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Inclusion of Visually Impaired and Deaf Students in Kenya: A Call for Action

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INCLUSION OF VISUALLY IMPAIRED AND DEAF STUDENTS IN UNIVERSITIES IN KENYA: A CALL FOR ACTION

Edwin O. Abuya* and Jane W. Githinji**

Abstract: Drawing on field data, this Article reviews the experiences of visually impaired and deaf students (VIDS) in select universities in Kenya. The paper argues that, unlike able bodied students, these learners face discrimination in these institutions. The Article focuses on three spaces where VIDS are excluded: the admission process, the learning, and the examination environments. To counter the unfair treatment, the paper proposes three solutions that VIDS and stakeholders should consider. These are consistent with legal requirements on access to education by VIDS. Firstly, course instructors should be robustly engaged with. Further, universities should provide adequate and timely information should be provided to these learners. Finally, universities should invest in facilities that will promote the fundamental right to education. The piece concludes with the proposition that duty bearers need to do more in order to safeguard the legal entitlements due to VIDS.

Two and a half months down the line [after reporting to the University of Nairobi], we are waiting for assistive devices to be procured by the University. [Yet] we were informed that ... the University would prepare for us. ... It was only after admission ... when we went to ask for assistive devices that the process of obtaining funds and procurement was started.¹

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¹ Interview with Solomon, UON Student (Aug. 8, 2013).

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INTRODUCTION

Many students with disabilities² (“SWDs”) such as Solomon (quoted above) face several hurdles accessing university education in Kenya. Although this situation is not unique,³ domestic and international laws require State and non-State⁴ education providers to guarantee the right to education for all SWDS.⁵ Meeting legal requirements requires universities to facilitate access to all spaces within the institution. For visually impaired and deaf students (“VIDS”), this obligation entails investing in the appropriate technology, tools, and personnel. Like any other learners, VIDS should be able to navigate the entire learning environment with relative ease. Failure by universities to comply with these fundamental obligations has drastic consequences for the lives and livelihoods of VIDS.

To what extent do VIDS enjoy their fundamental right of education in the universities that admit them? This is the central question grappled with by this paper. Their inclusion in the learning process, as mentioned above, requires significant investment. Usually the facilities that are required to promote inclusive learning are expensive.⁶ It is not unusual for an

² The term “disability” in Kenya means “a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation.” Persons with Disabilities Act (2003) §2 (Act No. 14/2003, L.N. 64/2004, L.N. 182/2009) (Kenya) [hereinafter PDA].

³ See Hisham Salih & Toshubumi Kakizawa, *Evaluating the Learning Setting and Identifying the Study Needs of Students with Visual Impairment at the University of Khartoum in Sudan*, 4 J. OF SPECIAL EDUC. RSCH. 29 (2016); Abdreheaman Abdella, *Instructors’ Willingness to Provide Instructional Accommodations for Students with Disabilities Selected Universities in Ethiopia*, 22 INT’L J. OF INCLUSIVE EDUC. 671 (2018); Lawrence Nhemachena et al., *An Evaluation of Inclusive Education of Students with Visual Impairment in Schools and University in Beira, Mozambique*, J. OF THE AM. ACAD. OF SPECIAL EDUC. PRO. 76 (2012).

⁴ “State” meaning “public” or “state-run,” and non-state meaning “private” educational institutions.

⁵ African Union (AU), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (“African Disability Protocol”) art. 16 Jan. 29, 2018; PDA, *supra* note 2, at §2.

⁶ See also Bathseba Opini, *Examining the Motivations of Women Students with Disabilities’ Participation in University Education in Kenya*, 14 SCANDINAVIAN DISABILITY RSCH. 74, 82 (May 1, 2012); Veronica Kiama, *Factors that Hinder Promotion of Autistic Children into Inclusive Education in Public Primary Schools in Kenya: A Case of Integrated Schools in Nairobi County* (2012) (M.A. dissertation, University of Nairobi).

institution to claim that it lacks resources to procure the relevant amenities.⁷ Yet international and domestic laws require duty bearers to ensure that VIDS, like any other students, have full access to the learning set up. Solomon's account shows the hardships some students face in their quest to access university education in the country. Clearly, the failure to include VIDS has serious results. In addition to denying these learners their education rights, it also compromises their enjoyment of a wide range of other human rights—including access to employment as well as the right to dignified treatment and privacy rights. To avoid these consequences, universities must ensure that a level playing field is present at all times. To put it in another way, all barriers of access must be removed in order to guarantee equality and quality education for VIDS. Otherwise, an institution violates the law. While it may not be possible to restore a student's sight or ability to hear, compliance with the legal requirements requires institutions to ensure VIDS are able to pursue their learning uninterrupted. The basic test is whether VIDS are at par with their non-disabled colleagues.

Using Kenya as an example, this article reviews the extent to which VIDS enjoy their fundamental right of university education. During the drafting process of the Convention on the Rights of Persons with Disabilities ("CRPD"),⁸ the UN Deputy Secretary-General contended that "on paper" these students "may have enjoyed the same rights" as their abled colleagues;⁹ however, in "real life," these students "have often been relegated to the margins."¹⁰ This article tests the Deputy Secretary-General's hypothesis. It takes up the challenge the UN General Assembly gave researchers in 1977, namely, to engage in "research projects designed to facilitate the practical participation of disabled persons on daily life."¹¹ To appreciate the situation on the ground, the paper draws on fieldwork conducted in select Kenyan Universities. The researchers used the snowball system of identifying research subjects.¹² Once an interviewee had agreed to share their experience, h/she was then requested to approach

⁷ See *Wilson Macharia v. Safaricom Plc* (2021) eKLR, ¶18 (H.C.K.) (Kenya) (where the Respondent argued that "there were no budgetary provisions" to undertake the necessary accommodations); *Juliet Muema v. Smollan Kenya Ltd.* (2019) eKLR, 5 (Emp. and Lab. Rel Ct. at Nairobi) (Kenya) (where the company argued that the "cost [of the proposed accommodation] was a bar or prohibitive").

⁸ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD].

⁹ U.N. GAOR, 61st Sess., 76th plen. mtg. at 2, U.N. Doc. A/61/PV.76 (Dec. 13, 2006).

¹⁰ *Id.*

¹¹ U.N. GAOR, 32nd Sess., at ¶ (c), U.N. Doc. A/C.3/32/L.51 (Dec. 5, 1977).

¹² For a discussion of this mode of data collection, see Patrick Biernacki & Dan Waldorf, *Snowball Sampling: Problems and Technics of Chain Referral Sampling*, 10 SOCIO. METHODS AND RSCH. 141 (1981); Geoffrey Otieno Muga, *Food Security in the Households Headed by the Elderly Caretakers in Nyang'oma Sub-location, Bondo District of Western Kenya*, 30 (2006) (M.A. dissertation, University of Nairobi).

other potential interviewees. The purpose of the interview was explained to each individual. Those who agreed to participate were then further engaged. To ensure maximum participation, open-ended questions were used. All interviews were conducted in English. Two private universities—Catholic University of Eastern Africa (“CUEA”) and United States International University (“USIU”)—and two public universities—University of Nairobi (“UON”) and Kenyatta University (“KU”) were sampled. This approach allows us to compare experiences on access to education in different settings. The universities were chosen on the basis of being in the top ten list of best performing universities in Kenya.

A total (N) of 94 participants were interviewed. Seventy five (80%) were visually impaired, while nineteen (20%) had hearing difficulties. In addition to VIDS, staff at the select Universities (N=16) were also interviewed. Table one below captures the interviewees. Interviews sought to gain the experience of interviewees within these learning institutions, asking key questions such as: What challenges did they face? How could these difficulties be overcome? Who are the responsible players? To maintain confidentiality, this article uses pseudonyms.¹³

| University | Visually impaired students | Students with hearing difficulties | Total |
|--------------|----------------------------|------------------------------------|-----------|
| UON | 9 | 3 | 12 |
| KU | 64 | 16 | 80 |
| CUEA | 2 | 0 | 2 |
| USIU | 0 | 0 | 0 |
| TOTAL | 75 | 19 | 94 |

Table One: Number VIDS interviewed

This paper is divided into three sections. In section two, the chapter reviews hurdles which VIDS have historically experienced (and continue to experience) in Kenyan universities. These hurdles compromise VIDS’s right to education. Three hurdles are identifiable. The first barrier is admissions requirements for entry into a University. The second barrier is the challenges posed by access to the physical environment, namely, classrooms and libraries. Lastly, these learners face significant difficulties with writing examinations. Section three addresses what measures educational institutions should take to overcome these hurdles. The paper concludes with the proposition that all concerned persons must join hands in order to ensure safeguard of fundamental right of education for VIDS.

¹³ See also C.A. MUMMA-MARTINON, THESIS WRITING: A PRACTICAL GUIDE FOR STUDENTS AND SUPERVISORS, NAIROBI: ROYALLITE ACADEMIC 120 (2021) (advocating for confidentiality when reporting the results of fieldwork).

I. CHALLENGES OF INCLUSION INTO THE LEARNING ENVIRONMENT

A. *The First Hurdle: Admission Into a University*

For VIDS in Kenya, admission to a university program involves significant hurdles. For one, each degree program involves meeting a specific “cut off” based on the students’ secondary grades. For VIDS, systemic problems and access issues at the secondary level make it difficult to achieve the required grades for many desired degree programs. In addition, universities—especially private universities—offer too few seats for VID students.

1. *Admissions for Visually-Impaired Students*

In Kenya, students who complete secondary school can apply for admission into public or private universities.¹⁴ As of the date the research was conducted, both private and public universities utilized a system with cut-off points, or grade thresholds, meaning that applicants with higher grades or marks in secondary school enjoy a wider range of degree programs to choose from. Students seeking admission into private universities could submit applications directly to their preferred institution(s). If the student met the grade requirement for the degree course that they had applied for, the university would extend an offer. Then, upon meeting the admission criteria, the university would admit the applicant. On the other hand, applications to public universities were processed by a central Government agency, the Joint Admissions Board (“JAB”),¹⁵ which also administered the system of grade cut-off points for various degree courses. Failure by a private or public University to refuse to admit to accept an applicant on the basis of their disability is unlawful.¹⁶

Kenyan Universities programs are competitive. Owing to several years of marginalization and discrimination,¹⁷ SWDS are usually unable to compete with their non-disabled counterparts for the few university seats

¹⁴ See The Universities Act, No. 42 (2012) § 3 (Kenya).

¹⁵ Currently, the Kenya Universities and Colleges Central Placement Service (KUCCPS), a State Corporation, governs the admission of students applying to join public universities in the country. See KENYA GOV'T, KENYA U. AND C. CENT. PLACEMENT SERV., <https://kuccps.net/> (last visited Sept. 1, 2022).

¹⁶ See CONSTITUTION art. 27 §4 (2010) (Kenya). Similar standards exist in other jurisdictions. See *Australian Disability Discrimination Act 1992* (Cth) s 22 (Austl.).

¹⁷ See CPRD, *supra* note 8, at preamble ¶(t) (“Highlighting the fact that the majority of persons with disabilities live in conditions of poverty”). See also the preamble to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (“African Disability Protocol) *supra* note 5 (noting that “[SWDS] experience extreme levels of poverty”).

and courses.¹⁸ To deal with the negative consequences of this state of affairs and create an equal playing field, the JAB decided to lower entry marks into the University for the disabled category of learners.¹⁹ These measures are consistent with Kenya's Persons with Disability Act ("PDA"). Section 18(1) of this legislation accords SWDS the right to university education. Further, sub-section (2) requires learning institutions to take into account the special needs of SWDs during, among other activities, the admission process:

Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

The PDA requires public and private universities to ensure that VIDS have all the necessary learning tools. According to this statute in section 2, universities are required to provide these students with "assistive devices and services," which will guarantee their access to education. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009 ("PDA Regulations") reinforces this position. According to these regulations, universities are required to "ensure" that VIDS "are reasonably accommodated".²⁰ This legal framework creates a positive and a negative obligation. The law imposes upon universities the positive requirement to put in place adequate facilities to ensure that the learning process for VIDS proceeds uninterrupted at all times. The negative obligation, on the other hand, requires these institutions to refrain from erecting any barrier which would curtail the access to education by VIDS.²¹ In terms of material content, universities are required to provide VIDS with "core services."²² These include:

¹⁸ Nafisa Mayat & Seyi Amosun, *Perceptions of Academic Staff Toward Accommodating Students with Disabilities in a Civil Engineering Undergraduate Program in a University in South Africa*, 24 J. OF POSTSECONDARY EDUC. AND DISABILITY 53, 54 (2011) (contending that SWDS "were still under-represented in the Faculties of Science and Engineering because of a misconception among the academic staff that students with disabilities could not fulfil all the criteria required to complete the academic programs"); Tawanda Majoko, *Participation in Higher Education: Voices of Students with Disabilities*, 5 COGENT EDUC. 1, 3 (2018) (observing that SWDS "in higher education institutions are more vulnerable to poor academic performance in comparison with their peers without disabilities because of several barriers they experience").

¹⁹ Interview with Walter, KU University Official (July 11, 2013).

²⁰ Persons With Disabilities (Access to Employment, Services and Facilities) Regulations (2009) Rule 9(2) (Kenya) [hereinafter PDA Regulations].

²¹ See Dr. Tatu Kamau v. The Attorney General and Others (2021) eKLR at para 175 (Kenya) (L.A. Achode, K. Kimondo and M.W. Muigai J) (affirming the obligations) [hereinafter *Kamau v. The Attorney General*].

