

A comparison of disability rights in employment: Exploring the potential of the UNCRPD in Uganda and the United States

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Uganda and the United States have received global attention for their development of disability rights policies. The US is often seen as a leader in the development of the rights-based approach to disability policy, and Uganda drew from the US in adapting a similar legal framework. The adaptation is not an anomaly in global policy implementation. In the actuality of development practice, many countries import ideas founded in western ideologies to shape domestic policies and services. Using the United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD) as the overarching analytical framework, this paper compares the policy approaches to disability rights and justice in both countries to consider the ramifications of such cross-cultural adaptation. The analysis is framed within the discussion of the right to employment, as both countries are recognized for policy advances in this domain, but continue to experience low labor market participation for persons with disabilities. It identifies three critical areas that impact the realization of disability rights in each context: ideological frameworks; hiring and retention initiatives; and state level supports. Ultimately, it considers the limitations of the rights based framework for actualizing employment rights in the context of limited state and individual resources.

Keywords: Human Rights; development; comparative policy analysis; United Nations

Introduction

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is situated to become the emergent framework for analyzing state-level political approaches to parity and social justice for persons with disabilities¹. The UNCRPD framework is garnering considerable attention about how to apply theory to consider practical changes within domestic policy by academics in the social sciences, legal theorists, politicians, and activists alike (Kanter, 2015; Harpur, 2012; Ribet, 2011). Critiques of integrating the rights-based framework into the political systems of the global South, suggest that the framework is

largely ineffective in reaching individuals and impacting the day to day life of persons with disabilities (see for example Meekosha and Soldatic, 2011; Grech, 2009). They argue that attempts at advancing the recognition of disability from a rights-based perspective, for example through the UNCRPD, may overshadow efforts at addressing the material hardship and violence connected with issues of impairment in the global south. Disability rights advocates seek methods of redress within the political framework of the nation-state, while there are seldom avenues to challenge the Global North's historical and ongoing contributions to creating disability through war and the exploitation of labor in global south. Others argue that the framework reflects a policy scheme that may detract from the needs and goals of local activists and organizations in the context of poverty and limited resources. For example, Meyers (2016) argues that the UNCRPD's mandate to engage civil society in the implementation process may shift the focus of local agents, including Disabled People's Organizations (DPOs) towards human rights monitoring where in the past such organizations focused on self-help, services, and immediate supports related to maintaining an adequate standard of living. There also has been substantial debate about the cultural relevance of the framework, and the extent to which it reflects western ideology and practice (see Bickenbach, 2009). Without effective enforcement mechanisms, domestic policy that follows the UNCRPD framework bares the ferocity of a "paper tiger," borrowing from a phrase colloquially referring to the limited domestic implementation of human rights laws across Africa by politicians and activists alike.

In spite of ongoing critiques, the UNCRPD is widely recognized as a tremendous step in advancing the treatment of persons with disabilities globally. The potential of the UNCRPD is that it is a rallying point for activists and local civil society organizations to seek support and recognition to better the lives of persons with disabilities, regardless of existing supports for local level implementation. The UNCRPD is quickly becoming the international standard for social practices that transcends legal obligations. It also provides a substantive roadmap for advancing social inclusion, community integration, and the standard of living for persons with disabilities across different social contexts (Lord and Stein, 2008).

The galvanizing potential of the UNCRPD echoes similar excitement about disability rights that grew nearly 30 years ago in rich democratic nations of the global north. In 1990, the United States (US) became the first country in the world to enact a civil rights law that prohibited discrimination against persons with disabilities in various domains of life. The US has not, however, ratified the UNCRPD and it has failed to ratify other major human rights conventions, most notably the Convention on the Rights of the Child and the Universal Declaration of Human Rights. The US's reluctance to ratify international conventions is often explained in terms of US's policymakers' self-perception as moral authorities on human rights issues and the reluctance to invite foreign intervention into domestic affairs. As the US has only signed the UNCRPD, it thus impacts our choice to use the US as a case example to explore the potential for advances should the US ultimately ratify the treaty.

Instead of the human rights framework, the US primarily relies on a series of civil rights laws to ensure legal protections for people with disabilities. The Americans with Disabilities Act (ADA) of 1990 is the cornerstone of civil rights law and policy in the US, and it addresses the gap in previous rights-based legislation that outlawed discrimination against race, color, religion, sex, or national origin, but had not included disability. The ADA protects persons with disabilities against institutionalized and structural discrimination, and ensures their full inclusion and equal participation in society. The landmark law not only has far reaching domestic influence, but it has also shaped disability policy in the United Nations and in countries such as Australia and United Kingdom that later adopted similar disability policy approaches. It also has been highly influential in the legal frameworks of many lower-income countries that do not possess strong legislative frameworks for enforcing legal rights (Kanter, 2015). Uganda, for example, went as far as directly importing much of the exact same language of the ADA into domestic law and policy. Uganda's primary disability law, the Persons with Disabilities Act of 2006 (PWD Act), was enacted sixteen years after the ADA but predated the UNCRPD. The PWD Act reflects in many ways the latter and spirit (social intent) of the American law. The Act is guided by similar legislative principles, but there are substantial differences in the domestic implementation of rights-based laws globally.

