴⁰ G. Quinn and T. Degener: “The moral authority for change: human rights values and the worldwide process of disability reform” in United Nations, *The current use and future potential of United Nations human rights instruments in the context of disability*, Geneva and New York, 2002, p.14 available at <https://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf>.

former war combatants in defining disability⁴¹ and the same was further adopted in the definition of disability by the law n° 03/2011 of 10/02/2011 determining the responsibilities, organization and functioning of the National Council of Persons with Disabilities.⁴²

On the contrary, the definition of disability in the CRPD goes beyond the person's impairment of health ability and associate long-term physical, mental, intellectual or sensory impairments of a person with various barriers may hinder their full and effective participation in society on an equal basis with others. Here the focus is more on "the possible impairment(s) but rather on the constraints that the social fabric builds into accessing the enjoyment of rights."⁴³ This definition suggests surpassing the more obvious physical barriers and focusing on the "manifold social, behavioral, stereotype-based barriers that lead to and potentially sustain the exclusion of persons with disabilities."⁴⁴

The CRPD gives an open description of disability, therefore enshrining the "social model" definition i.e. recognizing that discrimination and therewith the disabling of access for persons with disabilities is largely due to barriers of various kinds, including the built environment, but even more so to social and attitudinal ones such as stereotypes, prejudices and other forms of paternalistic and patronizing treatment.⁴⁵ Rwanda should also adopt the "social construct model" definition of disability, as it would emphasize priorities of social attitudes, communication and inclusion, and dismantling barriers to access. This would be efficient in dealing with discrimination that a person with disabilities may face in society.

⁴¹ Law n° 02/2007 of 20/01/2007 relating to the protection of disabled former war combatants (O.G n° 6 of 15/03/2007).

⁴² Article 2, Law n° 03/2011 of 10/02/2011 determining the responsibilities, organization and functioning of the National Council of Persons with Disabilities (O.G., Gazette n° Special of 11/02/2011).

⁴³ M. Schulze, *Understanding The UN Convention On The Rights Of Persons with Disabilities: A Handbook on the Human Rights of Persons with Disabilities*, Handicap International, September 2009, p. 12 available at: https://iddccconsortium.net/sites/default/files/resourcestools/files/hi_crpdp_manual_sept2009_final.pdf

⁴⁴ Ibid.

⁴⁵ *Idem*, pp. 16-17.

2.1.1.2. Failure to include denial of reasonable accommodation as a form of disability discrimination in national law

According to CRPD “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation⁴⁶;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;⁴⁷Justice for persons with disabilities may require a range of accommodation in order to effectively access to justice, for example with regard to access to the provision of information, access to premises, and communication. This includes the ability to have their complaints heard and give evidence but also to seek and receive information about their rights, the remedies available to them, and available sources of assistance.

While article 16 of the Constitution prohibits discrimination on any grounds including physical or mental disability, it does not clearly state the denial of reasonable accommodation as a form of disability –based discrimination. In the context of disability rights, it must be noted that the CRPD includes the denial of reasonable accommodation as a form of disability-based discrimination.⁴⁸ The CRPD has defined “reasonable accommodation” as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that persons with disabilities enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms.

The failure to include denial of reasonable accommodation as a form of disability discrimination as required by the CRPD in the general law on protection for persons with disabilities is one notable gap under Rwandan that impedes the

⁴⁶ Article 2 of UN CRPD

⁴⁷ Article 2 of the convention on the rights of persons with disabilities

⁴⁸ See article 2 &3 of CRPD.

realisation of rights to access to justice for persons with disabilities.

2.1.1.3. Denial of legal capacity

Law n° 32/2016 of 28/08/2016 governing persons and family recognizes to every human being the capacity to have rights and duties from birth to death⁴⁹. Nevertheless, some provisions deny or not recognize equal legal capacity to persons with mental disabilities.

It is argued that article 150 of Law n°. 32/2016 governing persons and family: “the competent court declares legally incapacitated an adult with mental disability and appoint a guardian for that adult when the latter lives in a habitual state of mental deficiency even if such deficiency shows lucid intervals” and article 7 (30) of Law n°. 45/2011 governing contracts: “a natural person who manifests assent to a contract shall have legal capacity to contract unless he/she is mentally ill or insane”, provides for the discriminatory restriction of the legal capacity of persons with disabilities on the basis of impairment which is contrary to article 12 of the CRPD and Article 3 of the law on persons with disabilities in General which grant to persons with disabilities equal rights with others persons before the law.⁵⁰

In fact, article 150 of Law n°. 32/2016 governing persons and family allows the judicial incapacitation of persons with a mental disability even if such mental deficiency shows lucid intervals, hence depriving them of entering into contracts. They can be placed under guardianship; the guardian is then responsible for taking decisions of managing affairs on their behalf.

The same issue was raised under the law relating to evidence and its production a person with mental impairment may not be eligible as a witness in court.⁵¹ Provisions such as article 63 paragraph 2 of the law n°.15/2004 of 12/06/2004 relating to evidence and its production that implicitly prevents persons who are

⁴⁹ Articles 9 – 33 of Law n° 32/2016 of 28/08/2016 governing persons and family in O.G. n°37 of 12/09/2016

⁵⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Rwanda*, CRPD/C/RWA/CO/1, 9 April 2019, available at <https://www.nudor.org/wp-content/uploads/2019/06/CRPD-Concluding-Observations-Rwanda-9-April-2019.pdf>, accessed on 18/07/2020.

⁵¹ Article 63 of the law n° 15/2004 of 12/06/2004 relating to evidence and its production

unable to speak to give their evidence as a witness in court are not in line with article 12 of the CRPD (legal capacity).

In accordance with article 12 of CRPD, these provisions should support people with a mental impairment to exercise their legal capacity, while also respecting the right to a fair trial. The CRPD requires States Parties to ensure *that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.*⁵²

2.1.2. Attitudinal Barriers

The Rwandan community still has negative attitudes towards persons with physical disabilities; in most cases, they are considered as worthless in society.⁵³ In the study conducted by the Ministry of Justice, 54.4% of interviewed persons asserted that the rights of persons with physical impairments are often abused based on their physical status. From the Focus Group Discussion conducted by the Ministry of Justice on the matter in 2019, PWDs still face stigmatization and isolation from the community based on the nature of their disability despite GoR having established guidelines related to the protection of their rights. This requires continuous sensitization to raise community awareness including the family members to foster respect of the PWDs' rights and dignity.⁵⁴

The community largely harbour the negative attitudes towards persons with visual impairment and they do not appreciate their role in the community. Only 15.7% of interviewed persons by the Ministry of Justice appreciate their roles in the community. Once victimized, they cannot know the offenders (girls are sexually abused and tortured and they do not know the offenders) due to the visual impairment of victims. Stigma and isolation coupled with their low level of

⁵² CRPD Article 12(4).

⁵³ Ministry of Justice, Justice Reconciliation law and order sector access to justice strategic plan for inclusion of PWDS 2020-2025, Final Report, February 2020, p.23.

⁵⁴ Ibidem.

education prevent them from fighting for their rights. It was observed that in the NCPD committees at Provincial and District levels, they are not represented due to stigma and discrimination by other PWDs.⁵⁵

The community still carries a negative attitude towards persons with Hearing Impairment and they do not appreciate their role in the community. From the responses of participants to the interview, only 20.6% of interviewed persons by Ministry of Justice appreciate their roles in the community.⁵⁶

The community still carries negative attitude towards persons with Mental Impairment and they do not appreciate their role in the community. They are regarded as useless and segregated due to the nature of their inability. From interview with key informants conducted by the Ministry of Justice, those persons with mental disabilities are sometimes beaten, harassed, bullied and nobody can care for them, the community does not recognize their ideas and the family with a mentally impaired child feel ashamed about the child rejected by the community.⁵⁷

Discriminatory attitudes and false beliefs like the ones mentioned above dehumanise persons with disabilities and create de facto barriers to accessing different facets of the justice system. These include negative attitudes and false beliefs or assumptions on the part of relevant actors including police, lawyers and judges, which may result in PWDs being considered and treated as less credible at all stages of the legal process, right from reporting cases, to serving as witnesses, making a legal decision or seeking remedies for alleged violations of their rights. A case in point, in Rwanda, persons with Mental Disabilities cannot witness in court because the law considers them incapacitated, and lack standing in court proceedings.

2.1.3. Limited access to information and Communication Barriers

PWDs cannot seek remedies for injustice suffered if they do not know what their rights are and how to exercise them under the law. PWDs especially those with hearing, visual and intellectual disabilities often face barriers in accessing adequate information about complex judicial procedures (both criminal and civil)

⁵⁵ Idem, p.24.

⁵⁶ Ibidem

⁵⁷ Idem, p.25.

and are unable to effectively communicate with judicial and legal personnel. In this way, there is limited access to information provided in accessible formats. Laws and policies are published in PDF formats which the reading machines used by the PWDs cannot read. In the administration of Justice, some institutions do not provide legal aid to PWDs, sign language interpreters during the investigations and in courts or braille and other accommodative tools.