²² PDA Regulations, *supra* note 20, at rule 9 (3).

- (a) sign language;
- (b) oral and tactile interpreter services or other technological alternatives;
- (c) textbooks and other educational materials in alternative media, including, but not limited to, large print, braille, electronic format, and audio tape;
- (d) access to adaptive equipment including FM communicators, closed caption devices, amplified telephone receivers, closed circuit televisions, low-vision reading aids, player and recorders for 15/16 4-track tapes, photocopy machines able to use eleven-by-seventeen inch paper, braille devices, and computer enhancements;
- (e) release of syllabi, study guides, and other appropriate instructor-produced materials in advance of general distribution, and access beyond the regular classroom session to slides, films, overheads and other media and taping of lectures.²³

Under international law, as reflected by the UN Committee on Economic Social and Cultural Rights (“CESCR”), all forms and level of education should exhibit the following interrelated and essential features: availability, accessibility, acceptability and adaptability.²⁴ Accessibility includes three overlapping dimensions: non-discrimination, physical accessibility, and economic accessibility.²⁵ Non-discrimination means that education must be accessible to all, especially the most vulnerable groups, in law and in fact, without discrimination. Simply put, the CESCR mandates that all barriers of access to learning must be removed.

While the JAB reviewed the entry grade for visually impaired students,²⁶ some schools remained inflexible. This in turn had serious consequences on the course, which VIDS could select. For example, Solomon, a student at UON, lost the opportunity to pursue his dream course at the School of Law due to rigid rules:

²³ *Id.* at rule 9(4).

²⁴ United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art.13), at para 6(a)–(d), U.N. Doc. E/C.12/1999/10 (1999).

²⁵ *Id.* at para. 6(b).

²⁶ Interview with Morrison, JAB Official (July 11, 2013).

I wanted to do Law but the required grade for English is still B plain for all students. I obtained a B minus and lost the opportunity.²⁷

In Kenya, The Council of Legal Education regulates legal education.²⁸ The relevant rules require that students must have attained an overall grade of C plus and a B plain in English in order to study law.²⁹ A number of students with visual impairments found themselves locked out their preferred courses, not because of the lack of qualifications, but owing to transcription errors occurring when students' papers are translated from braille to English. Listen to the following narratives:

This is not fair as we write in Braille. The English papers are then transcribed before marking and errors are often made. We do not also have access to most written material like other students. The English grade should be lowered to C plus.³⁰

I obtained a grade of D plus in mathematics, but after remarking this was raised to B minus. A lot of errors are made when the papers are being transcribed. Last year no student with visual disability made a B plain in English.³¹

These blunders were costly to these students. This situation is quite troubling considering the limited course options available to VIDS:

Our choices are limited as our preference is courses that do not involve calculations and diagrams. The Council of Legal Education needs to consider revising this requirement.³²

In a nutshell, universities must be flexible when implementing the admission criteria, especially for VIDS. Universities must eradicate systematic transcription errors, such as those captured above.

The test of inclusive education involves two questions. First, does the environment enable VIDS to participate fully in the learning process? Second, has an institution removed all exclusionary barriers? Based on this rubric, increasing the number of slots for VIDS, without more, is insufficient. For a university to meet the standards it must fulfill this two-pronged test. Inclusion is ultimately about creating a right to belong to the

²⁷ Interview with Solomon, *supra* note 1.

²⁸ See Legal Education Act (No. 27 of 2012) § 8(1) (Kenya).

²⁹ See The Council of Legal Education Act (1995) Chapter 16A, First Schedule (Postgraduate Diploma, General Provisions) b (ii) (Kenya).

³⁰ Interview with Solomon, *supra* note 1.

³¹ Interview with Jack, UON Student (June 16, 2013).

³² Interview with Solomon, *supra* note 1.

mainstream by eliminating discrimination and working towards equality for all.³³

2. *Admissions for Hearing-Impaired Students*

Hearing-impaired students enjoy a robust protection regime under Kenya's Constitution. Beginning with Article 7, the Government is obligated to "promote the development and use of" Kenyan Sign Language ("KSL").³⁴ Articles 54 and 120 also reinforce the basic constitutional protection by entitling student with hearing impairments to use sign language, and identifying KSL as one of the "official languages of parliament," respectively.³⁵ Further, the right of a learner to use the language of their choice is guaranteed by Article 44 of the Constitution.³⁶ Kenya's position is consistent with the protection regime found at the international level. Under the CRPD, learning institutions are obligated to facilitate the "learning of sign language."³⁷ They are also required to promote the "linguistic identity of the deaf community."³⁸ These rights are significant. The right to a language ensures a person's right to "develop one's cognitive faculties and one's right to experience appropriate social interaction [which] are fundamental, inviolable rights."³⁹

Despite the legal guarantees, the position on the ground was quite different for hearing-impaired learners, too. The major difficulty faced by students with hearing impairments is that they do not understand or have a lot of difficulty understanding spoken language.⁴⁰ Moses from KU admitted having difficulties communicating with other students and staff: "My main problem here is the communication barrier."⁴¹ This problem arose because of the university admitting hearing-impaired students, but neglecting to take any further steps to enable these students "to take part in the normal life"⁴² of the institution. For students such as Moses to be able to communicate fully with members of the university community, the

³³ Panaiyotis Angelides & Christiana Aravi, *A Comparative Perspective on the Experiences of Deaf and Hard of Hearing Individuals as Students at Mainstream and Special Schools*, AM. ANNALS DEAF 467, 484 (2006/2007).

³⁴ CONSTITUTION art. 7 (2010) (Kenya).

³⁵ *Id.* at art. 54, 120.

³⁶ *Id.* at art. 44.

³⁷ CPRD, *supra* note 8, at art. 24 § (3)(b).

³⁸ *Id.*

³⁹ Sarah Trovato, *A Stronger Reason for the Right to Sign Languages*, 13 SIGN LANGUAGE STUD. 401, 412 (2013).

⁴⁰ Legislation in other countries has addressed this issue. *See* for instance, the Indian Rights of Persons with Disabilities Act, 2016, §16(v) (India) (requiring academic institutions to ensure that the education of deaf students is "imparted" in the most appropriate. . . modes and means of communication); Persons with Disabilities Act (2011) §16 (Sierra Leone) (calling on educational institutions "to introduce sign language").

⁴¹ Interview with Moses, UON Student (July 10, 2013).

⁴² Persons with Disabilities Act, 2010, §3 (Tanzania).

institution has to take action. Otherwise, these learners will continue to be excluded from the university environment.⁴³ Further, their rights of access to information, which the Kenyan constitution guarantees in article 35, will be violated.⁴⁴ So, too, will other fundamental rights, including the right to dignity⁴⁵ and equality⁴⁶ as well as the freedom of expression.⁴⁷ Yet, these rights, as emphasized by Kenya's High Court, are key "foundational values."⁴⁸

B. The Second Hurdle: Access to Classrooms and Libraries

Access to classrooms and libraries is the second hurdle that VIDS experience in Kenyan universities. These spaces are vital to learners for several reasons. Primarily, it is here that learning and research occurs. Further, it is in these environments that students engage with course instructors and their colleagues. Consequently, it is important for universities to ensure that they have sufficient class room and library space.⁴⁹ In addition, all learners should have unlimited access to these spaces.⁵⁰ Despite legal guarantees, several challenges were noted on the ground. The remainder of this section evaluates this theme.

1. Access to Classrooms

Kenya has a robust legal framework for protection of access to the learning environment for VIDS. Primarily, the Constitution requires universities to promote the diversity of languages in the country.⁵¹ As mentioned earlier, KSL is one of the official languages in the country. Universities are required to "promote the development and use of" "Braille and other communication formats and technologies,"⁵² which SWDS can access. The PDA provides a further protection layer. Under the terms of this legislation universities are required to provide "assistive devices and

⁴³ Lucas Magongwa, *Deaf Education in South Africa*, 155 AM. ANNALS DEAF, 493, 494 (2010).

⁴⁴ CONSTITUTION art. 34 (2010) (Kenya).

⁴⁵ Guaranteed by *id.* at art. 28.

⁴⁶ *Id.* at art. 27.

⁴⁷ *Id.* at art. 33.

⁴⁸ Kamau v. The Attorney General, *supra* note 21, at para. 199; *see also* Republic v. Kenya National Examinations Council & Anor Ex Parte Audrey Mbugua Ithibu (2014) K.L.R. (Kenya) (describing dignity as "the cornerstone of the other human rights enshrined in the Constitution") (per Korir J).

⁴⁹ *See* Universities Act (2012) No. 42/2012 §3 (Kenya) (requiring institutions to promote "equalization" of SWDS).

⁵⁰ *See* African Disability Protocol, *supra* note 5, at art. 15, 16(3).

⁵¹ CONSTITUTION art. 7(3)(a) (2010) (Kenya) (requiring Government to "promote and protect the diversity of language of the people of Kenya").

⁵² CONSTITUTION art. 7, 54 (2010) (Kenya).

services”⁵³ to VIDS in order to promote their rights to, among others, education. Section 2 of the PDA fleshes out this term to mean:

[I]mplements, tools and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to [SWDS].

The objective of this requirement is to ensure these learners are able to access the entire learning environment with ease. Further, the provision of these tools is designed to guarantee a level playing field. To put it in another way, section 2 seeks to guard against the discrimination⁵⁴ of VIDS. The purpose of providing these tools was discussed at the drafting of the CRPD. Mr. Aksin, a delegate from Turkey, contended:

Equal opportunity for all requires equal access to education, which will not be possible if disabled students do not have the appropriate facilities, particularly adaptive devices.⁵⁵

At the international level the United Nations Committee on Economic, Social and Cultural Rights has emphasized the need for universities to provide VIDS with these basic implements, as a way towards bringing them to the same level as their non-disabled colleagues. In its general comment No. 5 on persons with disabilities, this committee reiterated these institutions are required:

[T]o take positive action to reduce structural disadvantages and to give appropriate preferential treatment to [VIDS] in order to achieve the objectives of full participation and equality within [the institution].⁵⁶

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities⁵⁷ (“UN Disability Standard Rules”), which the UN promulgated in 1994, emphasized these fundamental goals. According to rule 4, the purpose of providing these tools is to ensure that VIDS “increase their level of independence in their daily living and [also] exercise their [basic] rights.”

⁵³ Persons with Disabilities Act, 2010, §3 (Tanzania).

⁵⁴ The PDA defines “discriminate” as according “different treatment to different persons solely or mainly as a result of their disabilities” PDA, *supra* note 2, at §2.

⁵⁵ U.N.G.A., 47th Sess., at 19, U.N. Doc. A/47/PV. 33 (Oct. 22, 1992).

⁵⁶ CESCR, General Comment No. 5: Persons With Disabilities, adopted at the Eleventh Session of the Committee on Economic, Social and Cultural Rights, at para 9, U.N. Doc. E/1995/22 (1995).

⁵⁷ G.A. Res. A/RES/48/96 (Mar. 4, 1994).

The situation on the ground was quite tricky for VIDS. Field data found that universities did not always arm them with the basic material. Interestingly, these learners were admitted without the necessary infrastructure being put in place. Most universities had hardly invested, for instance, in assistive devices. Under such circumstances it is difficult to understand how visually impaired learners can compete on an equal basis with other learners.⁵⁸ Many encountered several barriers. Jack of UON confirmed this:

I have been here for two weeks. I have been waiting for the procurement department to procure the software that I need to use.⁵⁹

Yet the law requires learning institutions to install an effective support system. In the absence of these structures it would be difficult to achieve the goal of inclusive education, which the sampled institutions undertook to achieve. The failure to remove exclusionary measures is discriminating and exclusionary.⁶⁰ Put differently, it is insufficient to admit VIDS into an academic institution. For the learning cycle to be completed, all exclusionary practices must be eradicated. The PDA calls on universities to ensure that VIDS are reasonably accommodated within these institutions.⁶¹ Further, this legislation fleshes out the material content of the obligation to provide VIDS with the necessary tools. Under this rule, a university is expected to provide visually impaired students with “textbooks and other educational materials in alternative media, including, but not limited to, large print, Braille, electronic format and audiotape.”⁶² The PDA further requires universities to provide VIDS with computer files or electronic versions of printed instructional materials and video materials that are captioned or accompanied by transcription of spoken text.⁶³ Despite these legal guarantees, the situation on the ground was quite different. Some institutions failed to adhere to these fundamental rules:

⁵⁸ See also African Disability Protocol, *supra* note 5, at art. 16 (requiring academic institutions to “ensure” that there is a level playing field).

⁵⁹ Interview with Jack, *supra* note 31.

⁶⁰ Maria B. Kaundjua, *Barriers Affecting Access to Health Information and Health Care Services Among the Deaf Community in Namibia*, 8 J. STUD. HUMAN. SOC. SCI. 37, 40 (2019).

⁶¹ PDA Regulations, *supra* note 20, at rule 9(2). A similar obligation exists at the regional level. Article 3(g) of the *African Disability Protocol* sets out “reasonable accommodation” as a fundamental principle for interpreting this treaty. African Disability Protocol, *supra* note 5, at art. 3(g).

⁶² PDA Regulations, *supra* note 20, at rule 9(3)(c).

⁶³ *Id.* at rule 6.