Comparing the implementation of rights-based laws in the global south and in richer western countries can improve understanding of how domestic policy is shaped by differences in cultural, enforcement mechanisms, and social norms. Specifically comparing Uganda and the US is important because both countries are looked to as leaders in advancing disability rights into policy and law. While the ADA was highly influential in shaping the UNCRPD, Uganda was among the first countries to introduce reserved seats for persons with disabilities at all levels of political representation. Furthermore, while Uganda was once colonized by Britain, a similar hegemony plays into postcolonial US relations, where Uganda has been a frequent recipient of US foreign aid, and US policy is directly exported to Uganda's democratic parliamentary framework. In this context, knowledge transfer has the danger of replicating inherently unequal power relations reflective of postcolonial discourse that links the 'problem' of disability to the need for industrialization and advanced development (Meekosha and Soldatic, 2011). This comparison may be used as a case example to elucidate how colonial legacies inform state level policy and politics. Rhetoric and direction for global disability policy are shaped by such colonial and postcolonial relationships, where knowledge production often flows from north to south in the context of human rights and development (Grech, 2009). There are seldom attempts to advance social policy theory and practice in the global north based on innovation in the global south. While not without its short falls, Uganda's policy system may provide useful examples to inform implementation in the global north, especially as Uganda receives accolades for their representative approach in governance that includes stakeholders with disabilities (Katsui and Kumpuvuori, 2008).

Furthermore, given the US's opposition to ratify international conventions, there is a need to consider new approaches to domestic policy and practice.

Despite the substantive legislative frameworks, both countries experience shortfalls in many areas that rights-based policies seek to redress. In the domain of employment, which has been a focal point of policy debate in both countries, persons with disabilities experience a number of inequalities and barriers to participation in both contexts. Most notably, unemployment for persons without disabilities is exorbitantly high in both countries. The PWD Act is Uganda's was signed into law on May 24, 2006 to address the inequality, and is the most comprehensive and promising disability-specific statute enacted in accordance with Uganda's Constitution. A primary goal of the Act is to provide comprehensive legal protections for, and eliminate all forms of discrimination against persons with disabilities (Part I, Section 3), and to promote the participation of persons with disabilities in all aspects of life as equal citizens (Part I, 3b). To this end, the PWD Act prohibits discrimination on the basis of disability in five domains: education and health (Part II), employment (Part III), goods, services, and facilities (Part IV), and other social rights (Part V). The law largely builds on the ADA's anti-discrimination framework, while also including additional plans for the affirmative hiring of persons with disabilities in the private sector.

The US experiences a particularly low disability employment compared to other highly developed nations, and the rate has remained close to 30% for the last three decades (WHO and World Bank, 2011). While exact figures are not known, persons with disabilities are largely marginalized and under accounted for in Uganda's highly competitive open labor market. In spite of known shortfalls within the US system in advancing the employment rights of persons with disabilities, Uganda is following the trajectory of the US framework. Comparison between the countries is additionally pertinent because both nations are facing growing rhetorical and political animosity that threatens the effectiveness of disability rights law- an issue that we will discuss throughout this paper.

A comparison of the two systems may be used to understand the limits of the rights based approach in changing everyday life for persons with disabilities, while also considering how to maximize implementation efforts to the furthest extent possible that the framework permits. Research about the political realization of rights and analytical accounts about the everyday experience in the Ugandan context, as with many countries in the global south, remains underdeveloped in theory and in practice (Businge, 2016). Additional exploration will help to better understand both the strengths and limitations of the rights based framework outside of the higher income western context.

The purpose of this paper is to compare the disability employment policy systems in the US and Uganda, and to identify areas to improve implementation by examining the broader socio-cultural contexts that have shaped disability policy and practices of the two countries

over time. While both countries approach the question of disability rights in the employment context through similar policy frameworks, the larger cultural and political ramifications are ultimately unique to each country and context. The analysis is framed with the UNCRPD to demonstrate how legal rights mechanisms can shape both social and cultural practices impacting persons with disabilities. The next section provides an overview of the disability employment policy context in each country to contextualize the comparison between contexts.

Employment policy in the US

In recent history, the US disability employment policy system has most clearly been defined by its activism and strong civil rights framework. The civil rights framework not only stands as the major employment protection of persons with disabilities, but it is also the guiding framework for federal policy to advance the equality of opportunity, full participation, independent living, and economic self-sufficiency of Americans with disabilities (Silverstein, 1999). The guiding law, the ADA, is a non-discrimination law that was signed into effect on July 26, 1990. The primary purpose of this law is to establish a legal framework with enforceable standards to protect the rights of persons with disabilities against structural and institutionalized discrimination across all domains of social living. There is general agreement in US disability scholarship that the ADA has enhanced the legal protection and improved structural accessibility for persons with disabilities into the workplace as well as for those who already engaged in the labor market (Moss et al., 2001).

Unlike Uganda's disability law which was enacted without any known public demands, the passing of the ADA was a culmination of several years of activism and resistance by persons with disabilities. Cross-disability advocacy, protests, and lobbying for a law to address pervasive discrimination were essential to generate strong federal support at the time of the ADA's passage. Furthermore, the structure of the employment provisions was based on national record of the pervasive and historical discrimination of persons with disabilities in the workplace (Silverstein, 1999). The ADA was passed as an unfunded mandate, with the hope that employers and others would largely embrace the ADA's social goals based on the growing recognition of persons with disabilities as a marginalized group.

