

The Persons with Disability Act, 2006 (Act 715) of the Republic of Ghana: The Law, Omissions and Recommendations

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Abstract

The passage of the Persons with Disability Act, 2006 (Act 715) has been considered a noteworthy milestone in Ghana's human rights discourse because it gives the hope that it will improve the life of persons with disability (PWDs) to enable them be part of mainstream society. Though the Act covers key thematic provisions such as rights, accessibility, employment and education for PWDs amongst others, it has been criticized on the grounds that it has no provision on non-discrimination, the gender dimension of discrimination, rights of children with disability and legal definition of disability. Using secondary data such as the United Nations Convention on the Rights of Persons with Disability (UNCRPD) as well as disability legislations and policies of other countries in Africa, this paper argues that there are still glaring omissions in Act 715, some of which comprises housing for PWDs, voting rights of PWDs and liability of construction professionals. This paper proposes a stakeholder discussion of these omissions and the recommendations provided by critics and the outcome thereof should be considered in the event that policy actors decide to amend the Act. This is not to conclude that addressing these omissions will put an end to the scores of challenges confronting PWDs in Ghana but rather to ensure that Act 715 becomes robust and responsive to the needs and concerns of PWDs.

Keywords: persons with disability, housing, voting rights, construction professionals, Act 715

1. Introduction

In June, 2006, when the Persons with Disability Act, 2006 (Act 715) was finally passed by the Ghanaian Parliament, many stakeholders, including persons with disability (PWDs), received it with all enthusiasm. At the time, PWDs in Ghana were counted among the fortunate few because most African countries had no separate disability legislation. Particularly for PWDs in Ghana, this was a dream come true, having regard to the long struggle by the Ghana Federation of the Disabled (GFD), together with some civil society organizations, to make the Parliament of Ghana enact a law to enforce the provisions of Article 29 of the 1992 Constitution of Ghana. The passage of the Act was considered a noteworthy milestone in the country's human rights discourse as it gave the hope that it will improve the life of PWDs to enable them be part of mainstream society (Oduro, 2009; Eleweke, 2013). The Act covers thematic areas such as rights, accessibility, employment, education, transportation and health-care for PWDs; establishment and functions of a National Council on Persons with Disability (NCPD) and some miscellaneous provisions.

However, since its passage, Act 715 has been subjected a number of criticisms. Few months after the Act received Presidential assent in August, 2006, a constitutional and legal policy expert¹ argued that the Act had no provision on non-discrimination and the gender dimension of discrimination (Hansen, 2006). A 2008 study conducted in Ghana reiterated the same argument and even more, added that the Act has no legal definition of disability and no legislative instrument to aid its implementation (JMK Consulting Research, 2008). More to the point, following the ratification of the United Nations Convention on the Rights of Persons with Disability (UNCRPD) and the Optional Protocol in 2012 by the Government of Ghana, the Law and Development Associate, cited in Voice Ghana (2014), stated in its 2013 Draft Gap Analysis Report that Act 715 is inconsistent with the UNCRPD because it has no provision on women with disability, the rights of children with disability, the inherent right to life and the right to protection and safety in situations of risk and humanitarian emergencies.

These gaps notwithstanding, there are still some glaring omissions in Act 715. The aim of this paper is to discuss three (3) of these omissions in Act 715 and to offer proposals for consideration in the event that policy actors decide to amend the Act. This comprises housing for PWDs, voting rights of PWDs and liability of construction professionals. The paper dwells on disability laws and policies of Nigeria, Namibia, Malawi, Botswana, Kenya and the UNCRPD to establish best practices and offer recommendations in order to make PWDs in Ghana comfortable. The UNCRPD is particularly important to this paper because it is the first comprehensive international legal instrument which reflect global consensus, expressly protect the human rights of PWDs and provides an authoritative commentary on the manner in which countries should fulfill their obligations towards PWDs (Guernsey et al, 2007:4; Harpur, 2012). Other secondary sources of data include

¹ Dr. Kwadwo Appiagyei-Atua, a Law Lecturer at the University of Ghana, delivered a speech on 'The New Disability Law in Ghana, The Way Forward' at the 2nd Annual National Human Rights Lectures under the theme 'Advancing Economic, Social and Cultural Rights in Ghana: Prospects and Challenges'

journal articles and internet materials. The rest of the paper is organized as follows. Section 2 reviews Act 715. In Section 3, the omissions in the Act are discussed. The final section concludes the paper and provides recommendation for future amendment of the Act.

