

LLM (HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA) 2011

TOPIC: A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe.

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May the Almighty bless you all.

DEDICATION

To Tatenda and Tadiwanashe

Anything is possible in life

Stay focused and know who you are

Sacrifice and you shall enjoy the fruits

Always remember to follow your father's footsteps.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CWC	Children Welfare Council
CWDs	Children with Disabilities
DPA	Disabled Persons Act
DPOs	Disabled Persons Organisations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICF	International Classification of Functioning, Disability and Health
ICIDH	International Classification of Impairment, Disability and Handicap
NASCOH	National Association of Societies for the Care of the Handicapped
NDB	National Disability Board
PVOs	Private Voluntary Organisations
PWDs	Persons with Disabilities

RDCs	Rural District Councils
UCs	Urban Councils
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organisation
WWDs	Women with Disabilities
ZIMRA	Zimbabwe Revenue Authority

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ABSTRACT

The Zimbabwean society views persons with disabilities (PWDs) 'as useless liabilities that have no role to play in society.'¹ The Zimbabwean Government has also forgotten PWDs since they are not mentioned in all the country's national budgets.² This has led to uncountable barriers faced by PWDs in their bid to be included as equal members of the society. Some of the barriers are constant discrimination, sheer poverty, lack of access to mainstream public services and stigma. Hundreds to thousands of PWDs beg for alms in the streets of every town and city.

Zimbabwe then has to be reminded that all PWDs have:

a right to enjoy a decent life, as normal and full as possible, a right which lies at the heart of the right to human dignity. This right should be jealously guarded and forcefully protected by all states party to the African Charter in accordance with the well established principle that all human beings are born free and equal in dignity and rights.³

Thus, the era of silence when it comes to the realisation of the rights of PWDs in Zimbabwe has to come to an end. All PWDs in Zimbabwe should know that it is by right and not by privilege to be guaranteed full and effective participation, and inclusion in society. It is time for Zimbabwe to embrace all the rights for PWDs without any hesitation. It is time for humanity to celebrate the inherent dignity, individual autonomy, independence and the right not to be discriminated against for all PWDs. Every lawmaker in Zimbabwe has to be reminded to delete from the statute books all laws which view disability as a medical problem and instead, pass laws which are in line with the human rights-

¹ 'Africa's disabled will not be forgotten: People with disabilities fight for services, rights, dignity' *Africa Renewal* April 2010.

² As above.

³ *Purohit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) para 61.

based approach which is a more enlightened, realistic and people-centred approach to disability.⁴ No time to play but plenty of time to work...!

⁴ T Choruma *The forgotten tribe: People with disabilities in Zimbabwe* (2006) 10.

CHAPTER ONE

1.1 Introduction

Persons with disabilities (PWDs) have been portrayed as a historically disadvantaged group.⁵ In the Zimbabwean context, disability is viewed in a negative perception. To start with, the birth of a child with disability is normally associated with witchcraft, promiscuity by the mother during pregnancy and punishment by ancestral spirits.⁶ Children born with disabilities are sometimes strangled to death soon after birth. Further, there are also widespread reports of children with disabilities being hidden when visitors arrive.⁷

It is a common misconception within the Zimbabwean society that PWDs are passive and economically unproductive, and therefore they are a burden upon the country.⁸ Given the fact that Zimbabwe is a country experiencing severe political and economic crisis and also faces unprecedented developmental challenges, PWDs tend to suffer more human rights violations as compared to their non-disabled counterparts.⁹

Because of the widespread violations of the rights of PWDs in Zimbabwe, they have been described as the forgotten tribe.¹⁰

Women and children with disabilities in Zimbabwe suffer more human rights violations since they already fall under vulnerable groups.¹¹ Despite the

⁵ C Ngwenya 'Deconstructing the definition of disability under the Employment Equity Act: Social deconstruction' (2006) 22 *South African Journal on Human Rights* 613.

⁶ R Chimedza and S Peters 'Disabled people's quest for social justice in Zimbabwe' in F Armstrong and L Barton (eds) *Disability, human rights and education: Cross-cultural perspectives* (1999) 10-11.

⁷ Zimbabwe Human Rights Report 'Discrimination based on race, sex, religion, disability, language, or social status' available at [http://www.ncbuy.com/reference/country/human rights.html?code=ZI & sec = 5](http://www.ncbuy.com/reference/country/human%20rights.html?code=ZI&sec=5) (accessed 7 April 2011).