I reported to school at the end of May. Three months down the line, I have no Braille machine and no laptop. I have to listen to the teacher and then organize with my friends to read for me their notes.⁶⁴

This narrative is quite troubling. Is this practice not discriminatory and exclusionary? Further, this kind of situation where a learner has to rely on their colleagues is likely to affect one's dignity and lower their self-esteem. The main objective of the principal of inclusive education is that all learners should learn at the same pace.⁶⁵ Universities must, therefore, recognize the diverse needs of VIDS by having support services to match their needs.⁶⁶

In order to cope with this undesirable condition some VIDS decided to take matters into their hands. This coping mechanism, which has been noted in countries such as Uganda⁶⁷ and Tanzania,⁶⁸ enabled them to surmount the hurdles that they faced previously. Hence, they were able to move at the same pace as their abled colleagues. As Thomas from UON explained, "I bought myself a laptop, as that was the only way I could survive."⁶⁹ While this intervention removed the barrier that he initially faced, this step is less ideal. From this narrative it appears that Thomas had the means to purchase the equipment that he required in order to advance his learning. Even so, this was not the situation across the board. How about other students who have modest resources? This cohort was forced to wait until the university or a well-wisher provided the required material. The longer this process took, the more stressful the learning process became.

Academic institutions need to be committed, if VIDS are to enjoy the rights due to them. Adequate resources must be allocated by these institutions for this project to bear fruit.⁷⁰ A change in attitude on the part

⁶⁴ Interview with Lawrence, UON Student (Aug. 8, 2013).

⁶⁵ See also Ruth Mampane, *Resilience in the Continuum of Support, Juxtaposing Inclusive Education and Special Education Systems*, 22 S. AFRICAN REV. OF EDUC. 115, 116 (2016).

⁶⁶ See also Sourav Mukhopadhyay et al., *Inclusive Education for Learners with Disabilities in Botswana Primary Schools*, 2 SAGE OPEN 1, 8 (2012).

⁶⁷ See generally Rebecca Apolot, *Maternal and Newborn Health Needs for Women with Walking Disabilities: "The Twists and Turns": A Case Study in Kibuku District Uganda*, 18 INT'L J. EQUITY HEALTH 1 (2019).

⁶⁸ Joseph Milinga, *Educating Students with Disabilities in Inclusive Schools: Results from Two Schools in Tanzania*, 7 J. ADVOC., RSCH. EDUC. 134, 141–143 (2016).

⁶⁹ Interview with Thomas, UON Student (June 20, 2013).

⁷⁰ See the discussion in part II(c) below.

of University is also crucial. Several studies affirm this proposition.⁷¹ Francis Simui describes positive attitude as a “the most critical enabler to academic progression and ... success” for VIDS.⁷² While according to Lawrence Nhemachena, an encouraging attitude has an impact on “the way inclusion is managed for [SWDS] to benefit from it.”⁷³ The negative attitude of University staff, by contrast, can seriously undermine the level of support that VIDS can receive.⁷⁴ In order to avoid these adverse effects, some universities in Kenya undertook robust measures. The KU is an example of an institution that took into account the special needs of VIDS. The following experiences of Miriam and Walter affirm this position:

I wanted to do Braille music. I put my request to the Director of Disability Services. The University brought a teacher from outside who is trained in Braille Music for my case.⁷⁵

Every visually impaired student is provided with a Braille machine on admission to KU. There are also technicians to repair the machines.⁷⁶

At the drafting process of the CRPD, a Canadian delegate, Mr. Halliday, contended that “many disabled individuals are still frozen out of the decision-making processes that affect their lives.”⁷⁷ These experiences challenge this assertion. Miriam in particular was able, firstly, to undertake a course of her choice. This position is consistent with the *Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa* (“*African Disability Protocol*”),⁷⁸ which requires academic institutions on the continent to ensure “appropriate schooling

⁷¹ See Francis Simui, *Lived Experiences of Students with Visual Impairments at SIM University in Zambia: A Hermeneutic Phenomenological Approach* (Jan 2018) (Ph.D. thesis, University of Zambia); Lawrence Nhemachena et al., *An Evaluation of Inclusive Education of Students with Visual Impairment in Schools and University in Beira, Mozambique*, J. OF THE AM. ACAD. OF SPECIAL EDUC. PROF. 76 (2012). See generally Gert Rooy & Pempelani Mufune, *Experiences and Perceptions of HIV/AIDS and Sex Among People with Disabilities in Windhoek, Namibia*, 32 SEXUALITY & DISABILITY 311 (2014).

⁷² Simui, *supra* note 71, at 101.

⁷³ Simui, *supra* note 71, at 89.

⁷⁴ See CRPD, *supra* note 8, at 3, 70 ¶(e) (“Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”).

⁷⁵ Interview with Miriam, KU Student (June 10, 2013).

⁷⁶ Interview with Walter, KU University Official (July 4, 2013).

⁷⁷ U.N. GAOR, 47th Sess., U.N. Doc. A/47/PV. 35, at 76 (Oct. 26, 1992).

⁷⁸ African Disability Protocol, *supra* note 5.

choices”⁷⁹ are available to all VIDS. Further, since the university provided the necessary support system, the learning process for Miriam and Walter continued uninterrupted. To put it in another way, they were able to fully integrate in the school environment. Doubtless, these actions promoted the realization of access to inclusive education.

However, focusing on content delivery alone, as Paseka Mosia and Nareadi Phasha⁸⁰ contend, is unsatisfactory. This is a narrow view to take. The right to education for SWDS is much broader. To guarantee this entitlement one needs to think beyond the teaching environment. Sufficient attention must be paid to all the spaces that learners interact with in the University. Like the situation between learners and instructors, academic institutions are duty bound to set up appropriate and accessible spaces for all learners to freely interact. It is within these settings that students are able to socialize as well as exchange ideas and perspectives. This interaction is beneficial to SWDS and their able-bodied colleagues. Obadiah Nthia contends that these relations enable students “to develop such virtues as being accommodating, accepting, cooperative, considerate, patient, humble, and supportive.”⁸¹ For those with hearing impairments to be fully integrated, an academic institution must establish the right tools and services. Otherwise it will be extremely difficult for these learners to participate fully within the academic community. The advantages, which accrue from these engagements, will also be all together lost. In the language of the CRPD, learning should be:

Delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.⁸²

Kenya’s Constitution⁸³ and the PDA⁸⁴ reinforce this international obligation.

In spite of these legal guarantees, VIDS in KU and the UON expressed a lot of concern with regards to the frameworks established in these institutions for interaction between students. Many faced difficulties

⁷⁹ *Id.* at art. 16(3)(e).

⁸⁰ See generally Paseka Mosia & Nareadi Phasha, *Access to Curriculum for Students with Disabilities at Higher Education Institutions: How Does the National University of Lesotho Fare?*, 1 AFR. J. OF DISABILITY 13 (2017).

⁸¹ Obadiah Nthia, *Constraints Facing Inclusive Education for Children with Special Needs in Public Primary Schools in Embu District, Embu County, Kenya* (May 2012) (M.Ed. thesis, Kenyatta University).

⁸² CRPD, *supra* note 8, at art. 24 §(3)(c)

⁸³ See CONSTITUTION art. 54 (2010) (Kenya); See also CONSTITUTION art. 120 (2010) (Kenya).

⁸⁴ Persons with Disabilities Act (2012) No. 14 §18.2 (Kenya).

communicating with their fellow students due to language barriers. The main mode of communication within these institutions is the spoken or written word. Yet students with hearing impairments use KSL to communicate. According to Moses from KU, “I face poor interaction with other students due to language barrier.”⁸⁵ Lucas Magongwa asserts persuasively that hearing impairments become a disability when sign language is not recognized.⁸⁶ While the formal recognition of language is a step in the right direction, it is by itself not enough. To produce results on the ground, the language of the law must be matched with actual practice. Further, we need to realize that the deaf are not by the fact that they have a hearing impairment disabled. The problem lies in the failure by Universities to recognize that these students are facing an obstacle, which requires use of a different language to surmount.⁸⁷ Towards this end, the CRPD requires academic institutions to facilitate the “learning of sign language and the promotion of the linguistic identity of the deaf community.”⁸⁸ These institutions are also required to ensure that learning for these students is seamless.⁸⁹

Like students with visual impairments, those with hearing difficulties resorted to taking matters into their own hands. According to Samuel from the UON, ‘since I can talk I usually talk, then other students write down.’⁹⁰ Earlier on, this article noted the undesirable effects of academic institutions failing to provide the requisite amenities to VIDS. While the method that Samuel adopted may work in the short term, it is unsustainable in the long run. In addition, this technique depends a lot on the willingness and goodwill of the “other students” to maintain the back-and-forth conversation. If they choose not to, because of the tedious processes involved, students like Samuel will have no alternative but to disengage from the discussion. The net effect is to marginalize these learners.

Martin Musengi and Millicent Musyoka claim that universities in Africa have failed completely to accommodate students with hearing impairments.⁹¹ This claim is weak at several levels. In the first place, it is not based on empirical evidence. Secondly, the reality on the ground paints a very different picture. In order to improve learning by these students,

⁸⁵ Interview with Moses, *supra* note 41.

⁸⁶ Magongwa, *supra* note 43, at 493, 494.

⁸⁷ See also CRPD, *supra* note 8, at art. 24 §(3)(c).

⁸⁸ See *id.* at art. 24(2)(b).

⁸⁹ *Id.* at art. 24(2)(c) (calling on universities to deliver education “in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development”).

⁹⁰ Interview with Samuel, UON Student (Aug. 7 2013).

⁹¹ Martin Musengi & Millicent Musyoka, *Identifying and Inclusion of Deaf and Hard-of-Hearing Students in Higher Education: Lessons from Contrasting Policies and Practices in African and US Institutions*, in *INCLUSION AS SOCIAL JUSTICE: THEORY AND PRACTICE IN AFRICAN HIGHER EDUCATION* 178, 186 (Amasa Ndofirepi & Martin Musengi eds., 2020).

universities in Kenya and many countries on the continent⁹² have in fact taken specific measures. The UON, for example, is said to have trained some staff on KSL. This initiative was designed to promote effective communication between these staff and learners with hearing impairments:

University staff, and especially receptionists, have been trained in sign language as a way of disability mainstreaming.⁹³

While this was a positive step, the reach of this initiative was quite limited. Based on the authors' experience in the UON, the front-office staff who were (and still are) competent in KSL are very few. For this initiative to deliver, the training sessions would need to include also staff members in all campuses of the University as well as academics.⁹⁴ Research conducted in Tanzania established that these sessions are useful because they enable University personnel “to embrace inclusiveness and sensitivity in addressing” the needs of VIDS.⁹⁵ Students, too, need sufficient training on KSL. While this program requires a lot of resources to implement, this by itself is not a plausible reason that a duty bearer can advance for its failure to comply with its legal obligations.⁹⁶ In any event does this initiative not contribute immensely to the promotion of the “inclusive education system” that the CRPD guarantees?⁹⁷ It is also likely to reduce instances of discrimination and unequal treatment, which deaf students experience, to an all-time low.

In addition to training, Kenya's law creates an extra protection layer. Under the PDA universities are obligated to provide “assistive devices and services” to students with hearing impairments.⁹⁸ Section 2 of the legislation defines these amenities to mean:

[I]mplements, tools and specialised services (including the services of qualified interpreters for the deaf ...) provided to persons with disabilities to assist them in education

⁹² See generally Kenneth Muzata, *Teaching Skills of Special Education Students During Teaching Practice: The Case of the University of Zambia Pre-Service Special Education Students*, 1 MULTIDISCIPLINARY J. OF LANGUAGE & SOC. SCI. EDUC. 103 (2018); Philemon Akach, *Application of South African Sign Language (SALS) in a Bilingual-Bicultural Approach in Education of the Deaf* (2010) (Ph.D. thesis, University Free State), Emmy Orech, *Factors Influencing Students' Academic Performance in Ugandan Sign Language Courses at Kyambogo University, Uganda*, (2019) (M.Ed. in Special Needs Educ. thesis, Maseno University).

⁹³ Interview with Roselyn, UON Official (Aug. 7, 2013).

⁹⁴ CRPD, *supra* note 8, at art. 24 §(4).

⁹⁵ Rosemarie Nyigulila Mwaipopo et al., *Equity and Equality in Access to Higher Education: The Experiences of Students with Disabilities in Tanzania*, 6 RSCH. COMPAR. & INT'L. EDUC. 415, 426 (2011).

⁹⁶ See CONSTITUTION art. 20(5) (2010) (Kenya).

⁹⁷ CRPD, *supra* note 8, at art. 24 §(1).

⁹⁸ The Persons with Disability Act (2012) No. 14 §2 (Kenya).

A similar duty exists at the international level. According to the CRPD, universities must ensure that the education of students with hearing impairments is:

[D]elivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.⁹⁹

These are the bare minimum requirements. All academic institutions, which admit students with hearing impairments, must provide qualified interpreters and hearing aids. Granted, some positive steps have been noted in institutions such as the UON. Even so, learning is still a challenge, as the following narratives demonstrate:

The main barrier I face is lack of sign language interpreters during lectures and tutorial; hence, poor grasping of content delivered during the course.¹⁰⁰

There are no sign language interpreters in classes.¹⁰¹

I have now gone through a whole semester without sign language interpreters.¹⁰²

The lack of interpreters in some of these institutions in some ways explains the limited number of students with hearing disabilities in some of the universities sampled. According to Anthony, an official at KU:

The students are usually admitted but keep dropping out as they are not easily noticeable and there is a shortage of sign language interpreters.¹⁰³

As a way forward, Celeste Kelman and Angela Branco suggest that academic institutions should adopt the practice of co-teaching—assigning two teachers to work together in an inclusive class, a regular teacher and a teacher trained in sign language interpretation.¹⁰⁴ While this idea is laudable, it is a bit simplistic. In the first instance the authors appear to assume that interpretation is a mechanical process. University lectures usually run for several hours each day. If a student has tutorials—that is, small discussion groups to attend—they will be required to spend more

⁹⁹ CRPD, *supra* note 8, at art. 24 §(3)(c).