2. A Summary of the Provisions of the Persons with Disability Act, 2006 (Act 715)

The Persons with Disability Act, 2006 (Act 715) has 8 main sections. *Section one* throws light on the rights of PWDs. It gives PWDs the right to live with their families or participate in any gathering open to the public. It frowns on subjecting PWDs to differential treatment in a residence. It says no person or employer shall exploit or discriminate against a PWD. Where a PWD is to appear in court, such court shall provide the necessary facilities to enable contribute effectively to proceedings. This section also states that all buildings or services to which the public has access should be made accessible to PWDs. The section ends with penalty for non-compliance of the provisions above. *Section two* highlights issues of employment of PWDs. It states that the state shall establish public employment centres to assist PWDs in securing a job. Government shall not only grant any PWD engaged in business but also any person or corporate body that employs a PWD shall be granted an annual tax rebate or a special incentive. Employers are also to make sure they provide PWDs with the requisite tools or facilities to able them carry out their duties as employees. It is prohibited under the Act for an employer to post or transfer a PWD to a department or place where he/she would not be able to perform his duties as an employee. If a PWD remain unemployed for more than two (2) years, the state shall take the name of such a person, give him/her the appropriate training and tools and assist him/her to secure a loan to start business. Any PWD who sells such tools given to him/her by the state commits an offence and is liable to pay a fine. Finally, the state shall establish rehabilitation centres in all regions, districts and communities in Ghana and ensure that PWDs shall be rehabilitated in the nearest centre to foster integration into society.

Section three concentrates on education of PWDs. Any custodian, parent or guardian who refuses to enrol a child with disability in school commits an offence and is liable to pay a fine or serve a term of imprisonment. The state shall provide the necessary facilities and equipment to enable PWDs benefit from school. The state shall not only provide free education to PWDs but also establish special schools for PWDs who cannot be enrolled in formal schools. It is the duty of the state to provide appropriate training for PWDs who is unable to pursue further formal education. The Act also specifies that no PWD shall be refused admission into school because of his disability. Any school that goes contrary to this provision commits an offence and is liable to pay a fine or serve a term of imprisonment. There shall be established public technical, vocational and teacher training institutions which shall include in their curricula special education. It concludes with the provision that all public libraries shall be fitted with facilities that makes accessible to PWDs. In *Section four*, the Act talks about transportation for PWDs. The state shall ensure that the needs of PWDs are factored into the design, construction and operation of transportation network. PWDs are permitted to import a vehicle modified or adapted for their use and such vehicles shall be exempt from payment of import duty and other related taxes. Drivers are to stop for a PWD who shows intention to cross a road. The Act is also clear on the reservation of special parking place for exclusive use by PWDs. A PWD may own a driving license upon satisfying all the conditions prescribed by the Driver and Vehicle Licensing Authority. It is also mandatory for all port managers to provide facilities that will aid the movement of PWDs at the port. All commercial buses shall reserve at least seats for PWDs. Any driver that hits a PWD or a bus that does not reserve at least two seats for PWD commits an offense and is liable to pay a fine or serve a term of imprisonment.

The Act focuses on health-care and facilities in *Section five*. It states that the state shall provide free general and specialist care for PWDs. The Act mandates the state to ensure that the study of disability or disability related matters are included in the curricula of training institution for health professionals. It is provided in the Act that health authorities shall organize periodic screening of children in order to detect, prevent and manage disability. The state shall also establish and operate a health assessment centre in every district, where mothers and infants shall be given early diagnostic medical attention to determine the onset of a disability. In *Section six*, some miscellaneous provisions are provided. It provides that any person or organization that manufactures technical aids or appliance for use by PWDs shall be exempted from the payment of tax. It is an offense for any person to call PWDs derogatory names because of their disability. The state shall ensure that the necessary facilities are provided to enable PWDs have access to sports, cultural and festive events. The Act states that law enforcement agencies shall take into account the disability of a person on arrest, trial or confinement and provide for that person accordingly. For the purpose of this study, the review of the Act ends with the transitional provision which states that all buildings to which the public has access shall by August, 2016 be accessible to and available for use by PWDs. These provisions notwithstanding, the disability scholarship has criticized Act 715 for its numerous omissions.