⁸ R Lang & G Charowa 'DFID scoping study: Disability issues in Zimbabwe' available at [http://www.dcssd.nl/data/1213686448155 DFID](http://www.dcssd.nl/data/1213686448155DFID) (accessed 9 April 2011).

⁹ As above.

¹⁰ Choruma (n 4 above) 5.

fact that women with disabilities (WWDs) are further disadvantaged not only because they are disabled but because they are disabled women,¹² both the Zimbabwean legal and institutional frameworks for the realisation of the rights of PWDs do not address their plight. The same neglect also touches on children with disabilities (CWDs) who are normally hidden at home and as a result, are denied their right to education among other fundamental rights and entitlements.¹³

Despite the fact that nearly 1.4 million people are living with disabilities in Zimbabwe,¹⁴ they continue to be largely characterized by severe poverty and deprivation, limited political participation, discrimination, stigma, high unemployment rates and high levels of illiteracy, only to mention but a few. The Disabled Persons Act of Zimbabwe (DPA),¹⁵ which is the primary law dealing exclusively with disability matters, appears to be failing to adequately address the question of disability. The major drawback of this Act is that it follows the out dated medical model of disability which locates disability within the person and views PWDs not as rights holders but as objects for clinical intervention.¹⁶ Further, the government has not even developed the necessary administrative infrastructures for the effective implementation of the DPA.¹⁷

Other laws that address the issue of disability include the Constitution,¹⁸ the Children's Act,¹⁹ the Mental Health Act,²⁰ the Social Welfare Act,²¹ the State

¹¹ Zimbabwe Human Rights Report (n 7 above).

¹² I Grobbelaar-du Plessis 'The African women with disabilities: The victims of multilayered discrimination' (2007) 22 *South Africa Publikereg/Public Law* 405.

¹³ Generally, see H Combrinck 'The hidden ones: Children with disabilities in Africa and the right to education' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) 299.

¹⁴ SA Nilsson 'Disability rights in Zimbabwe' available at <http://www.msc.st/docs/HRBA-Disability-Zimbabwe-revised-2011-01-30.doc> (accessed 25 July 2011).

¹⁵ Act 5 of 1992, Disabled Persons Act [Chapter 17:01].

¹⁶ G Quinn & T Degener *Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) 10.

¹⁷ Lang & Charowa (n 8 above) 7.

¹⁸ The Constitution of Zimbabwe, 1996 edition.

Service (Disability Benefits) Act,²² the War Victims Compensation Act²³ and the Criminal Law (Codification and Reform) Act.²⁴ All these laws have a lot of gaps when it comes to the realisation of the rights of PWDs. Once more, the Government has done little if anything to ensure the effective implementation of the laws.

On top of the laws, there are various institutions which deal with disability. These include the Ministry of Labour and Social Welfare, the National Disability Board (NDB), the Child Welfare Council, the courts of law and the recently appointed Special Advisor on Disability and Rehabilitation to the President and Cabinet. Basically, this thesis questions the invisibility of these institutions which is a major contributing factor to the inadequate realisation of the rights of PWDs in Zimbabwe.

Coming to the international level, the formulation and the ultimate coming into force of the Convention on the Rights Persons with Disabilities (CRPD)²⁵ have been hailed as a great landmark in the struggle to reframe the needs and concerns of PWDs in terms of human rights.²⁶ It also embodies a paradigm shift away from a social welfare response to disability to the most wanted human rights-based approach. However, it is saddening to note that Zimbabwe is not a party to the CRPD.

¹⁹ Act 22 of 1971, Children's Act [Chapter 5:06].

²⁰ Act 15 of 1996, Mental Health Act [Chapter 15:12].

²¹ Act 10 of 1988, Social Welfare Act [Chapter 17:06].

²² Act 22 of 1971, State Service (Disability Benefits) Act [Chapter 16:05].

²³ Act 22 of 1980, War Victims Compensation Act [Chapter 11:16].

²⁴ Act 23 of 2004, Criminal Law (Codification and Reform) Act [Chapter 9:23].

²⁵ The United Nations (UN) Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly on 13 December 2006 and entered into force on 3 May 2008.

²⁶ R Kayess & P French 'Out of darkness into light? Introducing the Convention on the Rights of Persons With Disabilities' (2008) 8 *Human Rights Law Review* 1 5.

Given such a background, this thesis explores and critically analyses the legal and institutional frameworks for the realisation of rights of PWDs in Zimbabwe.

