

Investing in people for Social and economic Justice

Zimbabwe Coalition on Debt and Development

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# POLICY BRIEF

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Enhancing a Disability Inclusive Policy Environment Through the Effective Implementation of the United Nations Convention on the Rights of Persons with Disabilities (PWDs)

## Background Information

This brief will focus on the assessment of disability laws and policies in Zimbabwe, the various disability models and which one(s) Zimbabwe is implementing and offer policy recommendations. It will also analyze some provisions of the UN Convention on the Rights of Persons with Disabilities<sup>1</sup>, The Constitution<sup>2</sup> and the Disabled Persons Act [Chapter 17:01]<sup>3</sup>. A comparative analysis to draw out lessons will also be made with approaches and practices in other countries such as South Africa.

In 1992 the Zimbabwean legislature passed the Disabled Persons Act (Act 5/1992) to address challenges faced by people with disabilities in Zimbabwe.<sup>4</sup> The country's constitution through Amendment Number 17 of 2005 included disability under section 23, which was the anti-discriminatory clause in the old constitution. Section 23 however emphasized on physical disability only thereby leaving other disability categories of a sensory nature.

In March 2013 Zimbabweans through a referendum voted and approved a new constitution. In May 2013 the Zimbabwean legislature ratified the UNCRPD. There has been very little improvement in the lives of PWDs because the Disabled Persons Act (DPA) was not implemented on the ground. The UNCRPD was ratified but is yet to be domesticated which means that it has not yet been incorporated onto the body of the country's laws to become binding. The situation has been aggravated by the fact that for the past 34 years the country has not crafted or enacted a disability policy, a situation which has provided an impetus for advocacy work on the domestication and implementation of the UNCRPD and crafting of a disability policy in Zimbabwe in line with the UNCRPD provisions.

## Models of Disability<sup>5</sup>

### Charity Model

The model views PWDs as objects of pity. Under this model people with disability survive on begging and donations from benevolent givers. The challenge with the charity model is that human beings are egocentric consequently it is difficult to premise or rely solely on this benevolence for one's survival and development. The charity model is also problematic in that it treats PWDs as perpetual recipients of pity and handouts, without interrogating why they remain at the lowest level of societal development. In addition to that, it is unsustainable. Under this model the skills and abilities of PWDs are undermined as the PWDs have to survive on the benevolence of the givers. Under the charity model the decision making powers of the PWDs hardly exist because it is the giver who decides how much the PWD can be given, such a model cannot be used to improve the standards of living for PWDs and should not be used for policy formulation and implementation.

<sup>1</sup>This paper will also use abbreviation UNCRPD to refer to the UN Convention on Rights of Persons with Disabilities

<sup>2</sup>The Constitution as adopted by Zimbabwe through a referendum in March 2013

<sup>3</sup>Also to be referred as DPA in this paper

<sup>4</sup>Also referred as PWDs in this paper

<sup>5</sup>As expounded by Altman, B., 2001, "Disability Definitions, Models, Classification Schemes, and Applications," in *Handbook of Disability Studies*, G. L. Albrecht, K.D. Selman, and M. Bury, Thousand Oaks, CA: Sage Publications, pp. 97–122.

## Medical Model

This model treats PWDs as patients; it uses words such as normal and abnormal to describe PWDs. The aspect of stigma and discrimination is inherent on the vocabulary of the medical model. The disadvantages of this model are that it emphasizes more on improving (treating) the person instead of the environment or society in which they live and function. It is also called the diagnostic or personal tragedy model. Its flaw is that it is narrow; it concentrates on the individual instead of the environment wherein the individual lives and functions. Thus it cannot be used as a basis for both policy formulation and implementation.

## Welfarist Approach

It concentrates on giving the PWD the basic minimum to enable him or her to struggle from one day to the next. The charity, medical and the welfarist approach are the ones which influence the disability landscape in Zimbabwe as shown in the Disabled Persons Act provisions of 1992. The Act talks to the welfare and rehabilitation of PWDs, in all its provisions the word “rights” is almost nonexistent. The welfarist approach is problematic as it gives PWDs the lowest minimum amount possible. It is not a holistic way of addressing disability concerns and cannot be relied on to influence the disability policy.

## Gowal Model

The understanding of this model is that the disability is a societal rather than individual issue. This model does not look at PWD as an individual only but also strives to look at his or her environment, this is the model which is more suitable and compatible with the rights based approach. The societal model is a broader and more holistic approach to disability matters it can be relied on for policy formulation and implementation as it creates some connection between the person and his/ her operating environment.