As a result of these barriers to communication and access to information, people with disabilities have limited knowledge and understanding of their legal rights and obligations and consequently, they are inhibited from reporting human rights abuses or their complaints may be inadequately investigated. When they are involved in legal or judicial process. It is hard for them to have equality of arms in a civil case or to defend themselves in a criminal case.⁵⁸

2.1.3.1. Limited access to legal information

As the United National Development Programme (UNDP) has aptly stated:

‘Legal awareness is the foundation for fighting injustice. The poor and other disadvantaged people cannot seek remedies for injustice when they do not know what their rights and entitlements are under the law. Information on remedies for injustice must be intelligible to the public and knowledge provided to them must serve their practical purposes.’⁵⁹

Access to legal information is a crucial aspect in the access to justice in the sense that among the principles of justice it is said that “ignorance of the law is no defence”. According to the Rwandan Constitution, ignorance of a duly published law is not an excuse.⁶⁰ This adage implies that all members of the public are presumed to know the law once it is published and gazetted. In this way, a small proportion of respondents (14%) affirmed that PWDs have some knowledge on laws.⁶¹ This means that a lot of work needs to be done in order to disseminate the laws to PWDs to ensure they understand and claim their rights.

⁵⁸LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019, p.38.

⁵⁹United Nations Development Programme, *Access to Justice Practice Note*, 2004, www.bit.ly/2tVfb0S, accessed 13 July 2020.

⁶⁰ Article 176 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

⁶¹ Ministry of Justice, *op.cit*, p.22.

Equally, persons with disabilities especially those with hearing, visual and intellectual disabilities do not access relevant information about complex judicial procedures that are not presented in formats that are accommodated to their disabilities and judicial proceedings are not adjusted to their disabilities, hence rendering the communication with judicial personnel ineffective. The fact that there is no mandatory provision enforcing the publication of public information in accessible formats for persons with disabilities specifically in braille formats for example; the Integrated Electronic Case Management System (IECMS), Court decisions (judgments, etc is also a gap in their access to justice. Persons with Visual Impairment do lack access to information on legal instruments protecting their rights. Notably, screen reading software to those who can afford to read. All legal instruments are published PDF format while PWVI only accesses and reads word format designed for their screen reader. Therefore, Public information disseminated through electronic and print media and e-platforms is not fully accessible to persons with different disabilities.⁶²

2.1.3.2. Sign-language

Non recognition of sign language as an official language which makes it harder to advocates for sign language interpretation. The non-recognition of sign-language under the Rwandan law among the official languages, the non-mandatory provision of professional sign-language interpretation services among the justice chain actors such as investigators, prosecutors, judges, legal aid service providers and the non-accessibility for persons with different disabilities of public information disseminated through electronic and print media and E-Platforms are also barriers to their access to justice. Limited availability of professional sign language interpretation services among justice sectors namely investigators, prosecutors, judges, and legal aid providers.⁶³

Working with persons with hearing impairment needs additional knowledge and skills. In all institutions visited, 100% of professional staff are not specialised in sign language which is a limitation to interact with the PWDs clients. Judges do not understand the sign language, so they cannot determine whether the PWDs understand what they are being told by signs or not. One of the justice principles is to plead in the language you understand and are comfortable with. It becomes challenging when the case is submitted to the judge who cannot understand sign language, and the client is pleading using that language. Available data indicates

⁶² LAF, HAGURUKA, UNAB, *Op cit*, p.47.

⁶³ *Idem*, p.39.

that neither RIB, MAJ, Police stations, prosecution, courts nor correctional services, have expert personnel who understand the sign language. In this case, they cannot advise clients when they have no communication channels.⁶⁴

Furthermore, from interviews with judicial staff conducted by the Ministry of Justice, they affirmed that they cannot provide assistance to persons with visual impairment due to lack of skills and tools to enable them to provide required services. In most cases, they are represented by their relatives in the court.⁶⁵ It was revealed by participants that they receive no advocates during the trial process. This is because, there are no expert lawyers, judges, or prosecutors trained in sign language to be able to assist the PWDs once they befall such a situation.⁶⁶

In this context, it has been revealed that some judicial staff seeks family relatives to support the victim and translate for them what he/she is communicating. This poses the risks of misrepresentation of translated facts intended to revenge the PWDs for previously carried grievances. Equally, in this hearing session, PWHI face injustice resulting from misinterpretation of their expressions and there are no sign translators in all the visited courts.⁶⁷

2.1.4. Limited access to legal aid services

Legal aid means providing assistance to PWDs who are unable to afford legal representation, advisory services, and access to the courts. Legal aid is regarded as central to providing access to justice by ensuring equality before the law; the right to counsel and the right to a fair trial.

PWDs are disproportionately more likely to live in poverty than other categories of the population and as a result are less likely to be able to afford to pay a lawyer for legal services, advice or representation. This includes representation in civil and criminal cases but also general information and advice about their legal rights and assistance in matters such as land or inheritance disputes. Despite the increased like the hood of poverty, and the additional support needs that many people with disabilities have for accessing justice, disability is not listed as a criterion in itself for eligibility for legal aid under legal aid policy. As a result, PWDs who are vulnerable but who many not fall within the relevant income-based categories can find it more difficult to access legal aid and free legal assistance.

⁶⁴ Ministry of Justice, *Op cit*, p.25.

⁶⁵ *Ibidem*.

⁶⁶ *Idem*, p.24.

⁶⁷ Ministry of Justice, *Op cit*, p.24.

Secondly, PWDs face barriers to accessing information about legal aid services providers and where to seek advice and assistance and those legal aid providers are not easily accessible.⁶⁸

In this context, 25.5% of respondents in the Ministry of Justice study confirmed that PWDs receive advice once they face justice cases, 11.8% confirmed that they are assisted and represented once arrested during the investigation while 35.3% of respondents affirmed that Persons with physical disabilities receive legal assistance and representation when suspected, accused or charged with criminal offences. The legal advice and representation are provided by MAJ offices stationed at the District level. Also from FGDs, persons with physical disabilities are limited by their mobility due to lack of assistive devices (prosthesis) and this limitation prohibits them from accessing judicial services in buildings where they are located. Finally, the majority of them have limited knowledge on legal instruments (laws, orders, regulations, instructions etc.) and policies as well as on their rights. In this way, they are victims of various violations of their rights.⁶⁹ The study reveals that 4.9% of respondents affirmed that persons with visual impairments have access to legal advisory services and 7.4% confirmed that they can be assisted in pre-trial hearing when arrested. In addition, 12.3% affirmed that they can have assistance and representation once charged with a criminal case.⁷⁰

Persons with disabilities may face barriers to accessing adequate and quality legal counsel for a variety of reasons. Where legal aid services are not provided at low or no cost, one may lack the economic means to engage a lawyer. Where information is not available in accessible formats, persons with disabilities may not be able to identify or locate a lawyer, or be aware of how a lawyer can be of assistance. Similarly, where accessible and affordable transportation is not available or where a lawyer's office is not accessible, persons with disabilities may be unable to reach or enter their offices.⁷¹ Persons with Mental Disabilities

⁶⁸ LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019, p.42.

⁶⁹ Ministry of Justice, *Op cit*, p.25.

⁷⁰ *Idem*, p.23.

⁷¹ United Nations, Toolkit on disability for AFRICA, access to justice for persons with disabilities, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

do not largely receive legal aid due to the nature of their impairment which categorises them as patients to be treated in the hospital. They lack capacity to think properly and articulate their statements and lack the ability to seek their rights; they are instead directed to the hospitals for treatment.⁷²

2.1.5. Physical Barriers

Physical barriers like lack of ramps, small office doors, lack of sign language interpreters, to name a few, impede many persons with disabilities from accessing justice at courtrooms, lawyer's offices, police stations or other relevant offices and service providers for PWDs. Thanks to the advocacy by the PWDs organisations, many people are now aware of the importance of ramps for wheelchair access to buildings, high colour contrast surfaces to assist persons with vision impairments as they navigate streets and buildings.

Persons with physical disability face barriers in accessing justice infrastructure, notably storied buildings due to physical inability to climb the steps. The challenge of accessing judicial infrastructure is visible mainly in old buildings which include courts, Police/RIB offices, RCS buildings, and Abunzi and MAJ offices where they are hosted in local administrative buildings. Despite the existence of the Building Code of 2015 on ensuring accessibility standards for persons with disabilities, the guidelines are not being fully implemented. Persons with disabilities especially those with physical impairments struggle to access justice premises while seeking justice. Some Court premises, Isange One Stop Center facilities, Rwanda Investigation Bureau (RIB)/National Police Premises, Prosecution offices, office premises of different legal aid providers do not have ramps to facilitate easy access for persons in a wheel chair. The PWDs who use wheel chairs find it difficult to climb stairs when wanted services are located upstairs. Among the court buildings visited only 2 buildings: Nyanza court buildings and Nyarugenge which is still under construction are PWDs sensitive.

⁷² Ibidem.