1.2 Problem statement

As has been indicated earlier on, PWDs in Zimbabwe are largely characterized by high levels of discrimination, extreme conditions of poverty, limited opportunities for accessing basic services like education, health, suitable housing and employment, lack of political participation and various forms of abuse including sexual and physical, only to mention but a few. The major contributing cause of the massive violation of the rights of PWDs is the inadequate legal and institutional frameworks addressing the question of disability in Zimbabwe. As a result of such inadequacy, there is basically no environment that is conducive for the full and effective realisation of the rights of PWDs.

The DPA does not even mention rights of PWDs in any single provision let alone to sufficiently provide for full and effective realisation of such rights. The Act again is fashioned along the outdated medical model of disability. To compound the misery of PWDs, the institutions dealing with disability issues in Zimbabwe are practically invisible and exist on paper only.

1.3 Research Question

Do the Zimbabwean legal and institutional frameworks offer an environment that is conducive for the full and effective realisation of the rights of PWDs?

The thesis addresses this question by giving a critical analysis of the legal and institutional frameworks for the realisation of the rights of PWDs in Zimbabwe. The CRPD will be frequently referred to in the analysis since it embodies the best contents and practices when it comes to the realisation of the rights of PWDs at the international level.

Answers to the central question will require consideration of the following sub-questions:

- What is the nature of disability rights?
- Which are the models of disability?
- Which model or models of disability best protects PWDs?
- Which laws and institutions address the concept of disability in Zimbabwe?
- To what extent do the legal and institutional frameworks in Zimbabwe support the best practices when it comes to the realisation of the rights of PWDs as embodied in the CRPD?
- What kind of legal and institutional reforms, if any, are needed for Zimbabwe to have an adequate platform for the full and effective realisation of the rights of PWDs?

1.4 Rationale for research

In a jurisdiction like Zimbabwe which is characterized by widespread violations of human rights, PWDs tend to suffer more as compared to their non-disabled counterparts. The Constitution of Zimbabwe, the DPA and other Acts of Parliament all address the question of disability in a piecemeal fashion. As indicated earlier on, Zimbabwe is not a party to the CRPD notwithstanding the fact that the Convention embodies the best contents and practices when it comes to the realisation of the rights of PWDs. Only one case touching on disability has been decided by the Supreme Court of Zimbabwe sitting as a Constitutional Court up to date.²⁷

²⁷

Simon Mvindi and 5 Others v the President of the Republic of Zimbabwe and Others SC 106/08 in which the Supreme Court found that PWDs have a right to vote in secrecy like any other person. The Government and political parties were accordingly ordered to develop political communication and voting materials in sign language, electronic format, in enlarged print or in Braille.

There is therefore an urgent need to thoroughly revisit all the laws and institutions that address the question of disability in Zimbabwe. This thesis basically exposes some of the major weaknesses in both the legal and institutional frameworks for the realisation of the rights of PWDs and suggests general and specific reforms.

1.5 Methodology of research

To answer all the questions of this thesis, the author followed a qualitative approach. This work primarily relies on desktop research. Both primary and secondary sources including the Statutes that deal with the concept of disability in Zimbabwe, international human rights instruments, academic and developmental researches on disability issues in Zimbabwe, books and journal articles were all consulted. The author also had recourse to internet sources.

Further, a few personal interviews were held with PWDs. The interviews consisted of brief unstructured questions and informed some of the observations and conclusions which the author made in this thesis.

1.6 Literature review

There are various Acts of Parliament in Zimbabwe which address the question of disability, either directly or indirectly. At the heart of the Acts of Parliament lies the DPA. This is the principal statute when it comes to the concept of disability in Zimbabwe. It makes provision for the welfare of PWDs and the establishment of the NDB, among other things.

Other Acts include the Children's Act which makes provision for the welfare and upbringing of children, including children with disabilities, the Mental Health Act which makes provision for the care, detention and after care

of persons who are mentally or intellectually handicapped and the Social Welfare Act which provides for the granting of social welfare assistance to persons in need and their dependents. It is a common scenario in Zimbabwe that disability normally leads to poverty and therefore, this Act has much relevance in the present discussion.

The CRPD has been consulted in as much as it is the principal Convention that address disability at the international level.

As of books, M Sepúlveda's *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) which tries to explain the nature and normative content of disability rights has been used. In addition, G Quinn and T Degener's *Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) which gives a comprehensive discussion of the models of disability and also addresses the extent to which rights of PWDs are guaranteed at the global level has been consulted.