In spite of strong legal remedies, persons with disabilities continue to experience marginalization in a number of ways specific to employment in both contexts. As previously noted, persons with disabilities continue to experience poverty and paid employment at an extremely low rate compared to other similarly developed countries (WHO and World Bank, 2011). The labor force participation rate for persons with disabilities has followed general rises in the overall US labor market and has increased over the last two years. In spite of

these gains, the disparity between persons with disabilities and persons without disabilities remains relatively unchanged.

Disability and employment policy in Uganda

Although specific employment projections for persons with disabilities are undocumented in Uganda, unemployment is certainly higher among persons with disabilities than in the general population. Uganda generally lacks nationally representative employment statistics disaggregated by disability, but national statistics show that 85% of persons with disabilities do not work (Uganda Bureau of Statistics, 2017). Some of the major barriers to employment for persons with disabilities in Uganda are: illiteracy and low levels of education; and negative attitudes resulting in discrimination and inaccessible workplace environments (Ojok, 2015; Nyombi and Kibandama, 2014). The Uganda National Household Survey found that approximately 90% of persons with disabilities fail to access secondary education (Uganda Bureau of Statistics, 2017), making it difficult for them to access jobs in a highly competitive labor market.

Uganda does not share the same history of activism as the US, but has made significant political strides in a short time. From a time when disability was treated as an affair of the family and charitable organizations, Uganda has taken noteworthy steps towards mainstreaming disability into its socio-political processes by establishing relatively strong legislative and institutional frameworks. The national Constitution embodies disability-specific articles (e.g. Article 32), and also contains other articles where disability is mentioned. Uganda's Constitution of 1995 (as amended) recognizes sign language as a language of the Deaf (National objectives XXIV (c), and requires affirmative action to be taken in favor of groups marginalized on the basis of disability or other groups (Article 32).

There is a relatively strong institutional framework for addressing disability issues at all levels of the political process. An Act of Parliament established Uganda's National Council for Disability in 2003, with the mandate of overseeing the implementation of disability policies and programs. The Equal Opportunities Commission, established in 2007, monitors and ensures that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of public entities at all levels comply with the equal opportunities and affirmative action requirements for groups marginalized on the basis of disability and other social groups (Part II, section 14). In exercise of this function, the Commission subjects public entities' budgets and strategic plans to verification with a possible rejection if the budgets are not disability inclusive. Uganda is one of the few countries in the world with a high representation of persons with disabilities in political structures. Persons with disabilities are represented at all elective positions from parliament (five seats) through to local councils,

and other decision making levels such as the councils of public universities and the National Council for Higher Education.

However, there is a significant disparity between policy and practice, and the daily experiences of individuals with disabilities. Persons with disabilities are largely excluded from the labor market and are amongst the poorest citizens. Though the proportion of Ugandans living below the poverty line has significantly declined in the general population (19.7%), over 80% of persons with disabilities live below the poverty line (UBOS, 2006), and 26% live in chronic poverty (Uganda Chronic Poverty report, 2006), with the highest proportion (44%) of poor people found in northern Uganda (Uganda Bureau of Statistics, 2017). Such numbers even exclude the most disadvantaged people living in Uganda— as Northern Uganda hosts more than 1 million refugees from South Sudan and the Democratic Republic of the Congo, and as many as 30,000 internally displaced citizens from Uganda's recent civil war living in camps and rural settings (UNHCR, 2018). Moreover, households headed by a person with a disability are more likely to be poorer than those headed by a person without a disability (Hoogeveen, 2005). Even though there are legislative and institutional safeguards to advance the participation of persons with disabilities in the labor market, many Ugandans with disabilities still encounter a number of barriers to participation that contribute to their neglect, abuse and marginalization from society (Businge, 2016).

Analytical framework: the UNCRPD

Although there are accounts of continuing discrimination and low disability employment in the US and Uganda, both countries have made significant strides towards incorporating a rights-based framework of disability in their political systems. It is important to acknowledge the traditional thinking and stereotypes about disability that necessitates political protection, and which also informs dominant viewpoints about disability in both countries. Traditional models of disability portray disability as an individual tragedy. Consequently, the historical narrative of persons with disabilities is that they are treated not as rights bearers, but as objects deserving of pity, charity, and cures (Quinn and Degener, 2002). Disability policies that are predominantly anchored in traditional models tend to reinforce negative stereotypes that have the effect of furthering the exclusion of persons with disabilities from society. The UNCRPD epitomizes a paradigm shift away from the paternalistic, medical view of disability, towards a human rights approach. The human rights paradigm of disability sees persons with disabilities as capable of claiming their own rights, and emphasizes individual agency and respect for the inherent dignity of all people (Quinn and Degener, 2002). We used the UNCRPD as the analytical framework because it provides a guiding analytical structure for assessing the extent to which domestic legislation conforms to the broader object, purpose, and social goals of the disability rights platform (Lord and Stein, 2008).