3. The Omissions in the Persons with Disability Act, 2006 (Act 715)

As earlier indicated, some two (2) omissions in Act 715 have been pointed out by an expert on constitutional and

legal policy. He describes the omissions as a ‘missing puzzle’ which gives room for exploitation of PWDs. Firstly, he pointed out that the Act does not contain a provision on equality or non-discrimination. He argues that the Act should have contained a provision on discrimination, especially where the non-discrimination clause of 1992 Constitution of Ghana does not mention discrimination on grounds of disability. With reference to Article 35(5) of the Constitution, his argument is valid. The Constitution provides that ‘the state shall actively promote the integration of the people of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs’. Nevertheless, this paper does not hold the view that Act 715 does not contain a non-discrimination provision. This is because it is clearly stated in Section 4 of the Act that no person or employer shall discriminate against another person or employee on grounds of his disability. Therefore, this paper concludes that the expert’s proposed provision that ‘persons with disability shall not be discriminated against on grounds of their disability’ has already been captured in the Act. However, it must be acknowledged that the non-discrimination clause in the Act is not comprehensive enough to prohibit all kinds of discrimination on the basis of equality as addressed by the UNCRPD (Gyamfi, 2013). It is important to note that discrimination as captured in the Act is more direct than indirect. To this extent, the paper is in agreement with an argument by the expert that the goal of the Act should be to also eliminate indirect discrimination which involves attitudinal, institutional and environmental barriers.

Secondly, all three (3) critics of the Act agree on the fact that the Act is silent on the gender dimension of discrimination against PWDs. Indeed, a number of studies on PWDs have acknowledged the fact that women with disability (WWD) experience multiple discrimination constituting gender and disability (Naami et al, 2012; Guernsey et al, 2007; Venter et al, n.d; Fiduccia and Wolfe, 1999). Davaki et al (2013) have shown that WWD do not only suffer double discrimination but also an intersectional discrimination of disability, gender and race. The situation is even worse for WWD from Ghana, as they experience an intersection of disability, poverty, gender, negative perceptions about their capabilities, geographic area and cultural beliefs and practices (Naami et al, 2012). It is suggested that the overall effect of intersectional discrimination can be understood by analyzing how a structural interrelationship between disability, gender and race affect women’s access to available resources. The expert, therefore, argues that it is unfair to have an Act that does not have a separate section devoted to such a vulnerable group. In fact, such an omission cannot be glossed over when the United Nations Convention on the Rights of Persons with Disability (UNCRPD) and the African Charter on Human and People’s Rights on the Rights of Women in Africa, of which Ghana is a signatory, recognizes the vulnerability of WWD. For instance, the Charter specifies that State parties shall undertake to combat all forms of discrimination against women at all levels and in all fields (Women in Law and Development in Africa, 2005). Other African countries such as Kenya, Malawi and Namibia have acknowledged WWD are at greater risk and have therefore made provision for them in their disability policy or Act.