T Choruma *The forgotten tribe: People with disabilities in Zimbabwe* (2006) explores the causes of disabilities and the major barriers faced by PWDs in their bid to be accommodated as equal members of the Zimbabwean society. Although not specifically writing on Zimbabwe, Helene Combrinck's Chapter titled 'The hidden ones: Children with disabilities in Africa and the right to education' in J Sloth-Nielsen (ed) *Children's rights in Africa: A legal perspective* (2008) shows the plight of African children with disabilities. SA Djoyou Kanga 'The rights of women with disabilities in Africa: Does the Protocol on the Rights of Women in Africa offer any hope?' (2011) highlights the double discrimination of WWDs.

All these sources of information assisted in informing some of the observations, conclusions and arguments which the author made in this thesis. As of the Statutes that deal with disability in Zimbabwe, this thesis proffers some

fundamental recommendations that may assist in fostering the effective realisation of the rights of PWDs in Zimbabwe.

1.7 Assumptions and limitations

This research is premised on the assumption that PWDs in Zimbabwe are the most vulnerable group. The work also assumes that the adoption of laws which specifically entrench the rights of PWDs and the revamping of institutions dealing with disability can assist to guarantee the effective realisation of the rights of PWDs, including the rights to education, health, employment, adequate standards of living, political participation and non-discrimination, among other rights.

As of limitations, research efforts are limited by time and resources, and are directed to the Zimbabwean jurisdiction only.

1.8 Overview of chapters

Chapter **one** introduces the study, discusses the research question, methodology, assumptions and limitations, and shows some of the sources consulted.

Chapter **two** discusses the 'definition' of disability, the models of disability and the main types of disability. This chapter shows that the social and human rights models are the best models for the adequate protection of PWDs as evidenced by the CRPD.

Chapter **three** gives a critical analysis of the Zimbabwean legal and institutional frameworks for the realisation of the rights of PWDs.

Chapter **four** concludes the study and proffers specific reforms to the legal and institutional frameworks so as to achieve full and effective realisation of the rights of PWDs in Zimbabwe.

CHAPTER TWO

DEFINING THE CONTENTIOUS CONCEPT OF DISABILITY

2.1 Introduction

The issues surrounding the definition of disability have been described as knotty and complex.²⁸ Defining disability is not an easy task since the concept is open to different interpretations. There is no consensus on an exhaustive and universally acceptable definition. The difficulties surrounding the adoption of a single comprehensive definition of disability is worsened by the fact that it is an evolving concept.²⁹ The author is of a view that it is undesirable to define disability since it is a dynamic concept.

Despite the complexity of the phenomenon of disability, there have been various attempts by both academics and at the international level to define what it means. Most of the definitions at the international level concentrated on the medical traits of individuals and failed to capture the fact that attitudinal and environmental factors also disable people.³⁰

The various attempts to define disability led to the development of different models of disability of which the three major ones which are the medical, social and human rights models will be discussed. The Convention on the Rights of Persons with Disabilities (CRPD) took a bold step in its avoidance to define the word 'disability' or 'persons with disabilities' (PWDs) due to the fact that any definition runs a high risk of time-locking the Convention since disability is an evolving concept.

²⁸ D Kaplan *The definition of disability* available at <http://www.accessiblesociety.org/topic/demographics-identity/dkaplanpaper.htm> (accessed 16 August 2011).

²⁹ See para e of the Preamble of the CRPD.

³⁰ The word 'environment' in a disability context is very broadly conceptualized and does not only include structures but also transportation, information and communications.

2.2 What is disability?

Kayess and French state that disability is understood and experienced as oppression by social structures and practices.³¹ In similar terms, Shakespeare and Watson are of the view that disability is something imposed on top of impairment by the way PWDs are isolated and excluded from full participation in society.³² According to them, PWDs are an oppressed group in society. Further, Williams states that disability arises from the interplay between the biological reality of physiological impairment, structural conditioning and socio-cultural interaction.³³ Williams' observation finds favour with the author in that disability should by and large be understood as arising from the interaction between persons with impairments on one hand and, environmental and attitudinal barriers on the other hand.

Further, in explaining the definition of disability as captured under the Americans with Disabilities Act,³⁴ the United States of America Supreme Court in the case of *Sutton v United Air Lines* (the *Sutton case*) stated that disability is a physical or mental impairment that substantially limits one or more major life activities.³⁵ By giving emphasis to the medical traits of PWDs only, the author opines that such a definition is unsupportable due to the fact that it fails to capture the disabling built environment and attitudinal barriers.

The author now turns to the international level and its attempts to define the concept of disability:

³¹ Kayess & French (n 26 above) 5.