The UNCRPD does not equally apply to Uganda and the US since the former has fully ratified the treaty and its optional protocols, but the latter has only signed it. The Convention, however, remains relevant in each context, as there are ongoing efforts and goals to theorize and actualize the application of the framework in both countries. States Parties' obligations under the UNCRPD include undertaking measures to ensure the promotion and full realization of the rights of persons with disabilities such as abolishing existing practices and laws that discriminate against persons with disabilities (Article 4) and involving persons with disabilities and their organizations fully in the monitoring process (Article 33).

The UNCRPD's primary relevance to Uganda in relation to employment is that it suggests a general direction about how to implement, and reform existing laws. The employment plight of persons with disabilities is exacerbated by the failure to enforce existing laws. For example, the PWD Act mandates a quota system for employing persons with disabilities (Section 13, para 3), a 15% tax reduction for companies that hire at least 10 persons with disabilities (Section 17), and tax exemptions on any costs incurred when making modifications in workplace premises for the purpose of enabling the employment of persons with disabilities (Section 13, par 4 b-c). The 15% tax incentive had motivated businesses to start hiring persons with disabilities, but it was hurriedly repealed from the Act in 2010, and reduced to 2% on grounds that it would cause revenue loss without necessarily improving the overall employment rate (Ojok, 2015; Nyombi and Kibandama, 2014). The reduction undermined employers' willingness to hire persons with disabilities under the new rate of 2%, rendering the revised tax incentive practically inconsequential. The UNCRPD framework would suggest a policy approach to improve implementation, and potentially develop new policy to meet the standards set forth by the international norms (Katsui and Kumpuvuori, 2008).

US interest in ratifying the UNCRPD primarily suggests social rather than statutory change. A concrete example of policy change would be the application of the non-discrimination clause to foreign aid and other funds spent outside the US. While a vital part of reducing disability discrimination in relation to employment, the social ramifications transcend the political. Ratification of the UNCRPD is absolutely necessary to maintain legitimacy as a global leader in disability rights given that US laws have been exported to outside countries based on their perceived success. The most immediate impact on domestic policy would be a heightened dialogue about how the current policy system is meeting the human rights framework. This dialogue is essential where discriminatory attitudes, stigma, and general skepticism about the provision of rights for persons with disabilities continue to dominate disability and policy discussions in the US. As Uganda adapts its disability policy from western language and norms, it is in danger of following a similar trajectory in implementation. We next provide a critical examination of the framework's application to both countries to identify shared areas of concern.

Methods: comparing the rights-based framework in the US and Uganda

The convention applies differently to the countries that ratify it (such as Uganda) and those who are merely signatories (such as the US). There are still a number of ways in which it can be used as an analytical framework to compare implementation and impact. In the context of Uganda and the US, it can be used to examine the policy frameworks and social ramifications as both countries have introduced similar legal measures, but are experiencing different trajectories in implementation.

We conducted an interpretive policy analysis to systematically compare the policies of the US and Uganda (Yanow, 2000). The analysis involves identifying policy documents and related literature, screening them for relevance, and then closely examining the identified documents to ascertain their alignment with the UNCRPD in terms of similarities, uniqueness, differences and where they complement each other. The main focus of comparison is article 27 of the UNCRPD, but we also make reference to crosscutting principles of the UNCRPD such as the meaning of disability and the principle of non-discrimination.

We chose key national reports as well as rebutting accounts from civil society to inform our review. For example, we examine key reports by the National Council on Disability (2013) as well as academic studies interpreting the impact of disability rights legislation in the US context. In Uganda we look at national level accounts of implementation, for example Uganda's Initial Status report on implementation of the UNCRPD, the parallel reports by the National Union of Disabled Persons of Uganda on UNCRPD implementation, the PWD Act 2006, the population census report of 2014 and original research on disability employment policy. Through our document analysis, we identified a number of key areas for comparison that jointly impact the efficacy of the UNCRPD in both contexts, and organized them into larger themes, which we refer to as critical areas of implementation in the next section,

Findings

In our analysis, we look at the countries' policy frameworks side by side. We examine how the countries compare in three critical areas that impact the realization of disability rights in each context: (1) The ideological framework for approaching disability; (2) the hiring and retention strategies used in relation to the primary disability rights policies; and (3), the national level support for implementation. We then consider how the UNCRPD can apply and improve the situation in each context.

Ideological frameworks

The ideological basis for claiming disability status and the subsequent recognition of discrimination is an essential part of a country's employment policy framework. The legal conceptualization of disability is important because it grants legitimacy to disability claims. In the context of human rights policies, the recognition of disability is a crucial aspect of being seen as an equal person before the law, and also provides further social legitimization to combat stigma and social exclusion (Quinn and Degener, 2002).

The ideological basis to claiming protective status within the US framework draws from the idea that persons with disabilities are a unified minority group, and experience discrimination in a way similar to women or racial/ethnic minorities. Creating policy within the minority model entails removing barriers so that a protected group can achieve equal status and compete on an equal level with the majority (in this case able-bodied) population. This model is exemplified in the policy goals of the ADA to broaden the "equality of opportunity" for Americans with disabilities, and emphasizes the role social and environmental barriers play in creating disability (Silverstein, 1999). The US approach was an important contribution to the UNCRPD's framework. The Convention perhaps emphasizes the social creation of disability even farther in its ideological framework in that it does not define disability so that it can be conceptualized and defined within local contexts.