## The Rights Based Approach

This model treats PWDs as individuals who are rights holders and also as duty bearers. Under this approach PWDs have rights that they can claim from the state and also duties that they can perform, for example upholding the countries' laws. Under this approach PWDs are consulted at policy formulation and implementation stages. The Rights Based Approach (RBA) also promotes participation, decision making and ownership of developmental products by PWDs. Amongst the involved stakeholders, the RBA seeks to overcome the weakness of the charity model in that it does not encourage PWDs to become perpetual recipients of handouts and services but also active participants in the whole process.

The RBA is based upon four core values, which are;

**Autonomy** – this entails the ability to make informed decisions and choices;

**Inclusiveness**– PWDs have to be involved in all spheres of life.

**Equality** – PWDs are equal to other citizens of the state and are equal before the law with all other citizens.

**Human Dignity**- It states that PWDs like other human beings have to be protected from inhuman degrading punishment or treatment. It further stipulates that the worthy and dignity of PWDs has to be protected and respected by the institutions and laws of the state.

This is the model which is desirable and Zimbabwe should strive to ensure that PWDs are viewed as right holders and policy making processes should be informed as such.

## Key Points on Disability in Zimbabwe

Zimbabwe has operated for 34 years without a disability policy; this has left many PWDs marginalized without access to social essentials to emancipate their livelihoods. This has made the program of social assistance from the state grossly inadequate to meet the rights of PWDs. The Ministry of Labour, Social Services and Employment Creation under which PWDs are housed gives out \$20 per household per month. The pay out of this social grant is not guaranteed for the beneficiaries of the program and PWDs may spend up to 3 months without receiving social assistance.<sup>6</sup>

<sup>6</sup>Some PWDs within the ZIMCODD disability cluster testified to this challenge.

These unfavorable conditions has led to the exodus of PWDs to neighboring countries like South Africa and Namibia primarily for begging leaving them vulnerable to abuse. The WHO report of 2011 states that about 15% of the world's population is PWDs and this is true for developing countries. It is estimated that 15% of Zimbabwe's PWDs lack the opportunities of the mainstream population.<sup>7</sup> They encounter a myriad of physical and social obstacles that prevent them from receiving an education prevent them from getting jobs even if they are well qualified and prevent them from obtaining proper healthcare. These obstacles also prevent PWDs from moving around freely, fitting in and gaining acceptance from society as well as accessing other human rights like other citizens. While Zimbabwe has enacted some legislation in this regard many gaps still remain. The World Bank estimates that the exclusion of PWDs from economic activities reduces a countries' gross domestic product by 25%.<sup>8</sup> It is the consideration of these and other challenges that necessitate the speedy formulation and implementation of a comprehensive policy on disability as informed by the UNCRPD.

### **Zimbabwe's Current Legislation on Disability:**

There are three pieces of legislation on disability namely the Constitution of Zimbabwe, the Disabled Persons Act Chapter [Chapter 17:01] and the provisions of the Labour Act [Chapter 28:01] Section 5 which tackles the issues of discrimination at the work place.

### **The Disabled Persons Act [Chapter 17:01]**

The major challenge with the Act is that it is now outdated. It concentrates on issues which were topical in 1992 for example access to buildings. It now needs to be updated to include emerging issues of the day for example self representation by PWDs and economic empowerment of PWDs. Furthermore the Act has not been implemented for example under Section 3, the Director of Disabled Persons' Affairs who would harmonize all disability work in Zimbabwe was not appointed at all in the last 22 years. Consequently some of the challenges faced by PWDs are due to not only the lack of funds, but also failure to implement the few progressive provisions that are there. The Act also concentrates on creating structures and offices but does not include an implementation strategy to breathe life into the Act. For instance in section 3 it created the Director of Disabled Persons' Affairs but did not give him/her a secretariat to help him/her carry out his/her functions. Section 4 provides for the creation of a National Disability Board but it had no secretariat. Section 4(7) of the Act states that the Minister may assign persons employed in his Ministry to perform such secretarial and administrative functions, in connection with the board as may be necessary for the performance of its functions. This is grossly inadequate because it means that the board has no secretariat, it has to rely on employees taken from the Ministry of Social Service. These employees may already be overloaded with duties from the Ministry of Social Services hence work from the disability board would be given little or no attention at all. The desideratum would be to provide a full time secretariat.

Section 7 of the Act states that even though the National Disability Board can issue adjustment orders for the owner of a building whose premises are inaccessible to PWDs, the owner of a building can appeal to the administrative court and state that he cannot be expected to bear the whole or any part of the expense to make the building accessible. Section 7(5) covers the grounds which can be relied upon by a property owner to appeal against an adjustment order. As already insinuated above the property owner can rely on monetary reasons and as per section 7 (5) -again they can rely on any other ground. From one's perspective the Act is too lenient on the grounds which can be relied upon for failure to comply with an adjustment order. There are so many exceptions such that in the final analysis the Act gives with the right hand and takes away with the left hand.