This paper is premised on the fact that there are more omissions in the Act than earlier critics have pointed out. To start with, it is unfair for the drafters of the Act to have left out housing for PWDs, particularly when the UN-Habitat (2009) has indicated that PWDs in Ghana experience several impediments to adequate housing, including lack of physical accessibility and discrimination and marginalization. The UN-Habitat added that the frequent discrimination and marginalization of PWDs is the reason that they are rarely consulted or taken into account when new public housing structures are developed. For instance, it is not in doubt that no provision was made for PWDs in the SSNIT Flats in Ghana; neither has the state considered PWDs in the ongoing Affordable Housing Project and other ongoing housing schemes. Making a case for the inclusion of a provision on housing in Act 715 is not out of place because Article 28(2d) of the UNCRPD, of which Ghana is a signatory, provides that ‘States recognize the rights of PWDs to social protection and to the enjoyment of that right without discrimination on the basis of disability and shall take appropriate steps to safeguard and promote the realization of this right, including measures to ensure access by PWDs to public housing programmes’. In African countries like Nigeria, Namibia, Malawi and Botswana, their disability legislations and policies state that the needs of PWDs shall be taken into consideration in the planning and development of public housing schemes. For instance, it is captured in Botswana’s National Policy on Care for People with Disabilities that the Ministry of Local Government, Lands and Housing shall ensure that any development of land (including housing) has provision for PWDs. More so, Section 7 of the Nigerians with Disability Decree, 1993, provides that the state shall within its national housing policy apportion not less than ten per cent of all public houses to PWDs. Whether these provisions have actually been implemented to the latter is another matter; but at least it signifies the commitment to ensure that PWDs are adequately housed.

As earlier indicated, the Persons with Disability Act, 2006 (Act 715) makes it mandatory for all buildings to which the public has access to be fitted with disability-friendly facilities to make them accessible to PWDs; this is the sole responsibility of the owner or occupier of such buildings. 8 years after passing the Act 715, it is as if the law does not exist, as many of the public buildings built post-2006 remain inaccessible to the PWDs. For instance, research has shown that most of the post-2006 buildings of public tertiary institutions in Ghana are not accessible to PWDs (Ansah and Owusu, 2012). This paper holds the view that the Act might never be able to

achieve its intended objectives if construction professionals such as architects and contractors in Ghana are not liable for non-compliance of the provisions of the Act. Architects and contractors, by the nature of their profession, are those who create the built environment (Kadir and Jamaludin, 2012) while owners and occupiers are only the financiers. In other words, buildings are built according to the advice of these construction professionals. Perhaps, this is the reason schedule 3.4 of Namibia's National Policy on Disability state that 'the State shall ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment, have access to the disability policy and the requirements for making places accessible to disabled people'. Such a provision is intended to ensure that construction professionals in Namibia adhere to the disability policy and sanctions meted out to those who fail to comply. With reference to the Namibian example, this paper considers it a serious omission not to have made construction professionals liable for non-compliance under Act 715 because they are at the root of the problem of inaccessibility and barriers in our built environment. Usually, construction professionals in Ghana hide behind the excuse of building to suit the purse of their client, who regards the provision of disability-friendly facilities as an extra cost (Hashim et al, 2012). In essence, they build to suit their client and not the law. It is in this regard that the GFD, on the 8th February, 2013, took an action against the Attorney General, Ghana Highway Authority and the Millennium Development Authority for neglecting the needs of PWDs in the design and construction of the George Walker Bush Highway in Accra, Ghana (Gyamfi, 2013). The contractors, China Railway WUJU Group and Moniz da Maia Serra & Fortunato-Engenharia (MSF), of the highway could not be added to the suit because they are not liable for non-compliance under Act 715. For as long as construction professionals are not liable for non-compliance, there will be no motivation to design or build in accordance with the tenets of Act 715.

To cap it all, it is also worth mentioning that there is no mention of the voting rights of PWDs in Act 715. All over the world, voting has become a key component of participation in democracy because it constitutes a source of individual power, a means of representation and a voice in political activities (Davis, 2010). In the same vein, voting signifies an opportunity for PWDs to exercise their citizenship rights according to the democratic principle of universal adult suffrage (Melamed et al., 2000). In Ghana, the Constitution gives every citizen of voting age the right to participate in political activity intended to the composition and policies of government. Having regard to the generality of this constitutional provision, the absence of the voting right of PWDs in Act 715 causes more harm than good due to their vulnerability. For PWDs, discrimination, stigma, marginalization and a lack of the needed support to vote are all barriers to their participation in the voting process (Davis, 2010). Though the Constitution guarantees the right of all persons to vote, most PWDs are unable to exercise this right due to physical barriers in the built environment. Ironically, Ghana has ratified the UNCRPD, which establishes the right of PWDs to a guaranteed free expression of will as electors and where necessary, at their request, allow voting by proxy. Perhaps, the drafters of the Act could have learnt from Nigeria, who's Nigerians Disability Decree of 1993 clearly states that PWDs shall have the right of assistance by a person of his choice to vote; the National Electoral Commission shall make polling stations available and accessible to the PWDs. This notwithstanding, it is important to note Ghana has taken some giant steps in ensuring that PWDs exercise their citizenship right. In the last elections, PWDs in psychiatric hospitals were given the opportunity to cast their vote (Ssenooba, 2013). However, many others in traditional hospitals and clinics, prayer camps and rehabilitation centres amongst others were not able to cast their vote in the same elections.