Uganda also recognizes disability as a unified marginalized group, similar to the US's minority model approach. It created a similar anti-discrimination framework, but focuses on affirmative action and quota systems that go beyond the US's approach. Through quotas and affirmative action, Uganda's government aims to redress the socio-cultural and historical inequalities that existed against women, workers, youth, and persons with disabilities (Tamale, 2004). The 1995 Constitution (as amended) established reserved seats in the national parliament for persons with disabilities. In practice, however, affirmative action and quotas in Uganda are working only in the education and political domains, but not in employment owing to non-enforcement of the PWD Act of 2006.

The rights-based framework in Uganda similarly reflects a dramatic step away from outdated thinking about disability as commonly reflected in previous social policies. Prior to the promulgation of the 1995 Constitution, the charity and medical models of disability introduced by the missionaries in the pre-colonial era, predominantly underpinned Uganda's conceptualization of disability. The government was uninvolved and left the affairs of persons with disabilities to missionaries and individual families. The missionaries and the colonial government introduced special schools and segregated work arrangements modeled on western segregated systems of care and education (Kristensen et al., 2006). To date, there are about eight vocational rehabilitation-training centers across the country that offer training in skills such as computer literacy, carpentry, tailoring and nursery teaching, and graduate about

280 persons with disabilities every year (Nyombi and Kibandama, 2014). While the rhetoric of disability rights suggested a more inclusive approach, the sheltered workshop system remains a part of Uganda's employment training program for persons with disabilities.

Both Ugandan and US disability policy schemes utilize a disability definition that largely fits within the UNCRPD's conceptualization of disability as 'an interaction' (see Quinn and Degener, 2002). Both countries have shown however, that in spite of clear legal definitions, the social contexts of law and policy prevent such a straightforward interpretation. Uganda's court system has been largely reluctant to hear any disability discrimination claims. In the US context, the issue is not the lack of case laws, but that of recognizing disability discrimination in employment. Since the ADA was enacted, numerous cases were heard in a short span of time, and the problem was instead about hostile court decisions based on narrow interpretation of the definition of disability under the law (Colker, 2005). The definition has since been clarified at the legislative level through the ADA Amendments of 2008. While there is growing consensus that the US legal framework is now firmly intact, disability rights are still often misunderstood and stigmatized in the public as special treatment (Gould et al., 2015). The US is now at the level of assessing the ADA's impact after more than two decades of implementation.

There has been additional discrepancy in interpreting the meaning of disability in the Ugandan context. In contrast to the US, the definitions of disability have not been adequately tested in the courts of law, but are evidently rigid and medicalized (e.g. The 2006 Employment Act, the Workers' Compensation Act and the National Social Security Fund Act), and still use derogatory language such as 'unsound mind' and 'lunatic' (e.g. the Mental Health Act 1938, which was revised in 1964). Although the PWD Act's definition recognizes disability as the interplay of impairment and environmental barriers, its emphasis on substantial functional limitation, which was adopted from the ADA, narrows the scope of discrimination protection accorded by the UNCRPD.

Whereas documented disability case decisions are scarce in Uganda, the majority of persons with disabilities in Uganda experience overt workplace discrimination without seeking court redress. For example, in its alternative report on UNCRPD implementation, the National Union of Disabled Persons of Uganda (NUDIPU) cites the cases of a primary school head teacher who was demoted to a classroom teacher, and another teacher dismissed and re-designated to a security guard position after they acquired disability during work (NUDIPU, 2013). Despite a strong framework, the legal recognition of discrimination in the employment context is rare.

The takeaway from the comparison of definitional framework is that legal conceptions of disability do not necessarily clarify the protected class outside of the courtroom nor result in the immediate realization of rights in practice. In spite of a clear approach that largely meets

the suggestions of the UNCRPD framework, debates about the legitimacy of disability abound in both contexts. Successful implementation and training about the civil rights approach requires additional support to clarify the larger social intent in addition to the legal specificities.

Hiring and retention

While the antidiscrimination framework primarily focuses on dissuading discriminatory practices, the human rights framework suggests positive and significant cultural changes that transcend the civil rights approach. One of the primary differences between the human rights framework and policy that grew from the minority model approach used in Uganda and the US is how antidiscrimination typically involves *removing* discriminatory practices, while the human rights framework primarily focuses on *creating* and affirming rights. This theoretical difference is commonly referred to as the distinction between positive and negative rights (Parker Harris, 2006). In regards to employment, the UNCRPD framework has two articles that are specifically applicable to building on the existing framework of civil rights and employment: Article 5, which prohibits all types of discrimination and guarantees equal legal protection (similar to the ADA) and Article 27 which guaranteed the rights of persons with disabilities to enter the open labor market. The ADA, at least discursively, echoes similar goals in its call for equality of opportunity and economic self-sufficiency, but does not go as far as such proactive services or supports to ensure the positive right of labor force participation.

There are interesting similarities between the ADA and the PWD Act's approach to increasing the workforce of persons with disabilities and their relationship to the positive rights approach espoused in the UNCRPD. For example, the PWD Act adopted the ADA's anti-discrimination prong. Like the ADA, it prohibits discrimination of qualified persons on the ground of disability from all employment processes. The Act also incorporated the concept of reasonable accommodation which is a major requirement in the ADA, although it is mentioned only once (Section 12, para 2g).