Figure 1: Stairs in one Intermediate court in Rwanda ⁷³

Persons with a visual impairment face barriers pertaining to their access to justice. In this way, only 7.7% of public buildings visited have signs directing the PWDs to know where they are going. These signs are primarily intended to be incorporated in the lifts/escalators, entrance doors and restrooms/bathrooms. Other buildings possess voiceless escalators and lifts, lack braille signs and symbols to Persons with Visual impairment (PWVI). This limits their ability to access such facilities that enable their access to justice rights. From interview with key informants indicated that white-cans are still insufficient to visually impaired PWDs.⁷⁴

2.1.6. Economic Barriers and extra cost of pursuing justice

People with disabilities are disproportionately mid low income earners, and face difficulties in gaining employment.⁷⁵The relationship between poverty and access to justice is in some respects rather straightforward. If an individual has limited financial ability, they are likely focused on basic survival and thus have little time and resources to pursue costly and/or lengthy legal proceedings, and engage and pay for quality legal counsel services. Unfortunately, the lack of financial resources usually leads to increased vulnerability to exploitation, and the necessity of access to justice becomes correspondingly more crucial.⁷⁶

⁷³ Pictures presented in the Ministry of Justice, *Op cit*, p.22.

⁷⁴ Ministry of Justice, *Op cit*, p.22.

⁷⁵Jeanine Braithwaite and Daniel Mont, *Disability and Poverty: A Survey of World Bank, Poverty Assessments and implications*, (The World Bank 2008), www.bit.ly/2rZ2qWo accessed 1 July 2020.

⁷⁶Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, *Access to justice for persons with disabilities: From international principles to practice* October 2017, p. 26.

Lack of economic resources impedes PWDs' direct access to justice in various ways; notably paying for quality legal counsel, engaging litigation which can be expensive and long, paying court fees or seeking remedies for alleged violations of rights. Moreover, the peoples with disabilities are required to pay additional costs to facilitate access to justice in addition to already high cost of pursuing justice, especially for persons with physical, hearing, and speaking and visual impairments. This can include additional travel costs for private transport for persons with physical disabilities because most public transport facilities are not accessible, in particular for wheel- chair users. Peoples with speech and hearing impairment may have to bear the cost of sign language interpretation services as free interpretation is not provided for under current legal provisions. The additional cost of interpretation combined with other costs such as lawyers and court fees, act as a barrier to access to justice for people with disabilities who are often financially vulnerable.

2.2. Role played by different justice actors in the creation of barriers to the enjoyment of PWDs' rights.

This section discusses challenges faced by persons with disabilities during the different stages of the criminal process, the role of the police, investigator and prosecutor in access to justice for persons with disabilities, the role of lawyers and legal aid providers, the role of courts in access to justice for persons with disabilities, the particular situation in relation to physical and sexual violence against women, treatment of persons with disabilities in detention, access to justice for children with disabilities.

2.2.1. Challenges faced by Persons with disabilities during the different stages of the criminal process

Individuals with disabilities may become involved in criminal proceedings, whether as victims and witnesses or suspects and defendants. The likelihood that persons with disabilities will come into contact with the criminal system is higher than that among the general population. Firstly, as victims: the high incidence of abuse of an interpersonal, violent nature such as physical or sexual assault is directly related to the perpetrators' perception of persons with disabilities as

vulnerable.⁷⁷

However, crimes against this population are less likely to be reported.⁷⁸ It has been noted that referral systems are insensitive to the plight of the PWDs and offer no urgent assistance to mitigate their legal challenges; notably, victims of sexual harassment with mental disabilities are required to produce mental medical certificate when it is provided once in two years. This implies that when the victim does not come in the provided time will he/she not get such a document and therefore, miss the opportunity to pursue the case against the offender.⁷⁹

Victims may often fear backlash from the perpetrator should they file a complaint, particularly in cases where the perpetrator is a family member or personal caregiver.⁸⁰ Some victims may experience difficulties in understanding and naming the abuse. Moreover, crimes against persons with these disabilities tend to be covered up by communities or service providers, often in an attempt to protect the victims themselves. Consequently, rates of disclosure and reporting to the police are lower compared to those in the general population⁸¹. Secondly, for reasons linked to their disabilities, persons with intellectual disabilities, psychosocial or communication disabilities may also be overly-represented in criminal proceedings as suspects and defendants.⁸² One explanation for this is that they are susceptible to being exploited and made accomplices by others. Another is that they may misjudge their own actions or have their intentions misunderstood by others. Additionally, some intellectual or psychosocial disabilities may be characterized by impulsive, unpredictable and in some cases aggressive behaviour. Lastly, their vulnerability may lead them to confess to

⁷⁷ Bryen, D. N., Wickman C.H. (2011). Ending the Silence of People with Little or No Functional Speech: Testifying in Court. *Disabilities Study Quarterly*, Vol 31, No 4 (2011)

⁷⁸ Martin, S. L., Ray, N., Sotres-Alvares, D., Kupper, L. L., Moracco, K. E., & Dickens, P. A. (2006). Physical and sexual assault of women with disabilities. *Violence against women*, 12, 83-837

⁷⁹ Ministry of justice, *op.cit*, 26

⁸⁰ Powers, L. E., & Oswald, M. (2004). *Violence and abuse against people with disabilities: experiences, barriers and prevention strategies*. Portland, OR: Oregon Health and Science University Center on Self-Determination. Retrieved April 18, 2010, from <http://www.directcareclearinghouse.org/download/AbuseandViolenceBrief%203-7-04.pdf>

⁸¹ Bryen, D. N., Wickman C.H. (2011), *Op cit*, (2011).

⁸² Schetzer, L. *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW. Stage 1, Public consultations* from: <http://www.lawfoundation.net.au>

crimes they did not commit as a result of having been manipulated by the police and prosecutors.

Moreover, once in contact with law enforcement agencies and the court system, persons with disabilities face further obstacles. By its nature, the criminal process is intricate: its procedures and rules are severe and the emotional burden on the participants is great. These difficulties are multiplied significantly for persons with disabilities. The complexity of the rules, the presence of different parties, formal codes of behaviour, professional vocabulary and a rigid code of conduct can be over-bearing and compound people's feelings of fear and helplessness.

The emotional burden experienced by persons with disabilities during the different stages of the criminal process is often onerous. This emotional burden resulted from experienced stigma. It has been noted that Existence of stigma and isolation of PWDs by some community members; this indicates prevalent myth about the PWDs in the community, hence leading to stigmatisation and segregation;⁸³ For victims and witnesses, these processes may elicit a difficult past experience, and for suspects or defendants may often cause greater apprehension than for a person without disabilities. Therefore, not only are persons with intellectual, psychosocial or communication disabilities more likely to come into contact with the criminal justice system but once within the system, their experience is especially burdensome. This experience is made worse by the attitudes and lack of awareness and understanding on the part of police investigators, prosecutors, lawyers, and the courts.

Persons with these disabilities can also experience difficulties in comprehending, conceptualizing, and communicating. The problem of communication between persons with hearing impairment and professionals of justice expressed by the limited availability of sign language translators in public meetings and seminars. This automatically excludes the PWH impairment, thereby depriving them of their right to participation. This is a critical challenge that limits the ability of the PWDs to access justice and enjoy their rights.⁸⁴ This leads to persons with disabilities often being perceived as being unable to give proper testimony in court. Their testimony may be judged as incomprehensible or riddled with holes and therefore ruled as inadmissible. Thus cases that would otherwise result in indictment and subsequent conviction are often closed or dismissed for reasons related to the

⁸³ Ministry of justice, op.cit, 26

⁸⁴ Ministry of justice, op.cit, 26.

victim's disability. Other times, the disability serves as an excuse for over-looking and in fact hindering the due process rights of suspects and criminal defendants. In summation, the inability of a criminal justice system to meet the needs of persons with disabilities substantially jeopardizes their right to equal treatment, inclusion and fairness. It also undermines society's greater interest and objectives in conducting criminal procedures. Therefore, making criminal proceedings accessible in the widest possible sense to persons with disabilities requires utilizing professional tools, methods, know-how and approaches that can be combined to assist people with disabilities to fully realize their rights in the criminal system⁸⁵.

Section 13 of the Convention on the Rights of Persons with Disabilities determines that a person with a disability has the right to have his or her matters brought before a court and heard in an efficient, beneficial and meaningful manner. It also determines that a person with disabilities is entitled to a full and equal opportunity to make use of every judicial procedure and defense granted under the law in the framework of criminal proceedings.

2.2.2. The Role of the Police, investigator, and prosecutor

As the first point of contact with the criminal justice system, the police or investigator play a very significant role in shaping the way in which alleged offences are handled, and whether cases proceed to trial. Given their role as gatekeepers to the justice system, the attitudes and dispositions of the police or investigator towards persons with disabilities who are victims of crime have a significant bearing on those victims' experiences of seeking legal redress. Police/investigator perceptions of people with disabilities, not least their capacity to be reliable reporters and witnesses of crime, have been shown to be key to understanding how incidents of abuse or harassment are handled.⁸⁶

Unfortunately, in Rwanda police or investigator officers lack awareness of disability or of working with victims with disabilities and, indeed, often endorse general stereotypes of persons with disabilities as vulnerable and lacking the

⁸⁵ Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, available at https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm, accessed 21/07/2020.