¹⁰⁰ Interview with Moses, *supra* note 41.

¹⁰¹ Interview with Samuel, UON Student (Aug. 7, 2013).

¹⁰² Interview with Stanley, UON Student (Aug. 7, 2013).

¹⁰³ Interview with Anthony, KU University Official (Jul. 19, 2013).

¹⁰⁴ Celeste Kelman & Angela Branco, *(Meta)communication Strategies in Inclusive Classes for Deaf Students*, 154 AM. ANNALS DEAF 371, 379 (2009).

time in a class. Considering this reality, is it practical to expect one interpreter to accompany a student to all these sessions? Further, interpreters usually have to take several rest breaks during any interpretation exercise.¹⁰⁵ Hence, it is unrealistic to expect one interpreter to be on duty for the entire duration. That said, this is not to imply that universities in Kenya should shirk their duties. On the contrary, they must provide the necessary support to all students with hearing difficulties. Otherwise, they will continue to struggle academically.

2. Access to Libraries

In a 1999 General Comment titled the *Right to Education*, the UN Office of the High Commissioner of Human Rights (“UNCHR”) described libraries as “essential” facilities in any academic institution.¹⁰⁶ The CRPD entitles SWDS to all support required from the university to facilitate their effective education.¹⁰⁷

Kenya’s Universities Act also contains a robust protection framework.¹⁰⁸ As a basic rule, all universities operating in the country are required to have a library.¹⁰⁹ For each academic program offered, institutions must have appropriate and sufficient space, reading material, and equipment.¹¹⁰ Although the Universities Act does not contain rules specific to SWDS, to claim that their special needs are overlooked would be a simplistic interpretation. By contrast, SWDSs’ rights are indeed captured by the fact that the legislation is designed to protect all students studying in Kenyan universities, irrespective of students’ unique situations.¹¹¹ Further, the statute should not be read in isolation. Rather, it needs to be looked in the context of other laws, including the Constitution and the *PDA* as well as the 1968 Building Code, all of which reinforce the rights accorded to SWDS.¹¹²

Accessibility of the library is especially important to any student. It is in this space that students conduct research, hold discussions with their

¹⁰⁵ See also Michael Feuerstein & Terence Fitzgerald, *Biomechanical Factors Affecting Upper Extremity Cumulative Trauma Disorders in Sign Language Interpreters*, 34 J. OCCUPATIONAL MED. 257, 259 (1992); TANIA MILETIC ET AL., VICTORIAN TRANSCULTURAL PSYCHIATRY UNIT, GUIDELINES FOR WORKING EFFECTIVELY WITH INTERPRETERS IN MENTAL HEALTH SETTINGS 17 (2006).

¹⁰⁶ CESCR, General Comment on the Right to Education (Art. 13) on its Twenty-First Session, ¶ 6a, E/C.12/1991/10 (Dec. 8, 1999).

¹⁰⁷ CRPD, *supra* note 8, at art. 24(1)(d).

¹⁰⁸ Universities Act, No. 42 (2016) (Kenya).

¹⁰⁹ See rule 7 of the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989, (“Universities Establishment Rules”) as well as rules 5 and 23 of the Standards of Physical Facilities.

¹¹⁰ *Id.* at rule 14(2); see also form ACC/CHE1 in the First Schedule (requiring Universities to detail the number of publications they hold).

¹¹¹ See *id.* at Preamble.

¹¹² CONSTITUTION art. 19–57 (2010) (Kenya). See generally *PDA*, *supra* note 2; Building Code (1968) (Kenya).

colleagues, and, of course, study. In the context of VIDS, several questions come to mind. To what extent were libraries easily reached physically by this category of learners? Are these spaces equipped with assistive devices? Are these devices sufficient? Are the materials available in an appropriate format, such as Braille?¹¹³ Are there sufficient staff?¹¹⁴ Have the staff undergone adequate training to enable them respond to the special needs of VIDS?¹¹⁵ These are some of the key considerations when assessing the extent to which a library complies with legal obligations. For VIDS accessibility means both *physical*—that is, they are able to reach the library—as well as *material* access—that is, they are able to reach any publication or facility within the library. If any of these elements is missing, the university library does not meet the legal requirements.¹¹⁶ Rachael, a student at both UON and KU, compared the two Universities in terms of library facilities:

I am a student of psychology at UON and Bachelor of Arts at KU. There are no computers in the library with adapted software for visually impaired students at UON. No one is available to attend to us and it is impossible to see the books. I have only used the library once and now am in 3rd year final semester. My main advantage is that I am a student of KU. I always have to come to KU to use the library and the books.¹¹⁷

The 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”) sets guidelines on access to material by visually impaired students.¹¹⁸ According to the preamble, universities must ensure that visually-impaired students have “access [to] published works.” Additionally, the frameworks universities establish should permit learners with visual impairments to “have access as feasibly and comfortably as a person without visual impairment or other print disability.”¹¹⁹ Moreover, these institutions need to “both expand the number of works in accessible

¹¹³ Several authors have addressed this theme. *See, e.g.*, JUSTICE PHUKUBJE, THE ROLE OF THE AUDIO-BRAILLE LIBRARY IN CONTRIBUTING TOWARDS ACADEMIC PERFORMANCE OF VISUALLY IMPAIRED STUDENTS AT THE UNIVERSITY OF LIMPOPO (2019); Namugenyi Aminah & Peter Wamea, *Effects of Information Seeking Behaviour on Accessibility of Library Services by Students with Visual Impairment in Uganda Christian University, Mukono*, 5 INT’L J. CURRENT ASPECTS 1 (2021).

¹¹⁴ *See also* rule 7(1)(e) of the Universities Establishment Rules (requiring Universities to have adequate staff in all spaces).

¹¹⁵ *See, for instance*, regulation 9.2 of the Kenyatta University *Disability Policies and Procedures* (February 2014); CRPD, *supra* note 8, at art. 24 §(4) (requiring university staff to be trained in sign language and/or Braille).

¹¹⁶ *See* PDA, *supra* note 2, at §18.2; CRPD, *supra* note 8, at art. 24 §(1), (2).

¹¹⁷ Interview with Rachael, KU and UON Student (July 10, 2013).

¹¹⁸ World Intellectual Property Organization, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled, Jun. 27, 2013.

¹¹⁹ *See id.* at art. 2(b).

formats and to improve the circulation of such works.”¹²⁰ Between the two surveyed institutions’ libraries, KU’s was more accommodating for the visually-impaired. As Rachael’s experience affirms, KU’s library contained a resource room for these learners. Further, the computers in the library were equipped with adaptive software, and there were scanners to convert hard copy documents into soft copy, as well as an embosser for converting documents into Braille. These resources are certainly not cheap. As mentioned earlier, inclusion of VIDS is a serious commitment for an academic institution. Anthony reminds us that, while “the software is expensive, the management is committed to this cause.”¹²¹

Compliance with the legal requirements also requires consideration of what physical accommodations an institution has installed to ensure that visually-impaired students can navigate the physical environment. Like other learners, VIDS should be able to physically access the library with relative ease. In multiple-storied buildings, elevators (lifts) are a basic requirement.¹²² The PDA emphasizes that VIDS “are entitled to a barrier-free and disability friendly environment to enable them to have access to buildings.” The CRPD’s preamble calls for facilities to be equipped to ensure that VIDS may “fully enjoy all human rights and fundamental freedoms.”

But experience in several African countries shows that VIDS experience serious difficulties when using elevators, difficulties the universities must address to uphold the duty to accommodate.¹²³ In addition to installing an elevator, the CRPD requires universities to ensure that elevators are designed to accommodate all users.¹²⁴ For one, this means that the elevators must be functional at all times. But universities must also ensure that proper equipment is installed, such as elevator buttons with Braille, to ensure that visually impaired students can operate the elevator. KU has taken a number of steps in this direction. At the time of this research, the lifts were fitted with buttons and emergency alarm bells, with Braille labels. Further, a loudspeaker voice confirmation informed visually impaired users of the floor that the elevator was on. These initiatives expanded library access for visually impaired students.

¹²⁰ See preamble to the *Marrakesh Treaty*.

¹²¹ Interview with Anthony, KU University Official (July 18, 2013).

¹²² See Building Code (1968) §87 (Kenya).

¹²³ See generally Rebecca Majinge & Christine Stilwell, *Library Services Provision for People with Visual Impairments and in Wheelchairs in Academic Libraries in Tanzania*, 79 S. AFRICAN J. LIBRS. & INFO. SCI. 39 (2013); Hellen Ocaya, *Outreach Library Services in Zambia: Possibilities*, 17 ZAMBIA LIBR. ASS’N J. 7 (1985); Daniel Ayoung et al., *Access to Library Services and Facilities by Persons with Disability: Insights from Academic Libraries in Ghana*, 53 J. LIBRARIANSHIP & INFO. SCI. 167 (2021).

¹²⁴ See CRPD, *supra* note 8, at art. 2 (defining “universal design” to mean “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed”).

But the situation at KU was far from perfect. While the university had taken great strides to include students with visual impairments, a number of challenges were still noticeable. As Robert and Juma pointed out, resources were not always adequate:

Sometimes the computers have broken down and particularly during exam time. All the computers that are working are always in use as there are less than twelve computers in the resource room. We have to depend on readers to read for us but they are not available during exam time.¹²⁵

The screen reader, which converts written material to large print, is only one. I cannot access it during exam time.¹²⁶

Considering at least 64 students with visual impairments were enrolled at KU, it is apparent that these circumstances were less than ideal. Clearly, demand for the adaptive equipment at the library exceeded the supply. The fact that these students needed to scramble to access academic material is of great concern.

The UON lacked facilities for visually impaired students. Despite being the oldest university in Kenya, it failed to meet its legal duty under Kenyan law. These learners were excluded completely from using the library. Consider the following narratives:

In my four years at the University, I did not use the library. There are no materials in Braille or adapted computers.¹²⁷

I cannot go to the library as there are no materials in Braille or assistive technology. I would have to go with someone to read for me and I would be making noise.¹²⁸

A similar situation was noted at CUEA:

I do not use the library. There are no computers with adapted software, nothing in Braille. There are no systems in place to cater for students with visual disabilities.¹²⁹

¹²⁵ Interview with Robert, KU Student (Aug. 7, 2013).

¹²⁶ Interview with Juma, KU Student (July 19, 2013).

¹²⁷ Interview with Thomas, *supra* note 69.

¹²⁸ Interview with Lawrence, *supra* note 64.

¹²⁹ Interview with Linda, CUEA Student (Aug. 23, 2013).

Is the situation at UON and CUEA not disturbing? Although this situation is not unique to Kenya,¹³⁰ the failure by these institutions to install a proper framework undermined the right of access to education by visually impaired students. It is quite unfortunate that some chose not to use the library. Unlike other learners, those who avoid the library are likely to miss out on information that can only be accessed in person in these spaces. Eventually, the avoidance approach is likely to impact on their academic performance, and future lives.

While students with hearing impairments were able to access the library space, they, too, encountered a number of barriers. As the case with visually impaired students, access to material in the library was a huge challenge. Listen to the following narratives from students based in the UON and KU, respectively:

I had difficulties accessing materials in the library as there are no sign language interpreters.¹³¹

There are no sign language interpreters in the library.¹³²

Libraries are “much more than reading rooms.”¹³³ These spaces need to meet the needs of all users. The experiences above demonstrate the extent to which the libraries in these institutions failed to accommodate the special needs of some learners. As the case with access to classrooms, this gap was bound to affect students with hearing impairments negatively. Elizabeth Kamchedzera argues that universities should construct separate libraries for SWDS.¹³⁴ This initiative alone cannot work. Meeting the special needs of VIDS calls on universities to undertake additional steps. In its 1994 statement titled, *The Salamanca Statement on Principles, Policy and Practice in Special Needs Education*, the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), underlined that these institutions need to deploy “appropriate and affordable technology,” as a way towards aiding “communication” and “learning” by SWDS.¹³⁵ The provision of the right equipment is not a luxury. By contrast, these are necessary entitlements that international and domestic laws guarantee

¹³⁰ See, e.g., Dorothy Eneya et al., University of Zululand Library and Inclusive Education: Responding to Needs of Students with Disabilities, 38 MOUSAION: S. AFRICAN J. INFO. STUD. 1, 10 (2020).

¹³¹ Interview with Samuel, UON Student (Aug. 7, 2013).

¹³² Interview with Stanley, KU Student (Aug. 7, 2013).

¹³³ Eneya, *supra* note 130, at 11.

¹³⁴ Elizabeth Kamchedzera, *Access and Equity for Students with Disabilities at the University of Malawi: The Case of Chancellor College*, in KNOWLEDGE FOR A SUSTAINABLE WORLD: A SOUTHERN AFRICAN-NORDIC CONTRIBUTION 71, 83 (Tor Halvorsen et al. eds., 2015).