4. Discussion

Table 1 below juxtaposes the Ghana's Persons with Disability Act, 2006 (Act 715) against disability legislations and policies of other African countries as well as the UNCRPD. As earlier argued, it is obvious from the table that Act 715 has no provision on WWD, housing for PWDs, voting rights of PWDs and liability of construction professionals. Therefore, it does not come as a surprise that the law has not been able to fully give effect to the rights of PWDs contained in the Constitution of Ghana (Oduro, 2009). To make matters worse, it can also be deduced from the table that, with the exception of Namibia, the other African countries under consideration, Ghana included, do not have a provision on liability of construction professionals in their disability legislation or policy and hence rendering the built environment inaccessible to PWDs. Smith et al (2008) has argued inaccessible environment restricts the movement of PWDs and thus negatively affecting their health, self-esteem and life satisfaction, three factors critical to successful living. This social barrier of inaccessibility in the built environment and its associated consequences is what the social model of disability seeks to address (Kadir and Jamaludin, 2012). Ironically, most, if not all, disability legislations and conventions are based on the social model that proposes a more inclusive and accessible society rather than one that treats PWDs as defective (Harpur, 2012). It must be acknowledged that construction professionals are key stakeholders in ensuring that societies cater for the needs and aspirations of all persons irrespective of their disability. African countries that are committed to achieving an inclusive and accessible society must begin to think of making construction professionals liable in their disability legislations and policies. Another key observation from the table is that most African countries, Ghana included, passed their disability legislations before the UNCRPD came into full

force. According to Harpur (2012) and Mandipa (2013), though adopted by the United Nations Assembly on the 3rd December, 2006, the UNCRPD received enough ratification to commence operation on the 3rd May, 2008. This explains why Ghana's Act 715, like Kenya's Persons with Disability (Amendment) Act and Botswana's National Policy on Care for People with Disabilities, 1996 does not have three or more of the provisions under consideration. By implication, most of Africa is yet to amend their disability legislations to ensure consistency with the UNCRPD. This is quite surprising especially when Lord and Stein (2013) have documented that African states embraced the adoption of the UNCRPD and championed¹ its rapid entry into force. For instance, even though Ghana has ratified the UNCRPD, all efforts at getting the government to initiate the process to amend Act 715 to ensure its consistency with the UNCRPD have yielded no appreciable results. It is in fact true that African countries' level of commitment to addressing issues of disability is questionable.