⁸⁶ United Nations, *Toolkit on disability for AFRICA, access to justice for persons with disabilities*, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

capacity to be competent and credible reports of crime and therefore poor witnesses. In addition, many police or investigators officers have difficulty distinguishing between different disabilities, most particularly intellectual disability and mental illness, and may not be able to recognize where persons with disabilities require additional support.⁸⁷

Negative experiences with law enforcement and fear that reported crimes will not be taken seriously can contribute to barriers in the reporting of crimes. Such barriers can also include uncertainty on the part of people with disabilities and third parties regarding what constitutes a crime, and when reporting of an incident should take place. Reporting can also be complicated where there exists variability in police policies and practices relating to who handles people with disabilities when they report a crime and where there are no clear recording procedures for crimes relating to persons with disabilities. Persons with disabilities also face challenges when there is a lack of accessible police stations, information and modes of communication. For example, deaf people may have difficulty in making contact with the police or investigator in an emergency situation.⁸⁸

2.2.3. The Role of Lawyers and legal aid providers

The Rwanda Bar Association provides legal assistance to persons with inadequate income, including Persons with Disabilities who may find themselves in such a situation. Lawyers assigned for this mission are paid from the judicial assistance fund managed by the Bar Council. In every district, there are two MAJ (*Maison d'Accès à la Justice*) judicial access points, put in place⁸⁹ to offer legal assistance to the poor citizens includes peoples with disabilities, especially those living in the countryside. These MAJ operate a pro-bono system able to provide free legal assistance to vulnerable groups and indigent citizens, including Persons with Disabilities.

However, in some cases, lawyers and MAJ staffs lack the training to work with or best serve clients with disabilities and this can affect the quality of service

⁸⁷ Ministry of Justice, *Op cit*, p.16

⁸⁸ United Nations, Toolkit on disability for AFRICA, access to justice for persons with disabilities, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

⁸⁹ Piloted in Nyanza 2008 and established in all Districts.

obtained by the client. So far in Rwanda, very little attention is given to training lawyers on how to provide legal services to people with mental health problems. Similarly, lawyers and MAJ staff may not be trained on the rights of persons with disabilities.

2.2.4. The Role of Courts

Beyond the challenges outlined above, persons with disabilities face legal barriers to their participation in legal proceedings in court, including legislation, regulations, policies, or practices expressly barring persons with disabilities from serving as witnesses. Participation can also be severely limited by a lack of accessible information or communications - for example where information is not available in accessible formats, examples being sign language provision for people who are deaf; easy-to-read material for persons with cognitive disabilities or large print for persons with low vision; or where assistive technology is not made available. Information and communication barriers can be compounded in instances where persons with disabilities do not speak the dominant language or the language used in proceedings.⁹⁰

Inaccessibility of proceedings may also be experienced where measures have not been taken to ensure the accessibility of relevant physical environments. In the case of courthouses, this includes building entrances; courtrooms, including counsel tables and witness boxes; bathrooms; public service offices, such as those used by victim support services or clerks; and holding pens, where criminal defendants may be held while awaiting court appearances. Physical barriers can impede access to justice in instances where the offices of lawyers, service providers, and police stations are physically inaccessible.

As noted above, persons with disabilities also face legal barriers to justice in instances where their rights are not protected under domestic law. Courts can, however, play an important role in the interpretation and enforcement of human rights treaty obligations. In Rwanda, as the CRPD has been ratified, courts possess the authority to consider its human rights standards, either because international standards have been expressly incorporated into domestic law and as such is binding, or because courts are able to use international standards as

⁹⁰ United Nations, Toolkit on disability for Africa, access to justice for persons with disabilities, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

a guide to interpreting domestic law. In some instances, international human rights standards may be helpful in filling gaps where domestic law is ambiguous or underdeveloped. This may be especially true in legal systems where disability rights standards are under-developed. An initial challenge with a newly ratified treaty such as the CRPD is for judges to be made aware of its obligations. In many cases, neither judges nor lawyers have any background in disability law, which underscores the importance of training judges and lawyers in the rights of persons with disabilities. In Rwanda, disability law frameworks are not yet fully developed. Some of the concepts in the CRPD are not yet incorporated into domestic law and policy. It is for this reason that some judges may not be comfortable with rendering decisions on the basis of the CRPD, even if Rwanda has ratified the treaty.

2.2.5. Role of Abunzi and local leaders

Elected authorities at the village and Sector levels are responsible among other duties for preventing and denouncing various forms of violence committed against persons belonging to their administrative entities includes peoples with disabilities.⁹¹ Before going through formal justice general aggrieved party seek justice first before local authorities or before (Abunzi), if his or her dispute is civil and belong to Abunzi jurisdiction.⁹²

However, Abunzi and local authorities are not skilled enough to help peoples with disabilities as they have not been trained on the rights of persons with disabilities and how to help those persons. In case those local leaders or Abunzi can not handle the dispute received, they directed the complaints to the competent organs that may help in resolving their dispute. As the first person to be contacted by a person with disabilities, if they can not consider properly the needs of a person with disabilities, not familiar with the rights of a person with disabilities and how to help them, they will not help properly the persons with disabilities who

⁹¹ The Republic of Rwanda, *Initial report of Rwanda on the implementation of the convention on the rights of persons with disabilities*, March 2015, p.54.

⁹² Article 10 of the law no37/2016 of 08/09/2016 determining organisation, jurisdiction, competence and functioning of an abunzi committee indicated that the Abunzi Committee at the Cell level has jurisdiction to decide any civil matter relating to: 1^o movable and immovable assets and succession thereto where their value does not exceed three million Rwanda francs (Frw 3,000,000); 2^o a breach of contract between individuals, if its value does not exceed three million Rwanda francs (Frw 3,000,000); 3^o family issues other than those requiring rendering a decision on civil status

come to them. There is a need to train Abunzi committee members on PWDs Human Rights and methods of handling PWDs issues.⁹³

2.2.6. Particular Situation in Relation to Physical and Sexual Violence against Women

Women with disabilities experience a high rate of gender-based-violence, sexual abuse mistreatment, and exploitation. Violence may be perpetrated by caregivers, family members or even strangers. Significant barriers exist to escaping violence, notably the obstacles for reporting crimes due to lack of access to communication, lack of access to information on violence,, barriers to mobility and lack of transportation to police stations or other services that could provide assistance, lack of accessible information or education regarding violence, and reliance on a perpetrator for assistance with essential life activities.⁹⁴

Survivors of physical or sexual violence may also fear that reporting crimes will not lead to justice. For example, law enforcement officers that doubt the credibility of women with disabilities may take less serious allegations they make. Women with psychosocial disabilities may face efforts to discredit their testimony on the grounds of their disability. The failure of courts to treat persons with disabilities as competent witnesses, discussed above, can be especially damaging to survivors of physical or sexual abuse, as the complaining witness in such cases often holds evidence that is critical to securing a conviction.⁹⁵

2.2.7. Treatment of Persons with Disabilities in Detention

The United Nations Office of Drugs and Crime has found that “the difficulties people with disabilities face in society are magnified in prisons” and has detailed many shortcomings in the treatment of prisoners with disabilities.⁹⁶ Many of these relate to the overarching barriers identified above. For example, laws and policies may fail to protect the rights and wellbeing of prisoners with disabilities. Staff and

⁹³ Ministry of Justice, *Op cit*, p.16

⁹⁴ For more information on violence against women with disabilities, see A/HRC/20/5, Thematic study of the Office of the High Commission for Human Rights on the issue of violence against women and girls and disability.

⁹⁵ Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/67/227, para. 41.

⁹⁶ UNODC, Handbook on Prisoners with Special Needs, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf, accessed on 01/02/2020.

other inmates may have negative attitudes toward persons with disabilities, resulting in prejudicial treatment. Correctional staff frequently also lack training in terms of the needs and rights of prisoners with disabilities. Facilities are often inaccessible, limiting the mobility of those in detention as well as their use of basic services such as sanitary services or services for the incarcerated such as recreation spaces or libraries. Detention centers may also lack accessible transport.

The July 2016-June 2017 National Human Rights Commission report found 200 inmates with different disabilities, and as a result, they do not enjoy normal living conditions. The Commission found that some of the inmates with disabilities have difficult living conditions due to their disabilities, and cannot help themselves on their own such as fetching water to bathe, to clean clothes, to eat, to go to the latrines, etc.⁹⁷

2.2.8. Access to justice for children with disabilities

The access to justice right as provided in article 13 of CRPD is also relevant to children with disabilities. However, children may be more limited to justice compare to adult persons. Rwanda has ratified the United Nations Convention on the Rights of the Child⁹⁸and the African Charter on the Rights and Welfare of the Child⁹⁹, The Convention on the Rights of the Child (CRC) is the central pillar of children's rights in international law, setting out the full range of children's rights, from the prohibition of torture to guaranteeing access to education.