¹³⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO), *The Salamanca Statement on Principles, Policy and Practice in Special Needs Education* (UNESCO Salamanca Principles), U.N. Doc. ED.94/WS/18, at ¶ 33 (June 7–10, 1994).

VIDS. Hence, Universities have a duty to comply with these legal requirements.

C. *The Third Hurdle: Examinations*

Students in Kenyan universities are required to write an examination at the end of each semester.¹³⁶ The idea is to test the extent which one understood the concepts, which the instructor covered. The examinations may either be open-book (students permitted to reference textbooks) or closed-book (students are not permitted to reference any external materials). On conclusion of the examination process, a student receives a letter grade. A number of questions arise in relation to the examination procedures of institutions, which admit VIDS. Are the VIDSs' special needs taken into account in regard to the setting and administration exams? Are they granted any extra time?¹³⁷ Are alternative formats like soft copies, Braille, and large-print script offered? Does the institution offer alternative methods of assessment?¹³⁸ These are crucial considerations that any university keen on safeguarding the rights of VIDS needs to consider. Section 18(2) of the PDA requires universities to contemplate the special needs of SWDs with respect to examinations, among others. Global academic institutions, such as the (UNESCO), have called on academic institutions to allocate “additional instructional support” to SWDS within the “regular”—not separate—curriculum.¹³⁹

The right to equal access to education does not imply that VIDS should be accorded preferential treatment. On the contrary, the policies and facilities are intended to bring them to the same level with their able-bodied colleagues. Hence, in the context of examinations, VIDS should write the same tests as the other students content-wise. Put differently, all students undertaking the same course should be assessed equally. In order to comply with the PDA, universities should put in place a suitable framework to enable SWDS to: (1) undertake examinations, and (2) undertake examinations with relative ease—that is, a similar ease to their able-bodied colleagues.

The CRPD also requires academic institutions to provide SWDS with the individual and collective “support” that they require “within the general

¹³⁶ See Universities Act (1985) §6(k) (Kenya).

¹³⁷ See also India's The Rights of Persons with Disabilities Act, 2016, 17(i) (requiring academic institutions to accord SWDS “extra time for completion of examination paper[s]”).

¹³⁸ See also African Disability Protocol, *supra* note 5, at art. 16 §(3)(g) (calling on universities to ensure that “multi-disciplinary” modes of assessment are deployed).

¹³⁹ UNESCO, *supra* note 135, at ¶ 29.

education system, to facilitate their effective education.”¹⁴⁰ Universities must therefore develop new teaching and examination techniques.¹⁴¹

KU had taken steps to accommodate learners with visual impairments, including providing its exams in different formats. Rachael, who was a student of both UON and KU, contrasted the two institutions:

I get large print exams in KU and I am given 30 minutes more time. On the other hand, there is no enough lighting at the examination hall at UON. Exams are not provided in large print and there is no provision for extra time.¹⁴²

Lawrence, from UON, also expressed concerns with the examination process:

The exams are two weeks away. We have not even done the continuous assessment tests since we do not have the assistive devices. Yet, the lecturers promised to give us an oral exam. This is truly isolating and discriminating.¹⁴³

While CUEA also took steps to accommodate visually impaired students, these initiatives did not deliver for all students, as affirmed by Linda:

CUEA had given me the option of oral testing. But I informed them that, if they put the exam in a flash disk, my Braille Note Taker can read for me and can convert my writings into Word. But services for Braille transcribers are also absent. My colleague uses a Braille machine. He is then given time to go and have his work deBrailled at his expense.¹⁴⁴

Failure by the UON and CUEA to grant additional or complete support to the above learners is of grave concern. Unlike other students, those with visual disabilities in particular need special tools to enable them navigate the stressful examination environment. The CRPD requires academic institutions to facilitate use of “Braille,” as a format of communication.¹⁴⁵ The practice in the KU was consistent with this fundamental rule. By contrast, the same cannot be said about the (then)

¹⁴⁰ See CRPD, *supra* note 8, at art. 24.

¹⁴¹ *Id.* at art. 24 § (4).

¹⁴² Interview with Rachael, KU/UON Student (July 10, 2013).

¹⁴³ Interview with Lawrence, *supra* note 64.

¹⁴⁴ Interview with Linda, CUEA Student (Aug. 23, 2013).

¹⁴⁵ See CRPD, *supra* note 8, at art. 21(b), art. 24(3)(b).

state of affairs in the other institutions, although in CUEA there is an indication that the University was partially compliant. Any student attempting an exam under the circumstances Rachael described would find it extremely tough.

Converting exam questions and answers back and forth between Braille and English is a time-consuming burden for VIDS during their examinations. Requiring a student to take additional steps in order to turn in their work, as Linda described, is quite problematic. In addition to human rights concerns, those with limited funding options were likely to suffer a great deal particularly if they are unable to de-braille their work within the time frame allocated by an examiner.

The process of de-brailing must be error-free to ensure that examinations are fair for VIDS. Data collected in Kenya¹⁴⁶ and Namibia¹⁴⁷ suggest that the service providers' proficiency and efficiency is of utmost importance. Any lapses in the conversion process can have a significant and detrimental effect upon exam performance. As Robert of KU explained, "a lot of errors occur in the [debrailing] process."¹⁴⁸ Non-compliance with the law has wide consequences. It is also likely to impact negatively on a learner's future life. For SWDS this is catastrophic considering the stigma that face in their daily lives.¹⁴⁹ Doubtless, these practices do very little to protect, promote, or preserve the freedom from discrimination and the right to human dignity, which the Kenyan Constitution guarantees to everyone in articles 27 and 28, respectively.¹⁵⁰

Universities should provide all visually-impaired students with proper equipment. At KU, this study was informed that every student with a visual disability is given a Braille machine upon admission. Exams are available in Braille, and the students' work is transcribed for the examination at the university's expense, not the students'. Other students, such as Thomas of UON, have suggested that the solution lies in embracing advanced technology:

¹⁴⁶ Hesbon Obado, *Teachers' Perceptions Towards De-Brailling of Works by Students with Visual Impairment in Secondary Schools for Visually Impaired Learners in Kenya* (2019) (unpublished Master of Education Special Needs Education thesis, Kenyatta University).

¹⁴⁷ Elina Tobias et al., *My Hands are My Eyes: The Use of Tactile and Model Representation*, 22 MOSENODI J. 1, 6 (2019).

¹⁴⁸ Interview with Robert, KU Student (Aug. 7, 2013).

¹⁴⁹ There is a wide range of literature on this subject. See generally, Femke Mbazzi et al., "Obuntu Bulamu"—*Development and Testing of an Indigenous Intervention for Disability Inclusion in Uganda*, 22 SCANDINAVIAN J. OF DISABILITY RSCH. 403 (2020); Rosemary Choma, *Effect of Stigma on Inclusiveness of Persons with Disabilities in Community Development Projects: A Case of Temeke District* (2019) (unpublished Master of Project Management thesis, Open University of Tanzania) (available at <http://repository.out.ac.tz/2543/1/DISSERTATION%20-%20ROSEMARY%20CHOMA%20-%20FINAL.pdf>); Emad Sidhom et al, *Patients' Perspectives on Stigma of Mental Illness (An Egyptian Study in a Private Hospital)*, 5 FRONTIERS IN PSYCHIATRY 1 (2014).

¹⁵⁰ CONSTITUTION art. 27, 28 (2010) (Kenya).

The important alternative is technology. Laptops allow you to type in Braille, while software converts your writings to word. [E]rrors of debrailing are therefore avoided.¹⁵¹

But simply providing the required gear, whether a braille machine or a laptop, is insufficient. Students with visual impairments have to enjoy the right to education at all times, with no interruptions caused by faulty or non-functional technology. To fulfil this obligation, universities must ensure that the equipment and facilities are in excellent working condition at all times. These tools must be serviced by qualified personnel at regular intervals such that they operate at their maximum level. Malfunctioning or broken equipment should be attended to immediately to ensure that a learner's education proceeds uninterrupted.

While KU's practice of providing equipment to visually impaired students was commendable, the system faced some challenges. A vast majority of the students interviewed (48, 75%), complained about the status of the equipment. In the words of Salim:

While I was doing the exam last week, my Braille machine broke down. It was repaired but then broke down again. I had to borrow from another student.¹⁵²

While the initiative that this learner took is sound, it is less ideal. Band-aid solutions, such as these, should be discouraged. These offer temporary solutions only. Focus should be on permanent solutions. The need for immediate technology support services at all times cannot be overemphasized. The idea of borrowing from colleagues is also very problematic. In their research on Kenya and Rwanda, respectively, George Ngundo¹⁵³ as well as Beth Nasiforo and Philothere Ntawiha¹⁵⁴ call for the regular maintenance and increase of all support services. This obligation entails an escalation in computers with software and uninterrupted access to materials in softcopy, as a way towards achieving the goal of inclusive education.

II. ADDRESSING THE DISCRIMINATORY BARRIERS: THREE PROPOSED STRATEGIES

¹⁵¹ Interview with Thomas, *supra* note 69.

¹⁵² Interview with Salim, KU Student (Aug. 7, 2013).

¹⁵³ George Ngundo, *Implementation of Inclusive Education in Kenyatta University Kenya* (2012) (Unpublished Master of Education thesis, Kenyatta University).

¹⁵⁴ Beth Nasiforo & Philothere Ntawiha, *Provision of Assistive Resources for Learners with Visual Impairment in Colleges of the University of Rwanda*, 5 RWANDAN J. OF EDUC. 21, 29 (2021).

During negotiations for the CRPD, Mr. Meguid, a representative from Egypt, called for “action” towards the plight facing PWDS as a way towards enabling them to “participate in the various fields of life.”¹⁵⁵ The preceding section discussed some of the challenges VIDS faced in the universities according to the Authors’ field research. This section examines three measures that stakeholders can take to overcome the discriminatory barriers identified in the preceding section.

A. *The First Measure: Engaging Course Instructors*

Lecturers were also not alerted about us.¹⁵⁶

[As a course instructor] I am not informed about the composition of my classes. It is the students who follow me after class to inform me of their impairments.¹⁵⁷

The majority of the students interviewed (75, 80%) confirmed that most course instructors were unaware of their presence and special needs. The sentiments of Lawrence (quoted above) aptly characterize the position on the ground at the time the data for this research was collected. As a result of the information gap, instructors were unable to accord these learners the accommodations to which they are entitled in order to fully access the learning environment. VIDS were treated as any other student, without regard for (or even recognition of) their special needs. As the preceding section has demonstrated, this had serious implications for VIDSs’ learning process. While this situation is not unique,¹⁵⁸ universities in Kenya cannot take comfort in the ubiquitousness of this situation.

As a first step, therefore, course instructors need to be acquainted with the composition of learners in their classes.¹⁵⁹ Mark’s sentiments (quoted above) underscore the value of identifying at the outset those learners who require special attention. Relevant educational information about each learner should be collected during the admissions process. Although this

¹⁵⁵ U.N. General Assembly, 36th Sess., 89th plen. mtg. at para. 331, U.N. Doc. A/36/PV.89 (Dec. 8, 1981).

¹⁵⁶ Interview with Lawrence, *supra* note 64.

¹⁵⁷ Interview with Mark, UON Instructor (Sept. 20, 2013).

¹⁵⁸ See generally, Hala Abdelhameed, *The Development and Provision of Educational Services for Children with Intellectual Disabilities in Egypt*, 16 REVISTA BRASILEIRA DE EDUCAÇÃO ESPECIAL 1 (2010); JN Zongozzi, *Accessible Quality Higher Education for Students with Disabilities in a South African Open Distance and e-Learning Institution: Challenges*, 67 INT’L J. OF DISABILITY, DEV. AND EDUC. 1 (2020).

¹⁵⁹ Research on inclusive education in Ethiopia has also underlined the importance of this same step. See Tamirta Ginja & Xiaoduan Chen, *Conceptualising Inclusive Education: The Role of Teacher Training and Teacher’s Attitudes Towards Inclusion of Children with Disabilities in Ethiopia*, INT’L J. OF INCLUSIVE EDUC. 1, 9 (2021).

data collection could pose challenges,¹⁶⁰ this should not bar this important undertaking. On the contrary, administrative staff should strive to ensure that all SWDS are captured in the database. These data should be brought to the attention of course instructors prior to commencement of lectures. This information can prevent lecturers from being unaware about VIDSs' presence, thus permitting the lecturers to provide VIDS a more accommodating learning environment—as contrasted with the experience in Mark's class.

Kenya's Bill of Rights binds all state organs and persons.¹⁶¹ Consequently, course instructors and the faculty administration have the primary obligation of finding students who require assistance. "Lecturers should take time to find out the composition of the class," as Samuel noted.¹⁶² Once they have identified these learners and the areas that need to be streamlined, the next step is for the institution to provide the requisite support. The overall objective is to enable VIDS "to acquire the skills, knowledge and competencies required."¹⁶³ Put differently, they should take all measures required to eliminate any "obstacle and barrier to accessibility."¹⁶⁴ It is through such initiatives that the overall goal of the PDA, namely, to "achieve equalisation of opportunities for" VIDS, will be met.