³² T Shakespeare & N Watson 'The social model of disability: An outdated ideology' available at http://www.leeds.ac.uk/disability-studies/archive_uk/shakespeare.pdf (accessed 17 October 2011).

³³ S Williams 'Is anybody there? Critical realism, chronic illness and the disability debate' (1999) 21 *Sociology of Health and Illness* 797 810.

³⁴ The Americans with Disabilities Act 1990.

³⁵ *Sutton v United Air Lines, Inc.* (97-1943) 527 U.S. 471 (1999).

2.2.1 The international level and attempts to define disability

In 1975, the United Nations (UN) attempted to define disability in the Declaration on the Rights of Disabled Persons.³⁶ A disabled person was defined as ‘any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.’³⁷ Like the *Sutton case*, this definition only concentrated on the medical traits of the individual with impairments without reference to other disabling factors like the built environment.

In the 1980s, the World Health Organisation (WHO) developed a classification called the International Classification of Impairment, Disability and Handicap (ICIDH) under which disability was viewed as a consequence of disease.³⁸ ‘Diseases’ and ‘disorders’ were linked to their possible consequences including disabilities. The definition under the ICIDH was viewed by many people as problematic³⁹ and was accordingly rejected by the disability sector as it did not take into account attitudinal and environmental barriers which may sometimes ‘disable’ people.

In 1999, a revised WHO ICIDH stated that disability is ‘[a]ny disturbance in terms of “functional status” associated with health conditions at body, individual and society levels. “Functioning” and “disability” are umbrella terms covering three dimensions: (1) body functions and structure: (2) activities at the

³⁶ Declaration on the Rights of Disabled Persons, adopted by the General Assembly Resolution 3447 (XXX) of 9 December 1975, UN Doc A/10034 (1975).

³⁷ As above, para 1.

³⁸ See D Stewart & P Rosenbaum ‘The International Classification of Functioning, Disability, and Health (ICF): A global model to guide clinical thinking and practice in childhood disability’ available at http://www.canchild.ca/en/canchildresources/international_classification_of_functioning_.asp (accessed 8 September 2011).

³⁹ As above.

individual level: and (3) participation in society.’⁴⁰ A crucial point that began to be slightly visible during this period was the classification of disability in a social context.

Meanwhile, the 1993 Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (the Standard Rules) provides that ‘the term “disability” summarises a great number of different functional limitations...People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness.’⁴¹ Just like the 1975 Declaration on the Rights of Disabled Persons, the major weakness arising from such a definition is that it fails to capture the ‘disabling’ attitudinal and environmental factors.

In 2001, the WHO International Classification of Functioning, Disability and Health (ICF) took into account the social aspects of disability and did not define disability only as a ‘medical’ or ‘biological’ dysfunction.⁴² By including contextual factors, the ICF allows the recording of the impact of the environment on the person’s functioning. Accordingly, disability is viewed as an umbrella term used to cover impairments,⁴³ activity limitations⁴⁴ and participation restrictions.⁴⁵ This was a progressive attempt to define what disability is and it paved way for an understanding that disability results from the interaction between persons with impairments and their surrounding environment. The WHO ICF of 2001 marked a turning point by which disability began to be viewed

⁴⁰ See the revised WHO ICIDH (beta 2) available at <http://www.who.int/classifications/icf/en/> (accessed 16 August 2011).

⁴¹ Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, A/RES/48/96 (20 December 1993) para 17.

⁴² See WHO International Classification of Functioning, Disability and Health available at <http://www.who.int/classifications/icf/en/> (accessed 16 August 2011).

⁴³ ‘problems’ in the body function or structure.

⁴⁴ ‘difficulties’ encountered by an individual in the execution of a task or action.

⁴⁵ ‘problems’ experienced by an individual in involvement in life situations.

as a complex phenomenon, arising out of the interaction between features of a person's body and features of the society in which he or she lives.⁴⁶

2.2.2 Enter the CRPD

The CRPD does not explicitly define 'disability' or 'persons with disabilities.' It states that '[p]ersons 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.'⁴⁷ This is a bold step which was taken by the CRPD since disability is an evolving concept which varies between societies, meaning that any definition of disability ran a high risk of time-locking the CRPD⁴⁸ and this may have resulted in unwanted outcomes. Further, by making it clear that disability results from the interaction between persons with impairments and attitudinal and environmental barriers,⁴⁹ the CRPD is highly commendable. The author strongly supports the view that disability is a result of the interaction between persons with impairments and, the social and physical environments.