The Beijing Rules¹⁰⁰properly entitled the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, are a set of principles and guidelines for the proper administration of juvenile justice and include guidelines and commentary on justice for children issues such as juvenile courts, the age of criminal responsibility, prosecution of juveniles, sentencing and standards for juveniles if incarcerated. This set of Rules addresses fundamental principles such as the fair and humane treatment of children who come into conflict with the law;

⁹⁷ National Commission for Human Rights/Rwanda, *Annual Activity Report, July 2016 - June 2017*, Kigali, September 2017, p. 59&60.

⁹⁸<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁹⁹https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf

¹⁰⁰<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

conducting proceedings in the best interest of the child and ensuring their full participation in the proceedings; the application of the principle of proportionality to the offender and the offence; the application of community programmes for diversion from court procedures; detention as a measure of last resort and for the shortest possible time; deprivation of liberty only for serious offences; the abolition of corporal and capital punishment of children; continuous and specialized training for law enforcement officers working with children; the application of alternatives where possible; the provision of educational and other social re-integrative services for those children who are institutionalized.¹⁰¹ These set of rules are also applied to children with disabilities.

The Law n°71/2018 of 31/08/2018 relating to the protection of the child in its article 18 imposes to both parents and the Government the duty to take care of the children with disabilities and children with special physical or mental disabilities respectively. The latter may be placed in special institutions for care and treatment. The same law punishes parents who engage children with disabilities into beggary. The relevant Rwandan Law is contained in a number of different enactments. The Law determining offences and penalties in general of 2018¹⁰² contains the general rules relating to sentencing, the specific mitigating factors relating to minority age. The Law relating to the criminal procedure¹⁰³ contains rules on Minor's testimony¹⁰⁴ the rules for proceedings against Minors and rules for the separate detention of Minors.¹⁰⁵ The 2018 Law of the Child¹⁰⁶ includes important new principles to be applied at the stages of arrest, investigation, prosecution, trial and sentence. Those principles are also applied to children with disabilities. It is worth indicating that Article 25 of the Law of the Child¹⁰⁷ give the power to the investigators to *suggest a compromise between a child, his/her parent or guardian and the victim of the offence and such a compromise shall be approved by a Prosecutor when such an offence is punishable by a term of imprisonment not more than five (5) years.*

¹⁰¹Analysis on the effectiveness of legal representation for minors in Rwandan courts, Report, Transparency International

¹⁰² Law N°68/2018 of 30/08/2018 determining offences and penalties in general

¹⁰³ Law N° 027/2019 of 19/09/2019 relating to the criminal procedure

¹⁰⁴ Ibid Article 49.

¹⁰⁵ Article 222.

¹⁰⁶ Law N°71/2018 of 31/08/2018 relating to the protection of the child

¹⁰⁷ Ibidem

It should be noted that the child must have legal counsel from the investigative stage. The practice should be for the investigators' first action to ensure the child is represented. This should be done prior to the interviewing of the child suspect. For the trial, Article 33 of the law n°30/2018 of 02/06/2018 determining the jurisdiction of courts¹⁰⁸ has strengthened the rules relating to the trying of children before the specialized Chamber for Minors, including ensuring adult co-defendants are tried there as well.

The actors in the justice sector should always check whether the guarantees of children protection with disabilities are respected especially by considering the special needs for children with disabilities.

¹⁰⁸ Official Gazette n° Special of 02/06/2018

Chapter 3. Ensuring Access to Justice for Persons with Disabilities

This toolkit has reviewed a broad range of barriers facing persons with disabilities concerning access to justice in Rwanda. Overcoming these barriers will require a holistic and integrated approach and will require challenges to the discrimination faced by persons with disabilities in the administration of justice. In initiating action to ensure access to justice for persons with disabilities, initial steps, all of which should be undertaken in consultation and cooperation with persons with disabilities, can include a comprehensive scoping exercise to understand particular barriers to justice faced by persons with disabilities in the specific national context. Based on the findings of this scoping exercise government officials, and other stakeholders, may develop a comprehensive plan of action to overcome the identified barriers to justice faced by persons with disabilities. Possible actions for overcoming barriers addressed in the present toolkit are set out below.

3.1. Overcoming Legal Barriers

In seeking to overcome legal barriers, a starting place can be the carrying out of comprehensive reviews of the legislative framework, to identify legal barriers posed inter alia by discriminatory legislation, regulations, policies or practices. Scoping should both include a review of the extent to which the rights of persons with disabilities, as enshrined in the CRPD, are protected under national law, as well as of provisions relating specifically to participation in the justice system. These include instances where these expressly bar persons with disabilities from being witnesses, judges, or lawyers, or where limits are placed on legal capacity in ways that strip individuals of their legal recognition before the law. Besides, analysis of civil and criminal law and court procedure is relevant to assessing the variety of barriers that may exist for persons with disabilities within civil and criminal court processes.

3.1.1. Amending the law n° 01/2007 of 20/01/2007 relating to protection of person with disabilities

As found in chapter 2, the definition of disability in national legal texts does not conform to the one in the CRPD. Rwanda should also adopt the “social construct model” definition of disability, as it would emphasize priorities of social attitudes, communication and inclusion and dismantling barriers to access. This would be efficient in dealing with discrimination that a person with disability may face in the

society. It is recommended also the modification of article 2 of the Law n° 01/2007 of 20/01/2007 relating to protection of disabled persons in General and article 4 of the law n°02/2007 of 20/01/2007 relating to the protection of disabled former war combatants.

Furthermore, Justice for persons with disabilities may require a range of accommodation to effectively access to justice, for example concerning access to provision of information, access to premises and communication. This includes the ability to have their complaint heard and give evidence but also to seek and receive information about their rights, the remedies available to them, and available sources of assistance. Where legal barriers are found to exist laws and policies should be amended, as indicated in Article 4, General Obligations, of the CRPD, to create enabling disability law and policy frameworks: for example, ensuring that non-discrimination applies to persons with disabilities, ensuring that reasonable accommodation is a required element of non-discrimination and inclusion of DPOs in law and policy development.

3.1.2. Review the Legal capacity for persons with disabilities

It has been found that there are some legal provisions which discriminate against persons with disabilities in their access to justice and equality before the law and may be incompatible with the right to equal recognition before the law under article 12 of CRPD. This article 12 of the UNCRPD reaffirms that persons with disabilities have the right to recognition everywhere as persons before the law and enjoy legal capacity on an equal basis with others in all aspects of life. The UN committee on the rights of persons with disabilities has stated that states parties must holistically examine all areas of law to ensure that the right of persons with disabilities to legal capacity is not restricted on an unequal basis with others.¹⁰⁹

Given its general comment N°. 1 (2014) on equal recognition before the law, the Committee on the Rights of Persons with Disabilities recommends that the State party repeal all discriminatory legal provisions and end all practices that limit the legal capacity of persons with disabilities,¹¹⁰ including article 150 of Law N°. 32/2016 and article 4 (2) of Law N°. 45/2011 governing contracts. It also recommends that the State party enact legislation recognizing the full legal

¹⁰⁹ UN committee on the rights of persons with disabilities, general comment 1(2014) on article12 equality before the law, para 7.

¹¹⁰ Ibidem

capacity of persons with disabilities, including a supported decision-making regime that respects the autonomy, wishes and preferences of persons with disabilities. Under the law governing contracts a person with a mental impairment may be denied to enter a contract.¹¹¹

Furthermore, the Ministry of Justice should amending article 63 of the law n° 15/2004 relating to evidence and its production which stipulates that any person can be allowed to testify as witness in court, with exception of those people who have no capacity to be witness in court to the law which provides a more nuanced process for deciding whether an individual has the capacity to be an effective witness and for supporting those with disabilities.

The Ministry of Justice should also repealing article 7(2) of law n° 45/2011 of 25/11/2011 governing contracts which stipulates that natural person who manifests assent to a contract shall have legal capacity to contract unless he/she is under guardianship; a minor or mentally ill, to make the complaint with article 12 of the CRPD. In accordance with CRPD article these provisions should support people with mental impairment to exercise their legal capacity, while also respecting the right to a fair trial. This broad law also denies the legal capacity of persons with disabilities and should be replaced with a more nuanced provisions which instead supports the rights of people with disabilities to exercise their legal capacity but which contain safe guards against exploitation and abuse.

Once laws and policies have been brought into line with the CRPD, the disability community, national human rights institutions and government bodies (e.g., ministries of justice, institute of legal practice and development, electoral commissions, and law reform commissions) must engage in training on the content and interpretation of disability rights standards.