The most glaring difference between the PWD Act and the ADA's potential impact on hiring and retention is that the ADA's primary mechanism for ensuring equality of opportunities for PWD in the labor market is through the process of reasonable accommodation. The ADA ensures equality of opportunities by requiring reasonable accommodation in all processes of employment from job posting, to the interview and hiring procedures, and after a person obtains employment. However, under the PWD Act, reasonable accommodation is not a requirement at any of these stages. The essence of reasonable accommodation is that many persons with disabilities often need additional modifications in workplace premises, policies and culture to equally participate and be productive in employment. A practical ramification

of the lack of the reasonable accommodation requirement is that a person with a disability may be hired but fail to function effectively due to unfavorable working conditions like inaccessible facilities and/or equipment, but such a person cannot seek legal redress when employers are not obliged to provide reasonable accommodation.

Uganda instead promotes access to the workplace for persons with disabilities through affirmative hiring measures like tax incentives and the ‘Special Grant’ program, which provides small grants to groups of persons with disabilities to start up income generating activities. NUDIPU (2013) considers the Special Grant Program successful as more than 900 groups have received some sort of financial support to help with income generating activities. However, there are outstanding accusations of corruption in the form of kickbacks for those who are charged with dispersing grant moneys. For example, not all of the special grant beneficiaries are authentic because of alleged desk doctoring of project proposals by some district officials (Ojok, 2015).

The affirmative hiring requirements transcend the antidiscrimination framework presented in the ADA, but also has resulted in problems unique to the Ugandan context. On one hand, the incentivization and special grant approach may prompt employers to create more universally designed workplaces as employers may be more willing to create accessible workplaces to attract persons with disabilities, thus mitigating the need for retroactive accommodation (Ojok, 2015). The nonexistence of enforcement mechanisms is the clearest example that Uganda still needs considerable resources and planning before actualizing the broader suggestion of the UNCRPD. Until implementation becomes a reality, the advanced incentivization approach by Uganda remains a moot point for comparison. The issue of monitoring is further considered in the next section in regards to state level support.

State level support

The actualization of the UNCRPD’s framework into practice relies on the state’s commitment to coordinating enforcement mechanisms that are integrated across all domains of domestic policy (Article 33– national implementation and monitoring). As the rights-based framework in both countries largely relies on legislative remedy, two major factors play into implementation. First, there need to be clear enforceable standards at the state level to advance and improve existing legislation (Lord and Stein, 2008). Second, the system also requires a heightened commitment to educating individuals about self-advocacy, knowledge of the law, and access to the legal system – all of which are challenges to persons with limited access to quality education (Chataika et al., 2012). There are ongoing efforts in Uganda to address individual level knowledge that is integral to making the rights based approach effective in the employment domain, although these are mostly civil society initiatives. For

example, projects such as NUDIPU's 'Access to Justice' do address some of these issues by helping persons with disabilities learn about their protections under the different local laws and also by providing much needed legal representation for those unable to obtain it on their own (NUDIPU, 2013). Also, a group of Ugandan lawyers with disabilities founded an organization called Legal Action for Persons with Disabilities (LAPD) with the goal of sensitizing the public and ensuring that human rights are actualized for persons with disabilities. Issues of local government level buy-in however, create more substantive roadblocks to advancing the employment rights of Ugandans with disabilities.

Despite its promise and potential to improve disability rights, the PWD Act has never reached formal implementation in its 12 years of existence. There was an unsuccessful attempt to implement the law, but it was characterized by slow progress and regression, resulting instead in amending the law. For example, the process of developing the regulations was started but later suspended after the Attorney General's office directed that the Act was unenforceable and required amendment (Ojok, 2015). Presently, a Bill called the Persons with Disabilities Amendments Bill 2014 has been tabled in parliament to repeal and replace the PWD Act 2006. Many stakeholders have opposed the bill on the grounds that it is much weaker than the law it seeks to replace. Likewise, the responsible Committee of Parliament has deferred the Bill to the Ministry of Gender, Labor and Social Development to rework and align it with the UNCRPD. Some of the promising provisions of the Act that are due for repeal include the employment quota mandate, the 10% education budget requirement and all tax incentives. What is unknown is how long the current bill will take to sail through the complex policy making process, and to what extent the final version will align with the UNCRPD or reflect the interests of persons with disabilities in Uganda.

The failure to implement the PWD Act and the current unresolved stand-off regarding its implementation versus amendments leaves Uganda at a cross-road with regard to disability law. The existing law has been shelved and practically forgotten; yet the amendments bill is nowhere close to enactment. This leaves a sharp contrast in the implementation experience of the two countries. While the US approaches 30 years of ADA implementation and a relatively widespread acceptance for the civil rights framework within the court system, Uganda is still going through a retrogressive experimentation in trying to implement its disability law.