While Kenya's Constitution is emphatic that the implementation of the human rights and fundamental freedoms rests on the state and its organs,¹⁶⁵ the promotion, respect, and protection of these entitlements rest on a wide spectrum of stake holders.¹⁶⁶ Consequently, VIDS and student associations, too, should be involved in the engagement process. In particular, VIDS should take an active, not passive role. They should not shy away from providing information to the administration or individual instructors.¹⁶⁷ Considering the negative impact of non-disclosure, it is in SWDSs' best interest to make known their disabilities to all duty-bearers. Put differently, SWDS should be agents, not objects, in the data collection

¹⁶⁰ See generally, Phidea Mapunda et al., *Challenges in Identifying and Serving Students with Special Needs in Dodoma, Tanzania*, 11 INT'L J. OF CHILD CARE AND EDUC. POL'Y 1 (2017).

¹⁶¹ See CONSTITUTION art. 20 (2010) (Kenya).

¹⁶² Interview with Samuel, Student (Aug. 10, 2013).

¹⁶³ Emmanuel Moswela & Sourav Mukhopadhyay, *Asking for Too Much? The Voices of Students with Disabilities in Botswana*, 26 DISABILITY AND SOC'Y 307, 317 (2011).

¹⁶⁴ CRPD, *supra* note 8, at art. 9.

¹⁶⁵ *Id.* at art. 10, 21.

¹⁶⁶ See article 25 of the African (Banjul) Charter on Human and People's Rights (adopted 27 June, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) ("Banjul Charter"). See also CESCR, *supra* note 24, at para 60 (underscoring the obligations of non-state actors in the context of the right to education).

¹⁶⁷ Research conducted in South Africa has made this point. See Diane Bell et al., *Students with Hearing Impairment at a South African University: Self-Identity and Disclosure*, AFRICAN J. OF DISABILITY 1, 7 (2016) (noting how students "hid their hearing instruments in order to avoid being labelled and stigmatised as "deaf" or "disabled"").

process. As with the academic and administrative staff, the SWDS themselves also have an obligation to bring all the necessary information to the attention of the university as well as individual course instructors. In the context of VIDS in particular, the CRPD is emphatic in its preamble that VIDS have a responsibility to “strive for the promotion and observance of,” among others, the right to education.

Confidentiality and objectivity are of utmost concern when collecting data about any students, and especially SWDS. A university’s data collection method(s) should be objective and should promote “confidentiality and respect for the privacy”¹⁶⁸ of VIDS. The collected information should be stored in a safe place. Those who collect and collate data should observe internationally recognized standards from start to finish.¹⁶⁹ Following such procedures is likely to instill student confidence in the data collection process. In the absence of these safeguards, there is a high risk that students who need to be accommodated will engage only partially in the data collection processes or even refrain from participating altogether out of concerns related to confidentiality or a fear of discriminatory intent.

Once instructors have received the necessary student disability data, the instructors must modify their modes course content delivery and assessment to accommodate the special needs of VIDS.¹⁷⁰ In its commentary on the right to education, the UN High Commissioner flagged “acceptability” (in form and substance) of the mode of instruction by learners to be an essential feature of any objective academic institution.¹⁷¹ We must bear in mind that it is not VIDS who should fit within the already-existing learning structures, as some claim.¹⁷² In its preamble, the CRPD recognizes that the challenges VIDS face are as a result of:

[T]he interaction between [them] and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

The burden, therefore, is on an institution and its instructors to transform their instruction and examination techniques to address the special needs of these students.¹⁷³ And this task is not onerous. Robert (KU)

¹⁶⁸ See CPRD, *supra* note 8, at art. 31 §(1)(a).

¹⁶⁹ See UNITED NATIONS, UNITED NATIONS FUNDAMENTAL PRINCIPLES OF OFFICIAL STATISTICS: IMPLEMENTATION GUIDELINES (2015).

¹⁷⁰ See also UNESCO Salamanca Principles, *supra* note 135, at ¶ 28 (calling on academic institutions to adopt their curricula to fit the “needs” of VIDS).

¹⁷¹ CESCR, *supra* note 106, at para 6.

¹⁷² Paseka Andrew Mosia & Tlakale Nareadi Phasha, *Student Experience and Quality of Tertiary Education for Students with Disabilities in Lesotho*, J. OF STUDENT AFFS. IN AFR. 13, 25 (2020), (describing how “students with disabilities are expected to adjust themselves to standards set for everyone else despite falling short of their needs as persons with disabilities”).

¹⁷³ CPRD, *supra* note 8, at art. 24 § (2)(c), art. 31 § (2).

and Solomon (UON) underlined the importance of flexibility on the side of instructors:

The lecturers only need to take a bit of their time to have the materials embossed in Braille. Hard copies do not help us.¹⁷⁴

Some teachers use a projector in class. Others write on the blackboard and do not give us any soft copies. We even specifically ask for them, but they are not given.¹⁷⁵

But the process leading up to these changes will not be stress-free. It can be problematic. As is the case with any regime change, this transition is bound to face some resistance, not only from personnel within the academic institution, but also—surprisingly—from SWDS themselves.¹⁷⁶ For this collaboration to produce results, all players will have to pull in one direction.¹⁷⁷

Regular information-sharing sessions to discuss hands-on strategies to promote inclusion are essential. Article 24(4) of the CRPD calls on academic institutions to engage trainers with “disabilities.” Consistent with this rule, those who facilitate these consultations should be drawn from, among others, VIDS.

Simple solutions can ensure that the material is presented should be in a format accessible to all users. Solomon, a hearing-impaired student at the UON, underscored the value of this approach:

Soft copies can be of great help. We can read from our mail, if our computers are fitted with software.¹⁷⁸

Unlike learners with visual impairments, students with hearing difficulties would have no problem with the use of visual materials—projectors, boards and hard copy handouts. In the absence of sign language interpreters in a lecture room, these tools would go a long way towards

¹⁷⁴ Interview with Robert, KU Student (Aug. 7, 2013).

¹⁷⁵ Interview with Solomon, *supra* note 1.

¹⁷⁶ There is a great deal of research on this theme. See Pauline Waititu et al., *Perspectives on Psychosocial Challenges Facing Integrated Learners with Physical Disabilities (LWPD) in Selected Kenyan Mainstream Secondary Schools*, 1 INT’L J. ADVANCES IN SOC. SCI. AND HUMS. 1, 2 (2013); Irene Tarimo, *Factors Affecting Student’s Enrolment and Dropout at the Open University of Tanzania, Lindi Region*, 14 HURIA: J. OF THE OPEN UNIV. OF TANZANIA 111, 125 (2013). See generally Linda Cooper, *Activists within the Academy: The Role of Prior Experience in Adult Learners’ Acquisition of Postgraduate Literacies in a Postapartheid South African University*, 61 ADULT EDUC. Q., (2011). *But cf.* Coomara Pyaneandee, *Right to Education (Article 24)*, in INTERNATIONAL DISABILITY: A PRACTICAL APPROACH TO THE UNITED NATIONS CONVENTION ON THE RIGHT OF PERSONS WITH DISABILITIES (2019) (discussing the right to education).

¹⁷⁷ Josephine Akellot & Paul Bangirana, *Association Between Parental Involvement and Academic Achievement of Deaf Children at Mulago School for the Deaf, Kampala, Uganda*, AFRICAN HEALTH SCI. 2270, 2272 (2019).

¹⁷⁸ Interview with Solomon, *supra* note 1.

bridging the communication gap. Lecturers could issue handouts with the course content in advance of any lecture session. The objective of this route, which is consistent with the PDA Regulations,¹⁷⁹ is to enable SWDS to prepare adequately for each lesson.

As the CRPD requires in article 24(2)(e), academic institutions are duty bound to provide “individualized support measures” in order to “maximize” each person’s “academic and social development.” Despite this legal guarantee, the situation at the UON was at odds with basic domestic and international law principles. Samuel underlined the hardship that he went through:

Some lecturers don’t have projectors during lectures. ... There are no handouts from lecturers. ... Sometimes when I ask a question the lecturer replies without writing on the board and without facing me. So I cannot read his lips.¹⁸⁰

Samuel’s lecturer could have better accommodated Samuel’s needs by simply utilizing a projector, issuing a handout, writing on the board, or even endeavouring to face Samuel while speaking. Samuel’s experience underscores the importance of apprising lecturers of students’ needs and generating ideas for accommodation with the help of VIDS. The goal of inclusive education is to ensure that VIDS are able to learn in the same environment as their abled colleagues. Consistent with this goal, course instructors must prepare and distribute all learning and examination material in the appropriate format. If they fail to do so, some learners will, unfortunately, be left behind.

B. The Second Measure: Providing Adequate and Timely Information

In Swahili they say, “Kuuliza si ujinga.” When translated into English, it means, “Asking (a question) is not stupidity.” This saying presupposes that, in order for a person to receive any information, he or she must implore the holder of the data.¹⁸¹ Further, international law, as reflected by the International Covenant on Civil and Political Rights (“ICCPR”) and the African (Banjul) Charter on Human and People’s Rights (“Banjul Charter”), places an obligation on academic institutions to pro-actively release information.¹⁸² Kenya’s domestic law also recognizes this cardinal

¹⁷⁹ PDA Regulations, *supra* note 20, at 9(4)(e).

¹⁸⁰ Interview with Samuel, UON Student (Aug. 7, 2013).

¹⁸¹ Article 35 of Kenya’s Constitution captures this fundamental entitlement, CONSTITUTION art. 35 (2010) (Kenya).

¹⁸² International Covenant on Civil and Political Rights (ICCPR) art. 19, art. 9, Dec. 16, 1966, 999 U.N.T.S. 171; African [Banjul] Charter on Human and Peoples’ Rights art. 9, Jun. 27, 1981, 1520 U.N.T.S. 217.

rule.¹⁸³ For VIDS, this requirement is central to their enjoyment of the right to education.¹⁸⁴ The provision of accurate and timely information can provide these learners with the data and knowledge they require in order to participate effectively in the university environment.¹⁸⁵ Lack of information, as the UN General Assembly has observed, “effectively exclude[s] [VIDS] from full and effective participation in social life and development.”¹⁸⁶ Provision of sufficient information can also enable these learners to make informed choices about the courses or subjects to undertake¹⁸⁷ as well as the potential careers, which are available. In order to fulfill the terms of international and domestic law an institution should proactively avail to all students” the data relating to its operations. The negative obligation of human rights requires an institution not to withhold any useful information from a learner.

Universities should avail all relevant information from the point that a learner is admitted into the institution until that learner leaves. This issue was canvassed at the drafting of the CRPD. According to Mrs. Markus, a Libyan delegate, stakeholders have a “duty” to render information to these students.”¹⁸⁸ In order to meet the needs of VIDS, the information must be packaged in an accessible format. Furthermore, these data must be updated on a regular basis to keep pace with all institutional changes. The PDA Regulations mandate institutions to release syllabi, study guides, and other appropriate instructional materials in advance of general distribution in class.¹⁸⁹ These regulations also call upon institutions to guarantee access beyond the regular classroom environment.¹⁹⁰ They recommend use of slides, films, tape recorders, over boards, and other media.¹⁹¹ These initiatives are designed to ensure that VIDS have up-to-date information at all times. Despite the legal guarantees, the situation on the ground at the universities studied was markedly different. All of the surveyed students with visual disabilities complained about the lack of information.

Orientation, in particular, is an essential event for students, particularly freshmen and women. During these sessions, new students are introduced to the university environment and have the opportunity to meet academics

¹⁸³ See PDA, *supra* note 2, at §2, §7(i). See also PDA Regulations, *supra* note 20, at rule 3(1).

¹⁸⁴ See also Agnes Meroka-Mutua et al., *Coercion versus Facilitation: Context and the Implementation of Anti-FGM/C Law*, 55 LAW AND SOC’Y REV. 587, 607 (2021) (underscoring the link between provision of information and enforcement of human rights).

¹⁸⁵ Edwin Abuya, *Realizing the Right of Access to Information in Kenya: What Should Stakeholders be on the Lookout for*, in 27 ACCESS TO INFORMATION IN AFRICA 214, 215 (Fatima Diallo & Richard Calland eds., 2013).

¹⁸⁶ G.A. Res. 54/388, ¶15 (September 30, 1999).

¹⁸⁷ *Id.*

¹⁸⁸ U.N. GAOR, 32nd Sess., 73rd mtg., U.N. Doc. A/C.3/32/SR.73, ¶9 (Dec. 13, 1977).

¹⁸⁹ Persons with Disabilities (Access to Employment, Services and Facilities) Regulations (2009) art. 21 (Kenya).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

and non-teaching staff as well as colleagues. Naturally, an abundance of useful information on various aspects of the university and student life is transmitted to the students during orientation. Hence, participation is crucial for new students, and absence can have a rippling effect on one's academic life and success.

Considering the special needs of VIDS, it is important that, firstly, the university administration informs these students about the orientation program. This information should come either prior to these students joining an institution or upon registration. Further, the information that is shared with all students must be transmitted in a manner accessible to VIDS. Yet experience shows that this was not always the case. Lawrence of the UON shared his unfortunate experience: "There was no orientation, no timetable and no information on when classes would begin."¹⁹² This experience underscores the benefits of providing not only information, but also timely data. Students such as Lawrence would have very little options except to spend more time and other resources looking for the relevant data about the university.