The various attempts to define disability culminated in the development of different models of disability, of which three of them namely, medical, social and human rights models are discussed in this thesis. However, these are by no means the only models of disability.

⁴⁶ Unpublished: Lecture by Ilze Grobbelaar-du Plessis before the LLM in Human Rights and Democratisation in Africa Class, Centre for Human Rights, University of Pretoria, 9 May 2011.

⁴⁷ Art 1 of the CRPD.

⁴⁸ Kayess & French (n 26 above) 23.

⁴⁹ See paragraph e of the Preamble of the CRPD.

2.3 Main models of disability

2.3.1 The medical model

The medical model sees PWDs as ill, different from non-disabled peers and in need of medical care. This model focuses on the person's medical traits for example the specific impairments. In other words, this model views the physiological condition itself as the problem. It locates the disability within the person and views PWDs as objects for clinical intervention.⁵⁰ There is encouragement of some forms of charity for the biological 'defect'. According to Ngwena, the criterion for eligibility to welfare and charity is inability to function in mainstream society and to provide for oneself.⁵¹

PWDs are viewed as in need of appropriate assistance for example rehabilitation efforts to enable them to overcome the effects of disability. PWDs are viewed as objects and not as subjects in their own right. Treatment is typically provided in service systems and settings isolated from the general community. Feldblum observed that as medical technology increased, PWDs also became objects of rehabilitation and cure.⁵²

The major problem with this model is that it only stresses the need for medical solutions to fix the impairment to the extent possible to adjust PWDs to fit into 'normal' society.⁵³ It is very unfortunate that the model reinforces the idea that it is the impairment itself that causes the limitation among PWDs

⁵⁰ Quinn & Degener (n 16 above) 10.

⁵¹ Ngwena (n 5 above) 620.

⁵² CR Feldblum 'Definition of disability under Federal Anti-Discrimination Law: What happened? Why? And what can we do about it?' (2000) *Berkeley Journal of Employment and Labor Law* 91 94.

⁵³ L Nyirinkindi 'A critical analysis of paradigms and rights in disability discourses' (2006) 12 *East African Journal of Peace and Human Rights* 49 54.

without recognizing the role of the social and physical environments in disabling persons with impairments.⁵⁴

Since PWDs are taken to be always in need of help as part of the deserving poor and all focus is placed on the nature of impairment, the result is broader and deeper negative social attitudes against them.⁵⁵ The model therefore creates a dependency which disempowers PWDs and severely isolates them from the mainstream society. The model further prevents PWDs from enjoyment of human rights⁵⁶ in that it pegs rights to ability and therefore violates the incontrovertible principle of the inalienability and inherent nature of human rights.⁵⁷

2.3.2 The Social model

The social model stipulates that the problem with disability is not in PWDs but arises from attitudinal, physical and institutional barriers that systematically exclude PWDs from fully participating in society.⁵⁸ Disability is defined as a social construct—a type of multi-faceted social oppression. Thus, the first premise of the social model is that human difference is not innate but something socially constructed and applied through labels such as “the disabled”.⁵⁹ In other words, disability is not a problem but social attitudes towards PWDs for example stigma is the problem. Further, the built environment which does not adequately cater for different impairments is also a problem. In simple terms, it is the physical and

⁵⁴ Kayess & French (n 26 above) 6.

⁵⁵ Quinn & Degener (n 16 above) 10.

⁵⁶ See the South African Intergrated National Disability Strategy White Paper (November 1997) available at <http://www.info.gov.za/whitepapers/1997/disability.htm> (accessed 23 February 2011).

⁵⁷ Nyirinkindi (n 53 above) 53.

⁵⁸ Lang & Charowa (n 8 above).

⁵⁹ Quinn & Degener (n 16 above) 10.

social environments which impose limitations upon the full and effective participation and inclusion of PWDs.⁶⁰

Under this model, disability can be viewed as an outcome of the interaction between PWDs and their particular environments. Under such circumstances, disability is seen as a non-static, complex phenomenon that can be conceptualized in many ways.⁶¹

The social model stipulates that efforts should be directed towards dismantling the social and physical barriers to the effective participation and full inclusion of PWDs. It is the failure of the physical and social environments to adjust to the needs of PWDs that creates the problem of disability.⁶² Thus, norms, habits and symbols of the *able* society create immobilizing structural barriers for PWDs.⁶³ An example here is that the stairs to a building are a problem and not the person on a wheelchair. Buildings therefore need to be designed in a way to be accessible to all persons in the society.