3.1.3. Ratification of the protocol to the African charter on human and people's rights on persons with disabilities in Africa

As it has been analyzed in chapter one, Rwanda ha ratified several international and regional human rights that protect the rights to access to justice for persons with disabilities. However, it has been noted that Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa

¹¹¹ Article 4(2) of the Law N° 45/2011 of 25/11/2011 governing contracts.

that contained the provisions that guarantees the rights to access to justice for persons with disabilities has yet not ratified by Rwanda. Therefore, the ministry of justice should spread the process of ratification of Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

3.2. Overcoming Attitudinal Barriers and Improving Capacity of Legal Professionals

The attitudes, knowledge and awareness of police or investigator officers, lawyers, judges, staff of correctional facilities, and other professionals in the justice system on how to accommodate persons with disabilities effectively and make the processes accessible and inclusive are extremely important. There is a huge need for disability awareness training and capacity-building among all law enforcement and justice sector personnel.

Approaches to training may entail the following¹¹²:

- Including disability components, including the role of the justice sector in implementing relevant international standards, such as the CRPD, in programmes designed to strengthen justice sector institutions.
- Ensuring that regular training of police, investigator, prosecutors and prison officials includes a disability component and covers accessible communications and reasonable accommodations for persons with disabilities in the criminal justice context. Law enforcement officers should receive adequate and sufficiently in-depth training on the needs and rights of persons with disabilities to enable them to respond effectively to crimes involving persons with disabilities, including crimes of sexual violence.
- Improving the investigative capacity of police /or investigator, prosecutor through disability awareness training. Training should also be provided on cultural competence, to allow officers to work effectively with persons with disabilities across different cultures - for example, indigenous persons with disabilities.
- Including persons with disabilities and DPOs in community programmes on crime prevention and in community policing.

¹¹² United Nations, Toolkit on disability for AFRICA, access to justice for person with disabilities, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

- Providing training to strengthen the skills of attorneys interested in litigating in disability cases and building a network of appropriately-trained attorneys.

Training programmes should be devised in the collaboration with persons with disabilities and their representative organizations.

This recommendation has been also endorsed by Committee on the rights of persons with disabilities in concluding observations on the initial report of Rwanda:

The Committee recommends that the State party adopt measures to ensure that all persons with disabilities, especially persons who are deaf and persons with intellectual or psychosocial disabilities can exercise their right to access to justice. In particular, the Committee recommends that the State party:

(a) Provide continuous training for those working in the justice, law and order sector, on the rights of persons with disabilities, taking into account the diversity of persons with disabilities in judicial proceedings as witnesses, victims, or perpetrators;

(b) Ensure the accessibility of the judicial premises and proceedings to all persons with disabilities, especially women and girls with disabilities, by inter alia, providing accessible and free legal services to persons with disabilities, sign language interpretation services, and comprehensive age- and gender-appropriate procedural accommodation.¹¹³

Other strategy for addressing attitudinal barriers is working to increase the full participation and inclusion in the legal profession of persons with disabilities. This may well require the removal of discriminatory policies and practices in the admissions process for law school, and related training so that persons with disabilities can enter and participate in the legal profession.

To raise awareness among the justice sectors actors, The National Commission for Human Rights in partnership with the National Council of Persons with

¹¹³ Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of Rwanda, 9 April 2019.

Disabilities and other stakeholders including the Rwanda Bar Association should train judges, investigators, prosecutors, members of Abunzi committee, lawyers, MAJ officers, court bailiffs, correctional officers and persons with disabilities on the rights of persons with disabilities and how to ensure that they are respected in legal process. The training should accessibility, communication and accommodation needs.¹¹⁴

The Ministry of Justice, together with the National Commission for Human Rights and the National Council of Persons with Disabilities should develop a short guide / handbook for judges and lawyers on how to respect the rights of persons with disabilities in legal process, including information and advice on communication, accessibility and accommodation requirement. The guide should be based on human rights standard and international best practice.

3.3. Overcoming Information and Communication Barriers

Capacity development regarding disability for those involved in the administration of justice should include a focus on accessible communications and information; and a national scoping exercise on access to justice for persons with disabilities should consider the extent to which informational and communications barriers may exist at different stages of legal processes. In consultation and cooperation with persons with disabilities, governments should consider developing a comprehensive disability access plan that covers communications with persons with disabilities in ways that are accessible to them, for example, sign language interpreters, Braille, and others.

3.3.1. Recognition of a sign language as an official language

To easy the communication of person with disabilities, the Rwandan government should recognize sign language as an official language. This can be done by enacting and enforcing an organic law which recognize sign language as an official language.

¹¹⁴Ministry of Justice , Justice Reconciliation Law and Order Sector Access to Justice Strategic Plan for Inclusion of PWDS 2020-2025, Final Report, February 2020, p.49.

3.3.2. Improvements of accessibility of legal information and court documents

There is need to publish the word format legal instruments to facilitate PWDs to access and read them using their screen reader. Strangely, no single judicial personnel who understands how to use Braille. In all visited courts, 100% of judicial professionals' staff do not have knowledge in Braille. There is need for concerted efforts in teaching judicial personnel in essential sign language and communication with PWDs to be able to assist them in accessing rights to justice.¹¹⁵

Persons with Mental Impairment lack access to information on legal instruments protecting their rights due to inability to read and write. They are illiterate and semi-conscious such that what they say cannot be taken as truth. This limits their access to legal information and ability to claim their rights. 100% of respondents confirmed that persons with mental disabilities do not access to legal information¹¹⁶

The judiciary should ensure that court documents including judgments and summons can be available in large print and / or Braille when required. The judiciary under the guidance of the Supreme Court should upgrade the integrated electronic case management system (IECMS) by including talking voice and simplicity of warding to enables easy access for people with visual impairment.

3.4. Enhancement the access to legal aid providers' services

As noted throughout the present toolkit, there is also a need for community-level awareness-raising on disability and for empowerment of communities to support their members, including persons with disabilities, in obtaining access to justice; this includes for example ensuring that persons with disabilities enjoy equal access to legal aid services and legal literacy programmes, implementation of campaigns against stigma and stereotyping, and provision of human rights training for key service providers.¹¹⁷ To enhance the access to legal aid providers' services by persons with disabilities, the following action should be undertaken¹¹⁸:

¹¹⁵Ministry of Justice , Justice Reconciliation Law and Order Sector Access to Justice Strategic Plan for Inclusion of PWDS 2020-2025, Final Report, February 2020, p.23.

¹¹⁶Ministry of Justice , Justice Reconciliation Law and Order Sector Access to Justice Strategic Plan for Inclusion of PWDS 2020-2025, Final Report, February 2020, p.25.

¹¹⁷ CRPD/C/MUS/CO/1, para. 24.

¹¹⁸ United Nations, Toolkit on disability for AFRICA, access to justice for person with disabilities, available at

- Ensure that persons with disabilities in the first and second category are automatically eligible to free legal aid services including legal assistance and representation.
- Legal aid service providers should work in partnerships with organization working or advocating for the rights of persons with disabilities for the promotion and mainstreaming of their access to legal aid services.
- Legal aid providers (both state and non-state) should examine how they can ensure that persons with disabilities are aware of and able to access their services and should conduct social outreach activities to engage person with disabilities.
- Legal aid providers shall develop in partnership with organization working or advocating for the rights of persons with disabilities and NCPD a checklist which guides legal services providers on how to consider and accommodate the needs of persons with disabilities to ensure their equal and effective access to justice.
- Reviewing the national legal aid policy to adequately mainstream disability as one of the eligibility criteria for free legal aid services

3.4. Overcoming Physical Barriers

Given the physical barriers analysed in chapter 2 context, it is recommended that infrastructure facilities should be erected with accessibility options for the PWDs. From the conducted field visits only 27.1% of infrastructures visited have ramps and all offices are accessible. Also, only 12.1% of institutions visited possess toilets for Persons with physical impairment. In some court rooms, it is very difficult to persons with physical impairment even if they have assistive devices (chair wheel) due to the small nature of the door and stairs. In addition, only 13.2% of judicial buildings visited have parking of PWDs with clear signs indicating the place reserved to PWDs. In the same way, 5.5% of institutions visited have indication on their toilets indicating that they are reserved for PWDs. This status is needed to remove those accessibility barriers to allow PWDs to have effective access to judicial buildings. Even these structures whose ramps indicate responsiveness to PWDs needs, still reflect, much more lack in terms of

<https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

responsive utilities; notably, restrooms, offices with steps... ¹¹⁹

To ensure physical access to justice sector facilities, police stations, courthouses and prisons must be accessible to persons with disabilities. Therefore, the Ministry of Justice in partnership with the Ministry of infrastructures and National Council of Persons with Disabilities should conduct a mapping exercise to identify challenges related to physical access to justice premises and develop a roadmap on how to address them.

3.5. Overcoming Economic Barriers

The recommended scoping exercise should include an analysis of economic barriers to access to justice faced by persons with disabilities. The nature of such barriers may vary from country to country. However, in seeking to overcome economic obstacles the critical role of legal aid should be considered, as well as the availability of transportation and necessary support or medical services. Budgeting may also be necessary for appropriate accommodation for individuals requiring assistance, for instance to fund sign language interpreters, screen readers, etc. There is need also to ensure that persons with disabilities in the first and second category are granted exemption from paying court fees in the same was as disabled former war combatants are currently protected.¹²⁰

3.6. Check list for legal aid providers for person with disabilities

Lawyers play an important role in ensuring that persons with disabilities receive appropriate access to justice, both in terms of proactively advocating to the different actors in the justice system and of providing legal services that are sensitive to the needs of persons with disabilities.