Even when the university did provide information, VIDS noted additional problems regarding the accessibility of the information:

Notices put on the notice board always by pass us including changes in class and exam timetables as well as bursary application notices. ... Essential readings and course lists need to be provided to us in an essential format¹⁹³

The timetables and course outlines are in hard copy. Any changes to the timetables or any notices are not given to us in an accessible format.¹⁹⁴

Finally, universities and specific teaching units should organize orientation sessions for those who missed the initial programs, owing to late registration or transfer from one course to another. These sessions should be scheduled immediately after a student registers for a course. Running them later in the term, as other authors suggest,¹⁹⁵ is less ideal. Considering the crucial part orientation programs play in the daily life of any student, regular orientation programs are more likely to be more beneficial.¹⁹⁶

¹⁹² Interview with Lawrence, *supra* note 64.

¹⁹³ Interview with Salim, KU Student (Aug. 7, 2013).

¹⁹⁴ Interview with Lawrence, *supra* note 64.

¹⁹⁵ Liile Leratao Lekena & Anass Bayaga, *Trend Analysis of Frist Year Student Experience in University*, 32 S. AFR. J. OF HIGHER EDUC. 157, 166 (2018).

¹⁹⁶ See also Bwalya Jennipher et al., To Investigate the Awareness of the Importance of Copyright Exceptions in the Zambian Copyright Laws by Students: A Case Study of the Library and Information

Like the domestic law in Kenya, article 21 of the CRPD places an obligation on academic institutions to provide important information and materials to SWDs. These items must be in accessible formats and technologies appropriate to different kinds of disabilities. Further, universities, under the terms of this obligation, need to supply these data in a timely manner and without additional costs. Timetables for lectures and exams, syllabi, any changes in the learning schedules, and all other important information must be distributed in accessible formats. For learners with visual impairments, these materials must be supplied in soft or braille form; for those with hearing impairments, the information should be transmitted in written or soft copy format. Libraries and other important facilities must also publicize their services to VIDS. These initiatives can contribute immensely to the inclusion of VIDS in Kenyan universities.

C. *The Third Measure: Investing in Inclusive Education*

Meeting the goal of inclusive education requires institutions to invest in the special needs of VIDS. The African Disability Protocol underlines this fundamental rule. Under the terms of this treaty, universities are required to invest “adequate resources, including through budget allocations, ...”¹⁹⁷ In the absence of adequate resources, it will be a huge challenge for these learners to enjoy their basic entitlements.

1. *Budgeting for Inclusive Education*

For a university to fulfil its legal obligation, it must first conduct a needs assessment.¹⁹⁸ All the categories of disabilities within an institution should be identified and the specific requirements for learners in each category must be flagged. Once this process has been completed, the institution will then need to draw a budget— a basic governance tool.¹⁹⁹ Within this financial plan, an institution should allocate adequate resources to fund each program or activity. Since resources are, overall, finite the necessities should be placed in three categories—immediate, medium-term and long

Science (LIS) Students available at
http://lis.unza.zm:8080/archive/bitstream/handle/123456789/107/doc-unza21-lis4014_report-bwalya_chewe_chitonge_hamukombo_mhango.pdf.pdf?sequence=1&isAllowed=y (visited: May 3, 2022) (advocating for regular orientation programs).

¹⁹⁷ See African Disability Protocol, *supra* note 5, at art. 4 §(i).

¹⁹⁸ Research conducted in Zambia and Egypt supports this thesis. Kenneth Muzata, *Making Distance Education Inclusive to Students with Disabilities through ICTs in Higher Education Institutions in Zambia – A Concept Paper*, 4 MULTIDISCIPLINARY J. OF LANGUAGE AND SOC. SCI. EDUC. 1, 8 (2021); Elsayed Hassanein et al., *Barriers to Including Children with Disabilities in Egyptian Schools*, 24 J. OF INT’L SPECIAL NEEDS EDUC. 25, 28 (2021).

¹⁹⁹ CONSTITUTION art. 220 (2010) (Kenya) (setting out basic requirements for any budget).

term. For accountability purposes,²⁰⁰ a schedule with tangible outputs should be drawn.²⁰¹ Article 33(3) of the CRPD mandates civil society, especially those working with VIDS, to be “involved and participate fully in the monitoring process” of implementation of projects seeking to promote the rights of VIDS. The implementation plans should be reviewed regularly to keep abreast with any new development. To bear tangible results, VIDS have to be active, not passive, participants in the entire exercise.²⁰² A top-down approach cannot work, as Linda of CUEA and Mark of UON affirmed:

I personally had to inform the librarian about computer adapted software, they are not aware of anything.²⁰³

The University does not even know what devices to purchase for persons with visual disabilities.²⁰⁴

Simply put, universities need to adopt a bottom-up approach. All stakeholders must be involved in these discussions. The concept of public participation is a fundamental rule in Kenya’s constitutional architecture and design.²⁰⁵ As the Supreme Court of Kenya underlined in *Senate and 2 Others v Council of County Governors and 8 Others* “participation permits citizen[s] to take part in decision-making in matters that affect them.”²⁰⁶ In the absence of this engagement, there is a high chance that an institution’s budget committee will fail to consider specific needs of VIDS.

Cost is a significant factor because “assistive devices for the visually impaired are costly and would potentially benefit only a small number of students.”²⁰⁷ This claim sits uncomfortably with human rights standards. All learners within an institution are entitled to enjoy their basic rights. The question is not whether an initiative will stand to benefit a wide or a “small number of students.” Even if only a single student is affected, the legal

²⁰⁰ See also Tongai Chichaya et al., *Voices on Disability Issues in Namibia: Evidence from Entrenching Occupational Justice in Disability Policy Formulation*, SCANDINAVIAN J. OF OCCUPATIONAL THERAPY 1, 12 (2018) (advocating for “a robust” “monitoring and evaluation mechanism”).

²⁰¹ See also CONSTITUTION art. 228 (2010) (Kenya) (requiring the Controller of Budget to only approve expenditures “authorised by law”).

²⁰² But according to Morrison, an official of the Joint Admissions Board (“JAB”), it is the University Management, which “decides on the priority” areas. Interview with Morrison, JAB Official, (July 11, 2013).

²⁰³ Interview with Linda, CUEA Student (Aug. 23, 2013).

²⁰⁴ Interview with Mark, UON University Official (Sept. 20, 2013).

²⁰⁵ CONSTITUTION art. 10, 201(a) (2010) (Kenya).

²⁰⁶ *Senate & 2 others v. Council of County Governors & 8 others* (Petition 25 of 2019) (2022) KESC 7, ¶85 (Kenya).

²⁰⁷ Claire Harris & Charles Oppenheim, *The Provision of Library Services for Visually Impaired Students in UK Further Education Libraries in Response to the Special Educational Needs and Disability Act (SENDA)*, 35 J. LIBRARIANSHIP INFO. SCI. 243, 252 (2003).

framework requires an institution to accord him or her their basic learning rights. Furthermore, the Kenyan Constitution bars universities, which bear the burden of proof,²⁰⁸ from invoking the lack of resources as an excuse for failing to meet their constitutional obligations.²⁰⁹ The goal of inclusive education requires that no student should be left behind in the learning process, regardless of the cost; this is a basic criterion by which all institutions must abide.

During the research, it was noted that UON had allocated Kenya Shillings 3,600,000 (approximately USD 36,000) to cater for the needs of visually impaired students.²¹⁰ Indeed, this was a step in the right direction. However, this allocation raised a number of questions. Were VIDS involved in drawing the budget? Were the funds allocated sufficient for the needs of the target population? Were the tools and equipment VIDS required immediately supplied? Or did the bureaucratic processes in the institution create additional barriers? Were medium term and long terms needs identified and adequately resourced? Was there a sustainability plan built into the budget? These are fundamental issues, which should guide this process. Merely allocating resources without more is insufficient, albeit necessary to stem the structural disadvantages so as to enable VIDS to fully participate in the education system. One must closely scrutinize the allocation itself and the processes involved to determine if they are likely to promote and protect the right to education for VIDS.

Universities are required to do much more than merely abstain from taking measures which might have a negative impact on VIDS.²¹¹ The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages, and to give preferential treatment to VIDS in order to achieve the objectives of full participation and equality within society for all SWDs.²¹² The rights of VIDS must be protected and promoted at all times. As the Office of the High Commissioner for Human Rights contends, these rights must be safeguarded, irrespective of the prevailing circumstances:

[E]ven in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must

²⁰⁸ See Evidence Act (1949) (Kenya).

²⁰⁹ CONSTITUTION art. 20(5)(a) (2010) (Kenya).

²¹⁰ Interview with Morrison, *supra* note 26.

²¹¹ CESCR, General Comment on the Persons with Disabilities on its Eleventh Session, at para. 9, U.N. Doc. E/1995/22 (Dec. 9, 1994).

²¹² *Id.*

be protected by the adoption of relatively low-cost targeted programmes.²¹³

2. *Investment through Direct Financial Support*

Accessibility to education includes economic accessibility.²¹⁴ In Kenya, post-secondary education students can apply for loans from the Higher Education Loans Board²¹⁵ (“HELB”), a government agency. All applicants who meet set criteria are granted government loans. The amount that applicants receive varies from one student to another. Granted, many SWDS received full loans from the HELB. The issue, however, lies in the fact that these loans hardly compensate for the support tools and adaptive equipment which these students require. According to Solomon:

I cannot afford to buy for myself a laptop with the finance from HELB. It is only enough for my expenses.²¹⁶

Lawrence, an official working at the HELB, affirmed this state of affairs.²¹⁷ In order to ensure full access to the learning environment, institutions such as the HELB should consider giving VIDS additional financial support over and above what is ordinarily provided to other students. As the UN General Assembly underlined, “when public resources are scarce,” “the mobilization of ... resources of disabled persons themselves assume special importance.”²¹⁸ From the enhanced allocation, students such as Solomon can purchase the equipment they require to navigate the demanding learning environment. Those with hearing impairments can use these allowances to purchase hearing aids to bring them to the same level as their non-disabled colleagues. For students with visual impairments, a readers allowance is crucial.²¹⁹ This stems from the fact that, in the language of the CRPD, it is not always possible to convert a book into soft copies or other “easy to read and understand”²²⁰ format.

Other forms of financial support exist in Kenya. Section 3 of the PDA establishes the National Council for Persons with Disabilities (“National

²¹³ CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), 5th Sess., at para. 12, U.N. Doc. E/1991/23 (Dec. 14, 1990).

²¹⁴ CESCR, *supra* note 106, at ¶ 6(b).

²¹⁵ HIGHER EDUCATION LOANS BOARD, <https://www.helb.co.ke/> (last visited: May 8, 2022).

²¹⁶ Interview with Solomon, *supra* note 1.

²¹⁷ Interview with Lawrence, HELB Official (July 20, 2013).

²¹⁸ U.N. Secretary-General, *Feasibility study on alternative ways to mark the end of United Nations Decade of Disabled Persons*, ¶64, U.N. Doc. A/45/470 (Oct. 15, 1990).

²¹⁹ Evidence from Zimbabwe and Ethiopia supports this argument. Tsitsi Chataika, Inclusion of Disabled Students in Higher Education in Zimbabwe-A Social Ecosystem Perspective (Aug. 2007) (Ph.D. thesis, University of Sheffield); Mulat Belay & Sileshi Yihun, *The Challenges and Opportunities of Visually Impaired Students in Inclusive Education: The Case of Bedlu*, 4 J. of PEDAGOGICAL RSCH. 112, 121 (2020).

²²⁰ See CRPD, *supra* note 8, at art. 9 §(2), (9).

Council”). Among other functions, the National Council is required to provide financial support to SWDS.²²¹ One would expect these streams of government financial support to complement each other. Unfortunately, the situation on the ground was somewhat different. Some students expressed concerns with the National Council’s mandate to render financial help to needy students. According to Christopher of CUEA, “I have applied severally, but I have not received any support in form of fees.”²²²

Since the equipment they require is essential to their learning, some students were forced to take matters into their own hands. Thomas, a student in UON, is an example:

I had to buy a laptop and software. The laptop cost me Kenya Shillings Fifty Thousand (US\$ 500), and the software cost about Kenya Shillings One Hundred Thousand (US\$ 1000). This software has the ability to convert Braille into word and vice versa. The voice software can read documents, which are in soft. I also had to scan the handouts myself.²²³

Although in this instance the basic need was met, this situation is less ideal. For those who are unable to afford the requisite equipment, the learning process could come to a grinding halt. Under the Standard Rules institutions are required take cognizance of the assistive devices, required by VIDS.²²⁴ These implements should be provided free of charge or at such low prices that VIDS or their families can afford to buy them.²²⁵ When this task is left to the students, those from poor backgrounds are likely to suffer. Patrick and Lawrence confirmed this position:

Of the four of us who joined UON in May, only two of us can afford the laptops. We have to share our notes with the rest.²²⁶

Sometimes I have to borrow a laptop from my friends. I have to wait for the time they are not using them. Other students can only lend me theirs at a fee.²²⁷

²²¹ PDA, *supra* note 2, at §7(f) (requiring NCPWD “to make provision for assistance to students with disabilities in the form of scholarships, loan, programmes, fee subsidies and other similar forms of assistance in both public and private institutions”).

²²² Interview with Christopher, CUEA Student (July 5, 2013).

²²³ Interview with Thomas, *supra* note 69.

²²⁴ G.A. Res. 48/96, at Rule 4 (4) (Mar. 4, 1994).

²²⁵ *Id.*

²²⁶ Interview with Patrick, UON Student (Aug. 8, 2013).

²²⁷ Interview with Lawrence, *supra* note 64.