### **The Constitution and PWDs**

The current Zimbabwean Constitution was drafted from a welfarist perspective. This is evident from the kind of language used in a substantial portion of the provisions relating to PWDs e.g. section 14(1) states that the state must Endeavour through use of affirmative action to empower all marginalized persons in Zimbabwe. One cannot litigate

<sup>7</sup>World Health Organisation Report 2011: Section on World Disability Report

<sup>8</sup>ibid

on an endeavor. Other disability provisions are in section 22 and section 83. The language used such as; *to consider, encourage, to foster* is vague, non committal and unconvincing. Such language also makes it difficult to measure the state's commitment to promote and protect disability rights in Zimbabwe. The situation is aggravated by use of such phrases like within the limits of the resources, it could be stated that the state should prioritize disability rights, and remove claw back clauses like within the limits of available resources. In all the provisions dealing with PWDs there is no mention of economic empowerment. The constitutional framework should give PWDs economic empowerment.

Women under sections 17 and 80 and war veterans under section 23 and 84 are clearly given an entitlement to economic empowerment. The principle of self representation of PWDs is also greatly undermined. In terms of section 120 (1) (d), PWDs are represented by two persons in the senate one woman and one man. In the - House of Assembly PWDs have no representatives at all. This is grossly inadequate for the disability constituency whose estimated population is 15%. This is a flagrant contradiction of the founding values and principles of the constitution, section 3(2) (b) (iii) which points out that one of the founding values of the constitution is adequate representation of the electorate. It also contradicts the spirit of section 3(2) (i) paragraph (ii) which sets recognition of the rights of PWDs as one of the basic cornerstone of the constitution.

The Constitution also uses 3 various terms to refer to PWDs. It uses PWDs on persons with physical and mental disability and as persons with all forms of disability. The constitution in section 332 does not offer the definition of disability. Thus it might be prudent for Zimbabwe to adopt the definition of disability as provided by Article 1 of the UNCRPD which states 'People with disabilities include those who have long term physical, mental, intellectual or sensory impairments, which in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.' Section 83 -(e) and (f) of the Constitution of Zimbabwe states that the state will provide special facilities and state-funded education and training where they(PWDs) need it, the suggested recommendation is that they should just be state funded education and training of PWDs.

### **Disability Issues and Comparative Analysis**

In South Africa they have the Employment Equity Act<sup>9</sup> which among other things provides for the following:

- (i) A minimum threshold of 2 & half % of the jobs in the country to be reserved for PWDs in the private sector. In Zimbabwe this facility is not there.
- (ii) South Africa offers Tax rebates for companies that employ PWDs. In Zimbabwe these tax incentives are not there to encourage companies to employ PWDs.
- (iii) Placement desks for disability – this facility serves to uphold inclusiveness for PWDs in South Africa, placements desks for PWDs are not available in Zimbabwe. In South Africa PWDs are given ZAR1200.00 per month/individual as a social assistance grant. This is provided regardless of the PWDs' employment status. In Zimbabwe PWDs get \$20.00 per month per household regardless of how many PWDs are within the household. There are also stringent vetting procedures to make sure that such beneficiary to the State's social assistance program is unemployed. In South Africa there are 17 members of parliament with disabilities. Zimbabwe's Lower House of Parliament has no representatives for PWDs and there are only two in the Upper House. Thus the South African parliament has about 4, 5% for PWDs representation and is better when compared with Zimbabwe's legislature on the principle of self representation for PWDs.

### **Brief Summary of UNCRPD**

#### Article 2 -definitions:

“reasonable accommodation” means necessary and appropriate adjustments and modifications, not imposing a disproportionate or undue burden, where needed in a particular case to ensure for PWDs, the enjoyment or exercise on an equal bases with others, of all human rights and fundamental freedoms;

<sup>9</sup>Of 1998

“Universal design” means the design of products environments programs and services to be usable by all people, to the greatest extent possible, without need for adaptation or specialized design and will not exclude assistive devices for particular groups of PWDs where this equipment is needed.

#### Article 5 – Equality and non discrimination

State parties recognize that all people including PWDs are equal before the law and are entitled without any discrimination to the equal protection and benefits of the law.

#### Article 9 – Accessibility

State parties undertake to make buildings information, technology, transport and other facilities to be accessible to PWDs.

#### Article 12 – Equal Recognition before the law

PWDs have full recognition before the law on the bases of equality with others and will enjoy equal access to bank loans, mortgages and other forms of credit.