5. Conclusion and Recommendation

This paper contributes to the body of knowledge that is calling for an urgent amendment of the Persons with Disability Act, 2006 (Act 715) in order to conform to the provisions of the UNCRPD, of which Ghana is a signatory. Though other critics might have highlighted some key omissions in the Act, this paper draws the attention of the disability scholarship to some crucial omissions in the Act constituting housing for PWDs, liability of construction professional and the voting rights of PWDs. By way of recommendation, this paper suggests that the Act be amended to make it mandatory for the State to make provision for PWDs in its public housing schemes. At least a ten per cent provision, as done in Nigeria, will be a good starting point. It must also be clearly stated in the Act that all houses that are offered for rental purposes must have facilities that makes them accessible and rentable to PWDs. Such a provision is indispensable because renting is the most common type of tenancy in Ghana (Gough and Yankson, 2011). Secondly, if the objective of section 1(6) and 1(7) of Act 715 must be met, then it is not a matter of choice that construction professionals must be liable for non-compliance. In order to ensure that all buildings or places are accessible to PWDs, the Act must specify what is expected of construction professionals in Ghana and the penalty for non-compliance of its provisions. This is to ensure that construction professionals will always find a balance between building to suit the purse of their client and complying with the provisions of Act 715. Finally, it must be stated that giving patients of 'sound mind' in psychiatric hospitals in Ghana the opportunity to vote in the 2012 national elections is only a recognition of the rights of a small segment of PWDs. This paper recommends a provision that ensures all PWDs in Ghana, irrespective of their location, have the opportunity to vote in all national elections. This could either be in person or by proxy. This paper proposes a stakeholder discussion of these omissions and the recommendations provided by critics and the outcome thereof should be considered in the event that policy actors decide to amend the Act. This is not to conclude that addressing these omissions will put an end to the scores of challenges confronting PWDs in Ghana but rather to ensure that Act 715 becomes robust and responsive to the needs and concerns of PWDs.

¹ The Working Group that developed the foundational text of the CRPD negotiations included delegations from seven (7) African nations – Cameroon, Comoros, Mali, Morocco, Sierra Leone, South Africa and Uganda. Sixteen (16) African countries signed the CRPD and thirty-four (34), including Ghana, Kenya, Malawi and Namibia, have ratified the treaty. In addition, eighteen (18) African states are party to the Optional Protocol. The CRPD has included experts from Algeria, Kenya and Tunisia and the current Special Rapporteur on Disability is South African disability rights advocate, Mr. Chalklen (See Lord and Stein, 2013).

Table 1: Measuring Act 715 as against Other Disability Legislations, Policies and Conventions

Disability Legislation, Policies and Conventions	Provision(s)			
	Women with Disability (WWD)	Housing for PWDs	Voting Rights of PWDs	Liability of Construction Professionals
Persons with Disability Act, 2006 (Act 715) (<i>Ghana</i>)	None	None	None	None
United Nations Convention on Rights of Persons with Disability (2008)	Article 6 recognizes WWD as subject to multiple discrimination.	Article 28(2d) ensures access by PWDs to public housing programmes.	Article 29(a)(iii) guarantees the free expression of the will of PWDs as electors and where necessary allowing voting by proxy	None
Nigerians with Disability Decree, 1993 (<i>Nigeria</i>)	None	Section 7 makes a provision of not less than 10% of all public houses	Section 13 says PWDs shall have the right to vote either in person or by proxy and polling stations and shall be made available and accessible to PWDs.	None
Persons with Disabilities (Amendment) Act, 2007 (<i>Kenya</i>)	Section 6 recognizes WWD as subject to multiple discrimination	None	None	None
National Policy on Disability, 2004 (<i>Namibia</i>)	Schedule 2.5.1 ensures that WWD have equal opportunity to participate in all aspects of life	Schedule 3.8.4 ensures provision of and access to housing for PWDs are made.	None	Schedule 3.4 ensures that construction professionals have access to the disability policy and the requirements for making places accessible to PWDs.
National Policy on Care for People with Disabilities, 1996 (<i>Botswana</i>)	None	Schedule 4.3.1.4 ensures that any development of land has provision for PWDs.	None	None
National Policy on Equalisation of Opportunities for Persons with Disabilities (<i>Malawi</i>)	Schedule 2.4.10 acknowledges that WWD experience greater discrimination and higher levels of exclusion from the mainstream society.	Schedule 4.11.1 ensures that there is improved access to adequate housing for PWDs	Schedule 2.4.9 recognizes that PWDs are frequently denied their fundamental right to participate in national elections.	None

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Disability Legislations, Policies and Conventions

Ghana [Persons with Disability Act, 2006 (Act 715)]

Nigeria [Nigerians with Disability Decree, 1993]

Namibia [National Policy on Disability]

Malawi [National Policy on Equalisation of Opportunities for Persons with Disabilities]

Kenya [Persons with Disabilities (Amendment) Act, 2007]

United Nations Convention on the Rights of Persons with Disability

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