

Law's role in fostering inclusive and accessible pedestrian environments: insights from a multinational study

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Accessibility is a universal public good (UN Department for Economic and Social Affairs, 2013). In no context is this more evident than that of streets, through which we wheel and walk for countless reasons.

Law has always played an important role in shaping street accessibility. Its impact is sometimes disabling—as highlighted in TenBroek's classic article (1966). In recent decades, accessibility has increasingly featured in laws intended to make a positive difference—a trend strengthened by the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD), Article 9 of which focuses on accessibility (Lawson, 2018).

In the Inclusive Public Space (IPS) Project, we reviewed relevant law and policy in five countries (India, Kenya, the Netherlands, the UK and the US) (IPS, 2021), drawing upon and updating this work for subsequent outputs (e.g. Houtzager, 2021; Jain and Jain, 2024; Lawson *et al.*, 2024; Mute and Meroka-Mutua, 2024; Orchard *et al.*, 2024; Whaley *et al.*, 2024). We also interviewed pedestrians and stakeholders in each Project country about the nature and impact of barriers to inclusion and the effectiveness of relevant law and policy. Here, we outline key findings on the latter.

Types of relevant law

In all Project countries except the Netherlands, we found high-level equality-related commitments capable of supporting legal actions for failure to ensure the accessibility of pedestrian environments. Examples include, in the US, the Americans with Disabilities Act 1990 (ADA); in the UK, the Equality Act 2010 (EqA); in Kenya, the 2010 Constitution; and, in India, the 1950 Constitution, Article 21 of which (right to life) also has relevance to accessibility. In such enactments, accessibility is often implicit, but foundations are laid for the fuller elaboration of accessibility obligations in jurisprudence and standards. Although such provisions generally focus on substantive issues, some concern process. In particular, the UK Public Sector Equality Duty requires public authorities to have 'due regard' to disability and other equality when discharging their functions (Lawson *et al.*, 2024).

In several countries, we found legislation in which accessibility was addressed more explicitly. Examples include India's Rights of Persons with Disabilities Act 2016, section 40, which requires the national

government, in collaboration with the Chief Commissioner on Disability, to compile accessibility standards. In Kenya, Article 54 of the Constitution confers an entitlement to 'reasonable access'; and sections 21–29 of the Persons with Disabilities Act 2003 create a right to barrier-free access. Furthermore, Article 15 of the Protocol to the African Charter on Human and Peoples' Rights, about the Rights of Persons with Disabilities in Africa—which entered into force in June 2024—requires barrier-free access, including in the physical environment and transportation.

All countries had relevant planning laws, generally with guides or codes applicable to the design of streets. The extent to which they foregrounded accessibility, however, varied. The new Dutch Environment and Planning Act 2024 makes accessibility an explicit focus and requires municipalities to issue accessibility standards and plans for the public realm (Houtzager, 2021; Orchard *et al.*, 2024). An exciting recent development is the publication by the US Access Board of the Public Rights of Way Accessibility Guidelines 2023. These will become nationally binding on adoption by relevant federal agencies—a process which is underway.

Also relevant to the inclusiveness of streets for disabled and other pedestrians are laws, found in all Project countries, regulating the behaviour of car drivers and other road users. Such laws tend to be backed up by criminal penalties and collated into highway or analogous codes. Civil laws, such as negligence or occupiers' liability, also set standards of care affecting pedestrian inclusion (IPS, 2021).

Effectiveness of relevant law

Despite some positive developments, we found serious concerns about the pace of progress and effectiveness of relevant law—both as regards the substantive articulation of that law and its practical implementation and enforcement.

In terms of substance, concerns included the failure of the Netherlands equality law to prohibit disability discrimination in the public realm. Also, because of

difficulties with their disability-specific legislation (as will be discussed), in both Kenya and India there were concerns about the need to rely on judicial interpretation of constitutional rights for suitable protection.

There were also more specific concerns. Mute and Meroka-Mutua (2024) argue that the disempowering approach to 'disability' in Kenya's Persons with Disabilities Act 2003 fatally undermines its potential to achieve change—and stress the importance of ongoing efforts to replace it with authentic rights-based legislation. In the British Public Sector Equality Duty, the weakness of the requirement to have 'due regard' (as opposed to, for example, 'a duty to take steps') also caused concern.

There were also more localised concerns. New York State law, for example, requires property owners rather than city or county authorities to maintain footpaths in an accessible condition (New York State Property Maintenance Code 302). This creates complexity and confusion as to where responsibility lies and impedes the rolling out of city or county-wide initiatives.

Enforcement and implementation problems were identified as the primary concern by stakeholders in all countries. Such problems were sometimes rooted in the articulation of relevant obligations—such as in the lack of clarity about penalties for non-compliance with section 41 of India's Rights of Persons with Disabilities Act 2016 (requiring public authorities to ensure accessibility, including that of roads).