Unlike the medical model, the social model shifts the locus of responsibility from the individuals with disabilities to their inhospitable environments. Substantial changes to both the physical and the social environments are needed so as to enable PWDs to play a full and participatory role in society. The social model of disability is very commendable in as much as it advocates for the adjustment of the social and physical environments to fit PWDs. The social model is therefore repositioning of disability and has paved way to the human rights-approach to disability.

⁶⁰ M Oliver & B Sapey *Social work with disabled people: Practical social work* (2006) 23.

⁶¹ AH Eide *et al* 'Living conditions among people with activity limitations in Zimbabwe: A representative regional survey' available at <http://www.safod.org/images/lczimbabwe.pdf> (accessed 25 July 2011).

⁶² H Hahn 'Public support for rehabilitation programs: The analysis of US Disability Policy' (1986) 1 *Disability, Handicap & Society* 121 128.

⁶³ Ngwena (n 5 above) 635.

2.3.3 The Human rights model

Disability as a human rights issue leads to a recognition and acknowledgment that PWDs are equal citizens and should therefore enjoy equal rights and bear equal responsibilities as their non-disabled counterparts. This model emphasises the importance of defining the rights of PWDs and their entitlements. Not only is the defining of disability rights of prime value but there should also be the actual translation of those rights from paper into real improvements. For PWDs to accomplish their obligations, they should be given necessary support.

The human rights model further places focus on the inherent dignity of all human beings and subsequently, and only if necessary, the person's medical characteristics are also considered. It also stresses the need to remove all barriers to equal participation by PWDs and the elimination of discrimination. Just like the social model, it locates the problem of disability outside the individual with impairments. It stipulates that the failure by states and sometimes, by the private sector, to ensure the realisation of human rights by PWDs is a problem. Put simply, the problem of disability stems from lack of responsiveness by the state and civil society to the difference that disability represents.⁶⁴ Therefore, the state has a responsibility to tackle socially created obstacles, among other obstacles, in order to ensure full respect for the dignity and equal rights of all persons.⁶⁵

The end goal under this model is the building of societies that value difference and respect the dignity and equality of all human beings. The achievement of independence and participation by PWDs on genuinely equal terms with their non-disabled counterparts is not only a socially desirable goal but is also a right.⁶⁶ The difference of disability is therefore perceived as a cause

⁶⁴ Quinn & Degener (n 16 above) 10.

⁶⁵ As above.

⁶⁶ Quinn & Degener (n 16 above) 17.

for celebration of the diversity of the human family. Passing her appraisals, Choruma said that '[t]he human rights-based approach is a more enlightened, realistic, people-centred and responsible approach.'⁶⁷ Members of the disability movement see disability rights as the last liberation struggle for all PWDs.⁶⁸

2.4 The inextricable link between the social and human rights models

There is a strong link between the social and human rights models of disability. This relationship arises from the fact that both models focus on the empowerment of PWDs, social inclusion, choice and human rights.⁶⁹ Thus, under both models, big responsibility is placed upon governments to remove whatever physical or social barriers that hamper the full inclusion of PWDs into society and to ensure that the same rights and opportunities are availed to all individuals.

However, a slight difference is that unlike the social model which concentrates on the adjustment of the social and physical environments to fit PWDs, the human rights model is premised on the defining of all the rights of PWDs and ensuring the actual realization of the same.

Be that as it may, the combination of the two models leads to full and effective participation and inclusion of PWDs in society, respect for inherent dignity, individual autonomy, non-discrimination, equality of opportunities and accessibility, among other results.⁷⁰ Thus, the social and human rights models of disability are the best models for the full and effective realisation of the rights of PWDs.

⁶⁷ Choruma (n 4 above) 10.

⁶⁸ Lang & Charowa (n 8 above) 61.

⁶⁹ As above.

⁷⁰ These are some of the general principles under Article 3 of the CRPD.

Without distorting the inextricable link between the social and human rights models, the author strongly supports the latter in as much as it advocates for the defining of the rights of PWDs and the actual translation of the same from paper to tangible realities. This means securing a firm platform in which PWDs are taken as equal members of the society with the right to participate in all the aspects of life like any other person. In a way, the human rights model encompasses the social model in that for PWDs to enjoy for example the right to full participation, the built environment may need some adjustments.

2.5 CRPD as the best practice at international level

The formulation and the ultimate coming into force of the CRPD have been hailed as a great landmark in the struggle to reframe the needs and concerns of PWDs in terms of human rights.⁷¹ In terms of the models of disability, the CRPD is highly commendable for having abandoned the medical model in favour of the social and human rights models.⁷² As has been indicated earlier on, a medical approach to disability creates a dependency which disempowers PWDs and severely isolates them from the mainstream society whilst a human rights-based approach actually empowers PWDs by treating them as equal members of any given society.