The US experience has shown that the effectiveness of the rights-based framework largely depends on the presence of a robust judicial system and the capacity of the individuals with disabilities to seek legal redress in the courts of law. The US's anti-discrimination model cannot directly apply to Uganda on two grounds. First, Uganda's courts are grossly understaffed, and not equally accessible from certain upcountry (rural) locations. Some of the new districts do not have a magistrate court, and the nearest high court can be a long distance away. Second, many persons with disabilities are unable to seek legal redress in court (even when they are discriminated), because of unaffordable litigation costs and ignorance of the

law. Nyombi and Kibandama (2014) suggest that the lack of disability case laws in Uganda is not because persons with disabilities are not discriminated in employment, but because many of them lack the financial capacity and knowledge to seek redress in the courts.

The US enforcement of its employment provisions is clearly more established than Uganda's, but is at a similarly critical juncture in deciding the future trajectory of state-level enforcement. One of the major current roadblocks to advancing disability employment policy in the US is addressing pervasive cultural attitudes and stigmatic perceptions about disability. A recently proposed set of amendments to the ADA currently review in the US Congress in Spring of 2018, the ADA Education and Reform Act, reflect such latent misunderstandings about disability rights. The Act would require individuals to give 120 days' notice before suing under the law; this will greatly diminish the power of the ADA where for example, an individual may arrive at a retail store, or place of employment, find it completely inaccessible, but lack any immediate legal recourse (National Council on Disability, 2017). While the US House of representatives voted in favor of the bill, successful advocacy in the US senate prevented the bill from ever reaching the floor to finalize a vote. This was not the first time that such amendments were proposed, but the passage in the House is indicative of growing traction to restrict civil rights for persons with disabilities.

When put into the context of other civil rights laws in the US, the contradiction of the proposed ADA amendment becomes abhorrently clear. The effect of the reforms would be akin to requiring an individual who was denied access to a place of business based on their skin tone to 'warn the employer' that they committed discrimination before seeking legal remedy. Similar amendments have been proposed multiple times over the last two decades, and are fueled by the rhetoric that persons with disabilities are 'cheating' the system and making lawyers rich (Bagenstos, 2014). In this context, the most pervasive storyline in domestic policy discussions about the ADA are fringe abuses or failed litigation by people who are unable to prove their status as a member of the protected class. The legal debates often overshadow success stories of the ADA's accessibility provisions and the history of social activism. Although Uganda continues to draw on the US legal framework for inspiration, it is essential to also note barriers to the cultural embrace of disability rights.

Lessons learned and limitations of the rights based framework

Comparing the disability employment approaches in Uganda and the US, garners a few key lessons to advance policy in both nations and for the future knowledge and policy exchanges between the global north and south. The stories of implementation in both countries exemplify how the actualization of disability rights policy is informed by social norms and practices. In the US, stigma and misperceptions about disability rights as special treatment abound while Uganda's primary implementation concerns relate to the lack of enforcement

mechanisms. Discursively, aspects of Uganda's framework transcend elements of the US's antidiscrimination framework. Uganda's governmental quota system for the representation of persons with disabilities in parliament remains one of the most progressive examples of the immediate political recognition of marginalized groups in global politics (Murrias and Wang, 2012).

Drawing from Uganda's experience, ratification of the UNCRPD framework provides both direction for improving disability policy mechanisms and a mirage of achievement, as there are numerous barriers to actualizing state policy in local communities. The US would be wise to learn from Uganda's situation where ratification without enforcement is a largely symbolic act, where Uganda needs to learn from the US that a rigid definition of disability limits discrimination protection for persons with disabilities. The US would need to advance local enforcement strategies to meet the ideals reflected in the UNCRPD. While the ADA's status as an unfunded mandate contributes to ongoing implementation barriers, Uganda's PWD Act was passed as a private members' bill, a situation that is believed to contribute to its lack of ownership and subsequent on-going amendment (Ojok, 2015). The larger takeaway from this comparison is that even in countries with strong legislative frameworks for disability rights, the efficacy of the rights-based framework can quickly depreciate without state level support for implementation.

Disability rights in Uganda and the US are at a crucial turning point, as both countries seem to be reversing the hard-earned gains they made in recent decades to protect and promote the enjoyment of human rights by their disabled citizens. Both the US and Uganda have proposed amendments that would weaken their existing disability laws. This trend sets a bad precedent because many nations look up to the US as a world leader in promoting disability rights. The same is true for Uganda, which is one of the few so-called developing countries that is internationally recognized as a leader of disability policy in the African region.

In advocating for advanced implementation and recognition of disability rights in both contexts, it is also important to recognize the limitations of the rights based framework. Expectations of the ADA have been extremely high and it has often been presented as a cure-all framework for addressing economic opportunity (Bagenstos, 2014). Similarly, the implementation of disability rights law in Uganda cannot overshadow the need for additional poverty reduction strategies, the creation of inclusive education and training systems, and the need for new infrastructure to advance the full and equal participation of Ugandans with disabilities in society (Abimanyi-Ochom, and Mannan, 2013). Learning from the US case, over-enthusiastic expectations have been damaging in ongoing legal debates to improve the current system of rights, as political powers question the necessity of advancing beyond the existing civil rights framework (Kanter, 2015). Without diminishing the tremendous potential of the UNCRPD, it is perhaps worth a cautionary note to dampen expectations without the creation of effective enforcement mechanisms.