To make this possible, the following check list have been developed to assist lawyers in providing sensitive lawyering to clients with disabilities. These standards have been consolidated from multiple principles and best practices around the world, with specific considerations for Rwandan lawyers based on the domestic system.

¹¹⁹Ministry of Justice , Justice Reconciliation Law and Order Sector Access to Justice Strategic Plan for Inclusion of PWDS 2020-2025, Final Report, February 2020, p..21.

¹²⁰ Article 13 of the law 02/2007 of 20/01/2007 relating to the protection of disabled former war combatants

CHECK LIST	ACTIONS	Detailed actions
1. Did I have knowledge and skills to effectively represent Clients with disabilities?	Train yourself sufficiently on the knowledge and skills to effectively represent clients with disabilities	<ol style="list-style-type: none"> 1. Learn about the field of disability 2. Learn about domestic and international laws, human rights standards, and protective measures for persons with disabilities in the Rwandan justice system 3. Learn about litigation techniques and other skills in working with clients with disabilities 4. Learn about the various stakeholders that you can approach for assistance
2. Am I knowledgeable on implicit biases towards persons with disabilities and make intentional efforts to not make any generalized assumptions?	Be aware of your own implicit biases towards persons with disabilities and make intentional efforts to not make any generalized assumptions	<ol style="list-style-type: none"> 1. Think critically about any implicit biases you may have towards disability 2. Create a list of your biases and actively counter the stereotypical mindset you may have 3. Continuously challenge any assumptions you make about your clients with disabilities
3. What are the individual needs of a person's am I assisting?	Understand the perspectives of your clients with disabilities to cater to their individual needs	<ol style="list-style-type: none"> 1. Take the time to understand the particular situation of your client with disability and build their trust 2. Use the form of communication and interaction that your client prefers 3. Be sensitive about the language and terminology that you use 4. Be particularly sensitive to additionally marginalized populations and to trauma 5. Consult with experts and other organizations to receive assistance when necessary

<p>4. Can I communicate properly with the person I'm assisting?</p>	<p>Communicate in a manner suited to each client with disability to ensure comprehension and informed decision-making</p>	<ol style="list-style-type: none"> 1. Cater your method of information delivery to each of your client with disability, including the use of tools and assistive devices 2. Use plain language and pay attention to your sentence and question structures when speaking with your client 3. Speak clearly and directly to your client, even in the presence of a third party 4. Double check to ensure that your client fully understands the Conversations 5. Actively clarify your client's statements to avoid Misinterpretations 6. Fully explain all of the necessary information to your client, even if complex
<p>5. Can I respect the decisions of persons I'm assisting?</p>	<p>Respect the voices and decisions of your clients with disabilities</p>	<ol style="list-style-type: none"> 1. Presume that your client has the capacity to instruct you until conclusively determined otherwise by an individualized assessment 2. Represent the best interpretation of your client's will and preferences, rather than their best interests, if they do not have the capacity to instruct 3. Understand the (limited) role of support persons
<p>6. What is appropriate accommodation that fit the persons with disabilities I am</p>	<p>Seek appropriate accommodations proactively throughout each step of the justice system</p>	<ol style="list-style-type: none"> 1. Be proactive about requesting reasonable accommodations for your client, whether or not they are stipulated in the law

<p>assisting?</p>		<ol style="list-style-type: none"> 2. Be responsive towards the needs of your client throughout the legal process
<p>7. How can I protect the interest of the persons with disabilities I am assisting?</p>	<p>Protect the rights and interests of your clients with disabilities through diligent lawyering and compliance with professional standards</p>	<ol style="list-style-type: none"> 1. Advise your client diligently and prepare them thoroughly for the legal proceedings, including questioning and testimonies 2. Prevent justice stakeholders from dismissing the statements of your client on the basis of their disability 3. Utilize all relevant laws and challenge all unlawful actions committed against your client, both through domestic and international mechanisms 4. Adhere to all of your core professional responsibilities as a lawyer and do not discriminate against your client on the basis of disability
<p>8. How can I make an advocacy of persons with disabilities I am assisting?</p>	<p>Collaborate with other stakeholders to empower persons with disabilities and advocate for systemic reform</p>	<ol style="list-style-type: none"> 1. Utilize your experiences to provide stakeholder input to advance the rights of persons with disabilities 2. Assist in integrating issues of disability into the curriculum of law schools and the Lawyer Training Center 3. Provide mentorship to other lawyers and law students in representing clients with disabilities

4. Learning activities

4.1. Day 1 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities

Objectives	By the end of this session, participants will have: <ul style="list-style-type: none">- Understanding the key provisions under international and Rwandan law on the right to access to justice for persons with disabilities
Room Arrangement	Tables for small group work with 4-6 people. White boards with pins, paper and cards., power point presentation
Activity	<ul style="list-style-type: none">- 60 mins – Plenary discussion about “identify all key provisions under Rwandan law that provides for right to access to justice for persons with disabilities- 60 mins – Small group work- 60 mins – Plenary feedback, discussion, and summary.
Duration	180 minutes
Notes for a Training Team	Open the plenary session by asking participants how they define access to justice. If they miss any of the ideas in the module, bring them into the discussion.
Task Sheets	Learning Activity 4.1.1...: legal framework on the right to access to justice for persons with disabilities
Handouts	

4.2. Day 2 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities

Objectives	By the end of this session, participants will have: <ul style="list-style-type: none">- Considered the multiple barriers to access to justice faced by persons with disabilities.
-------------------	---

	<ul style="list-style-type: none"> - Identified approaches to overcoming these barriers.
Room Arrangement	Tables for small group work with 4-6 people. White boards with pins, paper and cards.
Activity	<ul style="list-style-type: none"> - 60 mins – Plenary discussion about “what do we mean by access to justice” with examples. - 60 mins – Small group work - 60 mins – Plenary feedback, discussion, and summary.
Duration	180 minutes
Notes for a Training Team	Open the plenary session by asking participants how they define access to justice. If they miss any of the ideas in the module, bring them into the discussion.
Task Sheets	Learning Activity 4.1.1...: Overcoming Barriers to Access to Justice
Handouts	

4.2.1. Overcoming Barriers to Access to Justice

Learning Activity 2.C: Overcoming Barriers to Access to Justice

Objective: *To consider the multiple barriers to access to justice faced by persons with disabilities and to identify approaches to overcoming these barriers.*

Step 1

In your groups, read the Access to Justice Scenarios and discuss each in turn. Answer the following questions:

- What factors are working to prevent equal access and accommodation in the scenario?
- What are the accessibility barriers, or potential barriers, at issue?
- What specific solutions are needed to provide reasonable accommodation and general accessibility?
- What resources do these solutions require?

- What kind of training would judges, court personnel, lawyers and others in the justice system require to ensure that they can improve access to justice?

Step 2

Select one example and prepare a flipchart summary of your discussion to feed back to plenary.-----

4.2.2. Handout: Scenarios: Access to Justice

Scenario 1

Muhire a comes to the legal assistance bureau at the *Maison d'accès à la justice* for assistance. She was unable to register to vote at her local voter registration centre on the basis that she has a cognitive disability. She was told that she need not vote as she would not understand how to vote. She believes that she has the right to vote and wishes to file a complaint with the election commissioner and any other relevant official.

Scenario 2

Kalisa receives a notice that he must report as a witness in local primary court. He shows up at the courthouse on the assigned day. He is a wheelchair user and does not see an accessible route into the building. He asks a guard for assistance and is told that there is no accessible entry way but that it is okay since persons with disabilities do not need to serve as a witness. Kalisa is disappointed as he wanted to perform his duty as a witness in court. He also thinks that the court house should provide access to wheelchair users and that others are also likely to be accommodated if physical access is improved.

Scenario 3

Mukakalisa has been raped by his uncle. She is blind and deaf. She comes to the police/RIB station to report. She meet the investigator who cannot understand the sign language. The investigator ignore her and Mukakalisa does know what to do. How the criminal justice should properly handle Mukakalisa.

Scenario 4

Lisa is deaf and attends the local deaf school. While visiting her aunt in another

town, she witnesses a bag of rice being stolen from a local restaurant. She goes to the local police station to report the incident. She is told that because she is deaf, they cannot take her witness statement. She offers to write her statement down and is then told that no judge would allow her to be a witness in a court because she is deaf, so there is no point in writing it down.