#### Article 13 – Access to justice

State parties will have staff involved in the administration of justice e.g. police, prisons, and judicial officers trained on disability rights, to facilitate access to justice by PWDs.

#### Article 21 – Freedom of expression and opinion, and access to information

PWDs are given freedom of expression.

#### Article 22 – Respect for Privacy

PWDS have their privacy protected, e.g. on health rehabilitation etc on the bases of equality with others.

#### Article 24 – Education

State parties undertake to provide inclusive education to PWDs and ensure that PWDs attain education on the bases of equality with others.

#### Article 25 – Health

State parties recognize the right of PWDs to work on equal bases with others in an environment that is open, inclusive and accessible.

#### Article 28 – Adequate standard of living and social protection

State parties recognize the right of PWDs to adequate living standards and protection.

#### Article 29 – Participation in political and public life

State parties will ensure that PWDs will participate meaningfully on political activities and public life.

#### Article 30 – Participation in cultural life, recreation, leisure and sport

State parties shall take measures that PWDs participate in recreational leisure and sporting activities.

#### Article 31 – Statistics and data collection

State parties shall undertake to research for data collection on disability statistics, carried out on international standards and norms.

#### Article 32 – International cooperation

State parties undertake to co-operate among themselves to achieve the realization of the convention's objectives.

## **Reasons for domestication and implementing the UNCRPD:**

1. It will broaden and greatly enrich our law on the field of disability rights.
2. The convention is written in clear straightforward language which is consistent with the rights based approach, consequently due to reliance on the Convention it will be easier to assert and obtain rights by PWDs from the state.
3. Under Article 1, the Convention clearly offers a straightforward and broad definition of disability so when a country is formulating a disability policy it will be easy to access the target group who will benefit from the policy it will also mark a fundamental departure from the current situation where the constitution uses three descriptions when referring to PWDs.
4. The convention will bring new concepts e.g. universal designs and reasonable accommodation which will greatly improve the lives of PWDs.
5. It will radically transform Zimbabwe's outlook on disability from one based on the charity model and the welfarist perspective to one based on the rights based approach. It will usher in urgently needed renewal to Zimbabwe's laws on disability which are currently anachronistic (outdated).  
Implementing the Convention can be used as a sustainable method of plugging the gaps identified in the constitution thus it can be used for overcoming the flaws on inadequacies of the constitution.

## **Policy Recommendations**

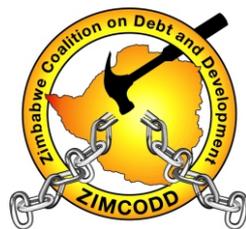
1. Domesticate and implement UNCRPD in Zimbabwe.
2. All policies and legislation should be aligned to the provisions of the Convention.
3. Involve PWDs through their various organisations in the formulation of policies and implementation of the Convention.
4. All government Ministries and Departments should ensure that disability issues are mainstreamed in all government programs.
5. All government programs must be made accessible to PWDs such as guaranteeing accessibility to buildings and overcoming visual auditory, environmental and psychological obstacles.
6. The government must ensure that it fosters conditions necessary for PWDs to raise their challenges and obtain solutions timeously. The government should promote the awareness about the Convention and involve all stakeholders when implementing the Convention.
7. Form a Disability Affairs Commission with the same power and influence as other Independent Commissions in the constitution. This Commission will abolish the National Disability Board established under the Disabled Persons Act [Chapter 17:01] and address the implementation challenges inherent in the Disability Board.
8. State funded inclusive education for PWDs. The Ministry of Education, Ministry of Finance and PWDs to co-operate in realizing this goal.
9. Adequate self representation in Parliament and Senate. 10 MPs with a disability (representing the 10 Provinces in Zimbabwe) and 5<sup>10</sup> in the senate.
10. The right to employment for PWDs with a 5% minimum threshold.
11. The state must offer a reasonable standard of living for PWDs. This should cover social protection, social grants from the state and loans for income generating projects. PWDs should be prioritized in access to national resources such as land and mineral resources.
12. Accurate and up to date disability statistics and the classification of the disability. This will enhance government response and planning to the challenges and expectations by different PWDs. This is the responsibility of all stakeholders, Ministry of Finance and Zimbabwe Statistical Office.
13. Access to justice for PWDs to effectively participate in courts of law, report cases to the police and making facilities accessible as provided under Article 13 of the UNCRPD.

## **Conclusion**

If the reforms suggested in this policy brief are adopted it can enable Zimbabwe to become an egalitarian and disability inclusive society, it will also make our policies on legislation and disability to be progressive and improve the quality of life for PWDs in Zimbabwe.

<sup>10</sup>The Senate is a smaller than the National Assembly, so 2 provinces to share one Senator.





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