The development of rights-based legislation in both nations also demonstrates how the human rights agenda can be used to distract from simultaneous instances of violence, oppression, and state sanctioned violence. In September 2018 the US withdrew from the UN Human Rights Council while facing increased international scrutiny regarding its immigration and forced deportation policies. Additionally, officials under the current Trump administration are purportedly increasing recruitment efforts of young Ugandans to fight ongoing conflicts in Somalia and Yemen. As Uganda will experience a new generation of people with impairments acquired through such armed violence and conflict, it is reticent of numerous past instances where human rights rhetoric has been used to justify international intervention that leads to further impairment and disability (Meekosha and Soldatic, 2011; Soldatic and Grech, 2014). While the UNCRPD's framework may be utilized to advance employment in the open labor market for returning soldiers, the international legal framework does not recognize the extraterritorial responsibility of the US as culpable actors with duties to assist in services or supports (NCD, 2015). Given the limited resources, networks, and employment services for actualizing the goals of the convention to date in Uganda, the creation of impairment through war and violence enables a justification for further foreign intervention and aid to carry out the rights based frameworks in practice (Grech, 2011)

The discursive achievements of both nations' policy frameworks do not mitigate ongoing concerns related to human rights abuses in both nations impacting people with disabilities. As Uganda remains one of the US's closest allies in Africa in central Africa, the implementation trajectory of both nations are both rhetorically and politically linked. In exchange for Uganda's supports of US proxy wars, the US will continue to overlook records of state-sanctioned violence and human rights abuses in Uganda that have gained attention in the international human rights community, including the treatment of LGBTIQ activists. As international support for the UNCRPD gains steam, a myopic rights-based focus for Uganda's employment system is an incomplete policy solution to advance the employment of persons with disabilities who face substantial barriers to actualizing their rights in practice. Even in the context of well-developed legal protections, many individuals across Sub-Saharan Africa do not know about their rights (Chataika et al., 2012). Dually marginalized citizens, such as women with disabilities, face a potentially disparate plight as mainstreamed efforts may reproduce inequalities within the educational system (Katusi, 2012). In Northern Uganda, in more rural areas ravaged by decades of armed conflict and struggle, access to training, education and basic socio-economic needs are far out of the reach of most citizens (Businge, 2016). This region also hosts the vast majority of Uganda's refugee population, which is now the second largest in the world. Given the burgeoning immigration debate in the US context as well, there is a need for additional deliberation to consider the UNCRPD's efficacy in contexts of displacement. There are few avenues for non-citizens, such as displaced people, to claim their rights within the State and directly benefit from Uganda's ratification and the US' signing of the UNCRPD. The immediate realization of the right-

based framework is a far reach for such communities, and is thus an important limitation to acknowledge in discussing the larger impact of employment rights.

The concerns over the inter-state culpability of actors in the global north, the realization of employment rights in situations of poverty, and the limited impact on situations of extreme material deprivation are not unique to Uganda's relations with the US. Recently, scholars have explored the possibility of leveraging the UNCRPD to support extraterritorial efforts to advance the material hardship of people with disabilities across borders (Kanter, 2015), but it is also important to recognize that the burgeoning and globalizing disability rights agenda may redirect local disability groups and civil society organizations away from their previous work on self-help and poverty reduction (Meyers, 2016). As the UNCRPD emerges as the dominant tool for analyzing issues of injustice related to disability, it is similarly important to recognize its theoretical and other limitations in curtailing duress in situations of extreme material hardship.

Conclusion

The comparison of disability policy in Uganda and the US exemplifies how the direct import of western policy discourses can have limited, and potentially adverse, ramifications to a state's cultural and political response to disability rights and social justice. Such replication not only can transfer similar problems across cultural contexts, but can also magnify instances of exclusionary practices unique to each context. The comparative analysis can be used in understanding both the strengths and limitations of the rights based framework.

Future exchange and analysis may consider how to create more parity in knowledge production and dissemination, while maintaining a critical awareness of socio-cultural differences in interpretation and implementation. Realizing the UNCRPD framework suggests a particular responsibility of global powers to support the actualization of disability rights, while segueing leadership to local actors in government and civil society. For example, future comparative analysis of disability rights across the north-south divide may further consider the extraterritorial obligations of ratification, considering the legal and moral obligations of state governments in the global north to advance the UNCRPD in practice (Kanter, 2015). A limitation in using the UNCRPD framework to analyze implementation across cultural contexts is that the US, as signatories, do not necessarily have a legal obligation to mediate or support in Uganda's implementation. The desire to maintain some semblance of moral authority in a time of waning reputation among the international community, begs consideration for the US's ratification of the Convention to support future learning and exchange. Furthermore, as a leader in Africa's advancing of disability rights networks, Uganda is compelled to develop implementation measures to ensure the

progressive realization of rights. In both cases, the UNCRPD offers at least a partial framework to advance the situation of persons with disabilities in the employment context.

Notes

¹ We use the term ‘persons with disabilities’ to reflect the language used in the UNCRPD and domestic law in Uganda. While US law and policy commonly refers to ‘people with disabilities’, we use the term ‘persons’ for consistency. We recognize the preferred term ‘disabled people’ by many activists and civil society organizations that are integral to the monitoring and realization of rights-based frameworks.

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