In all countries, awareness amongst disabled and other pedestrians of how to report problems was limited. This said, there were several positive initiatives—such as proactive outreach to disabled people's organisations by local government staff and elected members, and the use of apps for reporting problems, particularly in Netherlands and UK cities.

There was a worrying shortage of lawyers with relevant expertise in all countries. Impressive initiatives to address this were taking place in Kenya, involving



collaborations between Law Schools and disabled people's organisations. The costs of bringing court cases were often prohibitive, and legal aid was limited (e.g. in the UK). In most cases, successful legal enforcement was unlikely to result in orders for systemic, city-wide change, but there were interesting exceptions to this in the US and in India. Thus, in the US, the failure of authorities in Atlanta to comply with accessibility requirements in the public realm resulted in a settlement agreement between city authorities and the US Department of Justice in 2009 (Office of Public Affairs, 2009). Failure to discharge its terms resulted in a class action by disabled people in 2018, resulting in a 2024 court-directed settlement requiring the city to update its Transition Plan for sidewalks, with a focus on accessibility (Lawson, Curtis and Turner v City of Atlanta, 2024).

In India, as explained by Jain and Jain (2024: section 4), there are a growing number of cases in which courts have ordered municipal and other public bodies to take systemic action to address accessibility barriers. Despite such positive developments, they argue that the enforcement of the Rights of Persons with Disabilities Act is being significantly hampered by governmental failure to establish specific courts and public prosecutors to conduct cases under the

Act (as required by sections 84 and 85).

Policy and financial back-up

No law can fulfil its aims without a supportive policy context and necessary resources. The importance of this point is highlighted in the CRPD Committee's guidance on the implementation of accessibility obligations under Article 9 (UN Committee on the Rights of Persons with Disabilities, 2014: particularly paragraphs 10, 18, 19, 24, 28, 30 and 33). This emphasises the need for clear strategies and plans, with definite time-frames, for progressing systematically toward full accessibility; effective ongoing monitoring of the implementation of plans and strategies; the involvement of accessibility experts as well as disabled people and their organisations in such monitoring and standard development; training of all stakeholders, including contractors carrying out construction work; the investment of adequate financial and human resource to make the plans and strategies viable; and sanctions for non-compliance. Many such measures seemed to be missing in our Project countries, at least in the context of street accessibility.

Plans focusing exclusively on making the public realm accessible were virtually non-existent. The issue instead tended to be part of broader strategies—for example,

the promotion of active travel (including cycling as well as walking), accessible transport and cities. Consequently, in India, there was concern that accessibility initiatives and investments focused on public buildings with little regard for roads and the broader public realm. In Kenya, there was concern that car transport was being prioritised in new road-related construction, and, in the Netherlands, that the uninterrupted flow of traffic was being prioritised over pedestrian safety and convenience—manifesting, in some municipalities, in the switching off of pedestrian-controlled crossings with audio signals. In the Netherlands and the UK, there was concern that active travel policies tended to focus on the needs of cyclists, with the needs of pedestrians sometimes being marginalised—a concern highlighted in the UK in connection with new infrastructure, such as 'floating bus stops' which require pedestrians to cross over active cycle lanes (generally without controlled crossings) between bus stops and footpaths.

Lack of financial investment was another recurrent theme, with street accessibility apparently being regarded as a relatively low priority and, therefore, vulnerable to being squeezed. In Atlanta, for example, because of changed financial circumstances, a 2015/16 plan to invest \$35 million in the construction of 'curb cuts' (or dropped kerbs) to enable people with mobility impairments to more easily mount and dismount footpaths, was reduced to \$5 million (Renew Atlanta, undated).

Accessibility standards and guidance are clearly vital. There was concern in the UK about the content of some such guidance—for example, authorising floating bus stops, low kerbs and tactile paving that were difficult to detect with a guide dog or long cane. In India, too, there was concern that government was required to liaise with the Chief Commissioner of Disability (a role which has not been filled for five years) but not a broader community of disabled people's organisations and access consultants. In India and the UK, the US Access Board was considered an alternative, preferable model of standard development.

Conclusion

Law has an important and complex role to play in enhancing street accessibility. To achieve this end, multiple types of law need to be honed and pull in the same direction. Effective strategies, with hard timelines and concrete financial and human resource commitments, are also essential. Underpinning the success of all of this is the meaningful involvement of disabled people and others particularly affected by accessibility barriers, as Article 4(3) of the CRPD requires. Unless progress continues to be made, these spaces, so pervasive and so crucial to human flourishing, will continue to exclude, alienate and endanger disabled and older pedestrians.

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PROJECT NAME:

Inclusive Public Space: Law, Universality and Difference in the Accessibility of Streets

PROJECT SUMMARY

This project aims to strengthen initiatives to use law, policy and awareness-raising to enhance the accessibility of city streets, particularly for disabled and older pedestrians. It focuses on five countries and, within each of them, two cities. It draws on law/policy analysis, qualitative data from interviews and street-filming with city-based pedestrians, and interviews with national stakeholders.

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