4.3. Day 3 Session Sheet for the Trainer – Access to Justice for Persons with Disabilities

Objectives	By the end of this session, participants will have: - Reflected on the special concerns of addressing physical and sexual abuse of women with disabilities.
Room Arrangement	Video set-up including speakers, projector, computer. Tables for small group work with 4-6 people. White boards with pins, paper, and cards.
Activity	15 mins – View short video in plenary, with reflections and discussion. 45 mins – Group work around LA 2.D. 30 mins – Feedback and summary.
Duration	90 minutes
Notes for a Training Team	Toolkit content
Task Sheets	Learning Activity 4.2. 1. Physical and Sexual Violence against Women
Handouts	N/A

4.3. 1. Physical and Sexual Violence against Women

Objective: *To reflect on the special concerns of addressing physical and sexual abuse of women with disabilities.*

Women with disabilities experience higher rates of gender-based violence, sexual

abuse, neglect, maltreatment and exploitation than women without disabilities.¹²¹ Violence may be experienced in the home or in other settings, including institutions, and may be perpetrated by caregivers, family members or strangers, among others. Violence against women with disabilities can also take the form of forced medical treatment or procedures, including forced sterilization, the incidence of which has been documented in many countries and regions.

Significant barriers exist to escaping violence. Women with disabilities often face obstacles to reporting crimes. These include fear of losing independence or fear of retaliation; lack of access to communications; barriers to mobility and lack of transportation to police stations or other services that could provide assistance; lack of accessible information or education regarding violence; and reliance upon a perpetrator for assistance with essential life activities.

Part 1

In your institution are statistics available regarding physical and sexual violence against people with disabilities? Have any cases been highlighted at national level and what is the general attitude to the issue?

Part 2

In your group discuss and develop a plan for how to protect women with disabilities from physical and sexual violence perpetrated by law enforcement officers (police officers, investigator, prosecutors and prison guard) or caregivers or family members. You will need to consider not only the possible general barriers to justice but also additional barriers such as fear of reporting and attitudes to sexual crimes.

The following questions might help you target your plan:

- What would be the overall aim of your plan?
- Which targets or stakeholders should be involved?
- Which specific barriers would you most want to reduce or eliminate?

4.3. 2. Video: Deaf and Disabled Abuse

¹²¹In his 2006 *In-Depth Study on All Forms of Violence against Women*, the Secretary-General observed that surveys conducted in Europe, North America and Australia have shown that over half of women with disabilities have experienced physical abuse, compared to one third of non-disabled women. A/61/122/Add.1, para. 152, citing to Human Rights Watch, "Women and girls with disabilities", available at: <http://hrw.org/women/disabled.html>

Conclusion

This toolkit resulted from Haguruka in partnership with USAID *Duteze Imbere Ubutabera* (DIU) through Chemonics International. This toolkit discussed the key provisions in both national and international law on access to justice for persons with disabilities. The following barriers were identified. Legal barriers that are related to non-compliance of Rwandan law with the provisions of the convention on the rights of persons with disabilities. As a short-term recommendation, the judges should apply the ratified international conventions with regards to the protection of rights of persons with disabilities. Attitudes barriers from the actors of justice, limited access to information and communication barriers and physical barriers where it has been found that persons with disabilities face barriers in accessing justice infrastructures. Economic barriers and extra cost of pursuing justice where it has been found that persons with disabilities are required to pay additional cost to facilitate access to justice in addition to already high cost of pursuing justice, especially for persons with physical, hearing, and speaking and visual impairments. To address the identified barriers, this toolkit suggests some actions that may be undertaken by actors in the justice sector and at policy level to ensure access to justice for persons with disabilities. The suggested recommendations are for example amending the Rwandan laws to comply with the international convention on the rights of persons with disabilities, recognition of sign language as national law, train actors in justice sectors on the rights of persons with disabilities just to mention a few.

From the stakeholders who attended the validation of the toolkit, it has been recommended that this toolkit be translated in Kinyarwanda and be simplified in used language to be understood by all actors in the justice sector and includes Abunzi and paralegals. It is also recommended that the manual on access to justice and legal aid for persons with disabilities be designed and given to the persons with disabilities.

5. References

Laws

- Constitution of the Republic of Rwanda of 2003 revised in 2015
- Law n° 15/2004 of 12/06/2004 relating to evidence and its production
- Law n° 68/2018 of 30/08/2018 determining offences and penalties in general
- Law n° 027/2019 of 19/09/2019 relating to the criminal procedure
- Law n° 71/2018 of 31/08/2018 relating to the protection of the child
- Law n° 45/2011 of 25/11/2011 governing contracts
- Law n° 02/2007 of 20/01/2007 relating to the protection of disabled former war combatants
- Law n° 03/2011 of 10/02/2011 determining the responsibilities , organisation and functioning of the national council of persons with disabilities
- Law n° 01/2007 of 20/01/2007 relating to protection of persons with disabilities in general
- Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda
- Ministerial Order n° 20/18 of 27/7/2009 determining Modalities of Classifying Persons into Basic Categories Based on the Degree of Disabilities.

International instruments

- Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/RES/217(III), art. 7 (Dec. 10, 1948).
- International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966, 999 U.N.T.S.171, 6 I.L.M. 368 (1967).
- African charter on human and people's rights
- Convention on the rights of persons with disabilities

Books and articles

- Janet Lord, et al, Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities (2009).

- UN Women, UNDP, UNDOC and OHCHR, A Practitioner's Toolkit on Women's Access to Justice Programming, Available at https://www.unodc.org/pdf/criminal_justice/WA2J_Consolidated.pdf, accessed on 18 June 2020.
- Janet E. Lord, Katherine N. Guernsey, Joelle M. Balfe, Valerie L. Karr, and Allison. De Franco (2012). Human Rights Yes! Action and Advocacy on the Rights of Persons with disabilities. Second edition. Nancy Flower edition, Human Rights education, University of Minnesota Human Right Centre
- M. Schulze, *Understanding The UN Convention On The Rights Of Persons with Disabilities: A Handbook on the Human Rights of Persons with Disabilities*, Handicap International, September 2009, available at: https://iddccconsortium.net/sites/default/files/resourcestools/files/hi_crpd_manual_sept2009_final.pdf
- Jeanine Braithwaite and Daniel Mont, *Disability and Poverty: A Survey of World Bank, Poverty Assessments and implications*, (The World Bank 2008),
- Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, Access to justice for persons with disabilities: From international principles to practice October 2017.
- Bryen, D. N., Wickman C.H. (2011). Ending the Silence of People with Little or No Functional Speech: Testifying in Court. *Disabilities Study Quarterly*, Vol 31, No 4 (2011)
- Martin, S. L., Ray, N., Sotres-Alvares, D., Kupper, L. L., Moracco, K. E., & Dickens, P. A. (2006). Physical and sexual assault of women with disabilities. *Violence against women*, 12, 83-837
- Powers, L. E., & Oschwald, M. (2004). Violence and abuse against people with disabilities: experiences, barriers and prevention strategies. Portland, OR: Oregon Health and Science University Center on Self-Determination. Retrieved April 18, 2010, from <http://www.directcareclearinghouse.org/download/AbuseandViolenceBrief%203-7-04.pdf>
- Schetzer, L. Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW. Stage 1, Public consultations from: <http://www.lawfoundation.net.au>
- United Nations, Toolkit on disability for Africa, access to justice for person with disabilities, available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>, accessed on 01/07/2020.

- UNODC, Handbook on Prisoners with Special Needs, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf, accessed on 01/02/2020.
- *In-Depth Study on All Forms of Violence against Women*, the Secretary-General observed that surveys conducted in Europe, North America and Australia have shown that over half of women with disabilities have experienced physical abuse, compared to one third of non-disabled women. A/61/122/Add.1, para. 152, citing to Human Rights Watch, “Women and girls with disabilities”, available at: <http://hrw.org/women/disabled.html>

Policy, Reports and comments

- RLRC, Harmonisation of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, 2020.
- Ministry of justice, National Legal Aid Policy, October 2014
- Republic of Rwanda Ministry of Local Government. *Census of people with disabilities in Rwanda.2011*. http://uphls.org/IMG/pdf/REPORT_CENSUS_PWD_01Janv11.
- United Nations, Office of the High Commissioner for Human Rights, CPR GeneralComment No. 13: Article 14 (Administration of Justice) Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 (Apr. 13, 1984), available at <http://www.unhchr.ch/tbs/doc.nsf/0/bb722416a295f264c12563ed0049dfbd?OpenDocument> (last visited June. 26, 2020).
- UN Committee on the right of persons with disabilities, concluding observations on the initial report of Rwanda, 3 May 2019, CRPD/C/RWA/CO/1, para 6.
- Ministry of Justice , *Justice Reconciliation Law and Order Sector Access to Justice Strategic Plan for Inclusion of PWDS 2020-2025*, Final Report, February 2020.
- LAF, HAGURUKA, UNAB, *Assessment of barriers to effective access to justice for girls and women with disabilities*, 2019.
- Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/67/227, para. 41.
- National Commission for Human Rights/Rwanda, *Annual Activity Report, July 2016 - June 2017*, Kigali, September 2017.
- UN committee on the rights of persons with disabilities, general comment 1(2014) on Article 12 equality before the law, para 7.

- Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of Rwanda, 9 April 2019.

6. Key informants

- National Union of Disability Organizations of Rwanda (NUDOR)
- National Council of Persons with Disabilities (NCPD), Rwanda
- Legal Aid Forum (LAF)
- HAGURUKA