Accessibility requires that the form and substance of education and teaching materials be made acceptable to all learners.²²⁸ As noted earlier, in the absence of a suitable support system, students with hearing impairments find themselves in very difficult circumstances—many are unable to follow the classroom proceedings. As those with visual impairments, this cohort, too, took matters into their own hands. According to Samuel of UON, “I find myself spending more money to photocopy other people’s notes.”²²⁹ This initiative, according to Moses of KU, required these students to spend a lot of time on non-academic activities: “I have to copy more notes after class resulting in time wastage since other students will have moved to other tasks.”²³⁰ The fact that some learners had to photocopy notes implies that they spent extra financial and temporal resources on these exercises as compared to their able bodied colleagues.

These situations are less than ideal. They question the universities’ commitment to achieving the goal of inclusive education. These examples are also of great concern since they promote discrimination within an institution. Unlike other learners, VIDS are forced to share their learning materials, borrow academic resources from other colleagues or spend more time preparing their learning material. These learning environments are also likely to water down any learner’s self-confidence and self-esteem. Simply put, VIDS should be sufficiently resourced. The learning environment must be altered to facilitate the realization of their basic rights. Learning institutions must also invest in computers with adapted software, scanners, and embossers. Interpreters should also be available at all times to facilitate smooth learning by students with hearing impairments. We noted a number of initiatives towards made by the UON and KU towards bridging the gap. In KU, the university had invested in the training of library personnel:

Currently fifteen of the library staff who includes at least two staff in every floor of the library is being trained in sign language.²³¹

Likewise, the UON, which had a sign language research project on the campus, engages in a similar activity:

²²⁸ CESCR, *supra* note 106, at ¶ 6(c).

²²⁹ Interview with Samuel, UON Student (Aug. 7, 2013).

²³⁰ Interview with Moses, KU Student (Aug. 10, 2013).

²³¹ Interview with Betty, KU University Official (July 4, 2013).

We have trained two groups of staff in sign language as a result of disability mainstreaming. If the University orders, we can also train the students.²³²

While these were steps in the right direction, the numbers were on the lower side. To make an impact, more university personnel need to be trained on Kenya Sign Language.²³³ This initiative is in line with Kenya's Constitution, which calls on Universities to "promote the development and use of," [among others] Kenyan Sign language."²³⁴ Further, the Disability or Anti-Discrimination policies in these institutions should set a minimum number of personnel who should be trained and deployed annually. In the absence of these criteria, it will be difficult to hold these institutions accountable in the event of any apparent breach.

Continuous staff training on how to work with VIDS is also of utmost importance. Through this initiative, VIDS can be brought "to the same level of education as their non-disable peers."²³⁵ Article 4(1)(i) of the CRPD obligates universities to provide training opportunities to "staff working with" VIDS. This requirement is designed to ensure that these duty bearers are able to "better provide the assistance and services"²³⁶ due to VIDS. Lack of training on the part of instructors has a negative impact on the performance of these learners. This gap can lead to "moderate and below average"²³⁷ performance by this cohort of students. To be effective, these information-sharing sessions must be facilitated by, among others, VIDS. This is a central requirement under the PDA Regulations. Regulation 3(5) requires universities to "ensure the involvement and participation of persons with disabilities and organizations of and for persons with disability" in all training sessions. In addition to providing the necessary equipment, universities also need to ensure that the learners who use these facilities are well trained. Considering the years of marginalization, many VIDS have limited information and communications technology skills. This limitation presents a "daunting challenge."²³⁸ To seal this gap, academic institutions must invest in training

²³² Interview with Noel, UON University Official (Sept. 23, 2013).

²³³ See also D.O. Okombo & P.O. Akach, *Language Convergence and Wave Phenomena in the Growth of a National Sign Language in Kenya*, 125 INT'L J. OF SOCIO. LANGUAGE 131, 143 (1997); Joseph Kalya, *Effect of Kenyan Sign Language on Academic Performance of Learners with Hearing Impairment: Case of Kedowa Special School, Kericho County, Kenya* (Oct. 2020) (M.Ed. thesis, Kenyatta University).

²³⁴ CONSTITUTION art. 7(3)(b) (2010) (Kenya).

²³⁵ CESCR, *supra* note 211, at ¶ 35.

²³⁶ CRPD, *supra* note 8, at §4(1)(i).

²³⁷ Wandera Otyola et al., *Challenges Faced by Visually Impaired Students at Makerere and Kyambogo Universities*, 9 MAKERERE J. HIGHER EDUC. 76, 84 (2017).

²³⁸ Innosencia Eligi & Kelefa Mwantimwa, *ICT Accessibility and Usability to Support Learning of Visually-impaired Students in Tanzania*, 13 INT'L J. EDUC. AND DEV. USING INFO. AND COMMUN. TECH. 87, 87 (2017).

programs. The KU had taken steps towards this end. According to Anthony:

KU does have trained technicians who teach the students how to use computers with adaptive technology and assist in case of any problems.²³⁹

As the CRPD highlights in its preamble, there is a “critical need [by universities] to address the negative impact of poverty” on VIDS.²⁴⁰ In the absence of these support systems, this cohort of learners is likely to obtain marginal grades in examinations. Eventually, these will impact negatively on their future lives.

Universities must embrace new technology. Rather than Braille machines, they should devote resources to modern equipment, such as computers with assistive technology. These computers can convert materials typed in braille into word format and can also translate digital text into audible speech. Although they come at a cost, these processors go a long way towards ensuring that students with visual disabilities are able to integrate effectively into the university environment. The KU made major strides in this direction, as Thomas confirmed:

The important thing is technology. You cannot convert every text book to Braille. It’s bulky and expensive and not necessary as there is technology. The materials can however be available in soft copy. Adapted computers with voice software can read for the students. The laptop allows you to type in Braille and the software converts your writing into word. This simplifies work for everyone as there is no need to employ Braille transcribers.²⁴¹

Partnerships²⁴² with national institutions, human rights defenders and grassroot organizations are also critical. These interactions can provide useful data that can be used to address current challenges. As Mrs. Beagle, a New Zealand delegate observed at the drafting of the CRPD, partnerships between the State and voluntary organizations are useful in “overcoming the problems of limited resources which could frustrate the practical implementation of any measures adopted”²⁴³ to meet the challenges VIDS face. The Kenyan High Court in *Juliet Mwema v Smollan Kenya Limited*²⁴⁴ underpinned the importance of such partnerships. Kituo Cha Sheria, a

²³⁹ Interview with Anthony, KU University Official (July 19, 2013).

²⁴⁰ CRPD, *supra* note 8, at preamble ¶(t).

²⁴¹ Interview with Thomas, KU Student (June 20, 2013)

²⁴² See PDA Regulations, *supra* note 20, at Rule 6, 9(5).

²⁴³ G.A. Res. 54/388, *supra* note 188, at ¶ 24.

²⁴⁴ *Juliet Mwema v. Smollan Kenya Ltd.* (2019) eKLR (Kenya).

Kenyan-based rights organization, filed this case on behalf of the claimant, Ms. Muema.²⁴⁵ The claimant asserted that her employer, the respondent, had refused to provide her with suitable technology that would have enabled her to perform her job more efficiently.²⁴⁶ In support of this allegation, Ms. Muema drew on evidence, which she had received from the Kenya Society for the Blind (“KSB”), on the appropriate technology that should could use in her circumstances.²⁴⁷ The claimant also called an expert to buttress her claim.²⁴⁸ After considering all the evidence that the parties had adduced, Justice Byram Ongaya found in favor of Ms. Muema.²⁴⁹ According to the court, she had demonstrated that she was “entitled” to this equipment.²⁵⁰ Moreover, the respondent, her employer, did not establish any “hardship” in providing the required software.²⁵¹ Additionally, partnerships can provide practical strategies for realizing the rights due to VIDS.²⁵² Furthermore, these networks can give universities or learners information regarding available local and international outlets for sourcing necessary learning devices at affordable prices.²⁵³

CONCLUSION: MATCHING WORDS WITH ACTIONS

Judge Mwita of the Kenyan High Court emphasized in *Robert Alai v The Hon Attorney General & Another*²⁵⁴ that fundamental rights are to be “enjoyed,”²⁵⁵ not curtailed. This article has evaluated the experiences of VIDS in select universities in Kenya. It has highlighted several instances where the rights of these learners have been curtailed by the institutions that accept and admit them as students. It has affirmed the hypothesis that these learners have been relegated to the margins. The paper has proposed a number of steps that right-holders and duty-bearers can take to deal with the hurdles that were identified by the field interview data. The overall objective, to borrow the sentiments of Mr. Tanasie, a delegate of Romanian delegate during the drafting of the CRPD, is to ensure that these students

²⁴⁵ *Id.* at 1.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 2 (“The claimant’s further case is that she then consulted the Kenya Society for the Blind and she was advised about the Voice Command (VC) which was a superior technology to Screen Reader (SR) technology”).

²⁴⁸ *Id.* at 4–5 (In the opinion of the expert, Mr Lawrence Mute, the respondent had failed to accord the claimant reasonable accommodation “in the circumstances of the case”).

²⁴⁹ *Id.* at 5–7.

²⁵⁰ *Id.* at 6.

²⁵¹ *Id.*

²⁵² See also generally Shirin Kiani, *Women with Disabilities in the North Western Province of Cameroon: Resilient and Deserving of Greater Attention*, 24 *DISABILITY AND SOC’Y* 517 (2009).

²⁵³ See generally Akakandelwa Akakandelwa, *Provision of Learning and Teaching Materials of Pupils with Visual Impairment: Results from a National Survey in Zambia*, 30 *BRITISH J. OF VISUAL IMPAIRMENT* 42 (2011).

²⁵⁴ *Robert Alai v. Hon Att’y Gen. & Director of Public Prosecution* (2017) eKLR (Kenya).

²⁵⁵ *Id.* at ¶59.

“lead a dignified life [and] enjoy the right to ... access to education.”²⁵⁶ The Kenyan Constitution bestows a “duty” on all State organs and public officers “to address the needs of vulnerable groups within society, including ... [PWDS].”²⁵⁷ In addition to these players, all human rights defenders and VIDS have an obligation to ensure that the rights due to these learners are enjoyed at all time and in all spaces.

At the drafting of the CRPD, Mr. Khoza, a representative of Malawi, underlined the positive steps that the country had taken to promote the right of education for SWDS.²⁵⁸ Universities in Kenya, too, have made notable strides. Commendably, VIDS have been removed from the margins to the mainstream. Further, the country has passed a disability specific legislation and a robust constitution.

Despite these developments, the work is far from finished. As the findings of this article show, there is still a lot of work to be done on the ground in the context of implementation. Words must be matched by real action. Stakeholders should take prompt, positive action to translate the law in the books into actual practice. The recommendations made by this article can go a long way towards ameliorating the abuses that VIDS have experienced.

It is no longer acceptable to assert that VIDS require pity.²⁵⁹ Like other learners, these individuals should have uninterrupted access to the reading environment. If there are any hurdles, these should be addressed comprehensively. Otherwise, these students will continue to be traumatized by human rights violations to which they have been (and continue to be) exposed.²⁶⁰ In order to effect change, those who are involved in the implementation process should coordinate their efforts. Working in isolation will generate marginal results. These players should also allocate sufficient resources to the implementation process. As a monitoring and evaluation tool, they can issue report cards on performance by universities. To have a wider and sustainable impact, local sources must be tapped. Reliance on international partners is risky, considering their fluid priorities. Local partners are preferred; they are more likely to bring on board home-based solutions to combat the current challenges. This is

²⁵⁶ U.N.G.A., U.N. Doc. A/47/PV.33, at 41 (Oct. 23, 1992).

²⁵⁷ CONSTITUTION art. 21(3) (2010) (Kenya).

²⁵⁸ U.N.G.A., 43rd Sess., U.N. Doc. A/43/PV.75, at para. 183 (Dec. 23, 1988). According to this official:

In the field of education a great deal has already been done to provide special educational facilities for disabled children, especially the blind. The facilities are provided in selected schools where blind children attend the same schools as the sighted. There are plans to provide more such schools to enable and encourage parents to send their blind children there.

²⁵⁹ See also Hebron Ndlovu, *African Beliefs Concerning People with Disabilities: Implications for Theological Education*, 20 J. DISABILITY AND RELIGION 29, 29 (2016).

²⁶⁰ See also PETER WASAMBA, *RELENTLESSLY RESILIENT* 116 (2022) (discussing how, owing to the fact that he stammered when he spoke, the instructor in charge of the Theatre Arts class denied him a chance to audition for a play at the UON. According to the author, this experience was humiliating).

not to mean that researchers should disregard comparative lessons. Indeed, these, too, can be considered. Even so, the experiences that are borrowed will have to be “bent” in order to fit into the local circumstances.

The field data that formed the basis of this article was rather modest. Not all universities in the country were covered. It is also likely that not all VIDS were interviewed, owing to time limitations and the fact that some learners could not have been reached. Future studies in the area of disability rights should endeavor to fill these gaps. In the first place, they can collect data from VIDS at other universities not included in this study. Further, using different data collection methods and a wider sample size, they can conduct research in the universities, which formed the basis of this study. Collectively, the information that is generated from these projects can improve our understanding of the difficulties VIDS face and provide a new lens for dealing with the current problems to guide the search for practical solutions. Studies drawing on field work should be encouraged. Therein lies the task ahead.