The CRPD clearly states that the purpose of the Convention is 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'⁷³ Clearly, the CRPD is geared towards the achievement of equality of opportunities for PWDs, structural change, preparing

⁷¹ Kayess & French (n 26 above) 1.

⁷² See remarks by Venus Ilagan 'From vision to action: The road to implementation of the Convention on the Rights of Persons with Disabilities: A rights-based approach' available at <http://www.dpi.org/lang-en/resources/details.php?Page=874> (accessed 8 September 2011).

⁷³ Art 1 of the CRPD.

PWDs for greater participation, tackling of discrimination and the changing of social attitudes. As indicated earlier on, the CRPD's avoidance to define the term 'disability' or 'a person with disability' is highly commendable as it avoids time-locking the Convention.

The CRPD strongly rejects the view that PWDs are objects of charity or medical treatment and affirms them as subjects of rights with an ability to claim those rights as active members of society.⁷⁴ The CRPD's appreciation that disability results from the interaction between persons with impairments and social and physical environments is highly commendable.⁷⁵

Thus, the best practice includes the guaranteeing of full equality of opportunity for PWDs by advocating for various structural changes, preparing PWDs for greater participation, tackling discrimination in a number of areas and changing social attitudes.⁷⁶

2.6 Types of disability

The CRPD gives reference to long-term physical, mental, intellectual or sensory impairments.⁷⁷ Although the taxonomy of the types of disability in Article 1 of the CRPD is open-ended and indicative, there appears to be four main types of disability for the meantime. These are physical, mental, intellectual and sensory disabilities. For the purposes of this thesis, these are the types of disability which will be made reference to. There may also be incidences of multiple disabilities meaning two or more of the above disabilities in one individual.

⁷⁴ See statement by Louise Arbour, UN High Commissioner for Human Rights on the Ad-Hoc Committee's adoption of the International Convention on the rights of PWDs, 5 December 2006 available at <http://www2.ohchr.org/english/issues/disability/docs/statementhcdec06.doc> (accessed 8 September 2011).

⁷⁵ Generally, see T Degener and Y Koster-Dresse *Human rights and disabled persons: Essays and relevant human rights instruments* (1995) 13.

⁷⁶ See Article 1 and Arts 10 to 30 for an enumeration of all the specific rights and fundamental freedoms recognized by the CRPD.

⁷⁷ Art 1 of the CRPD.

2.7 Nature of disability rights

Disability rights are in no way a set of new rights but are already existing human rights which are applied to the circumstances of PWDs.⁷⁸ They are traceable back to the International Bill of Rights comprising of the Universal Declaration of Human Rights (UDHR)⁷⁹ which guarantees a full range of civil, political, economic, social, cultural rights and solidarity rights, the International Covenant on Civil and Political Rights (ICCPR)⁸⁰ which enumerates civil and political rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸¹ which guarantees economic, social and cultural rights.

The CRPD does not contain entirely new human rights⁸² but it consolidates all the generations of rights in one document. Civil and political rights which are generally referred to as first-generation rights are captured with amplified applications or extensions.⁸³ Second-generation rights which are normally referred to as economic, social and cultural rights are also well covered⁸⁴ with over-riding emphasis being placed on effective inclusion and full participation by PWDs in critical sectors like education and employment.

⁷⁸ UN Press Releases 'Chairman says Draft Convention sets out 'defined code of implementation and spells out how individual rights should be put into practice' 15 August 2005 available at <http://www.un.org/news/press/docs/2005/soc4680.doc.htm> (accessed 9 September 2011).

⁷⁹ Adopted and proclaimed by the UN General Assembly Resolution 217 A(III) OF 10 December 1948.

⁸⁰ Adopted and opened for signature, ratification and accession by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force 23 March 1976.

⁸¹ Adopted and opened for signature, ratification and accession by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force 3 January 1976.

⁸² Kayess & French (n 26 above) 32.

⁸³ Arts 10 to 23 and 29 of the CRPD.

⁸⁴ Arts 24 to 28 and Art 30 of the CRPD.

Although there is a view that the implementation of socio-economic and cultural rights is gradual and depends on the availability of state resources,⁸⁵ the CRPD together with its Optional Protocol provide for the immediate realisation of such rights. One may argue that the CRPD provides for the progressive realisation of 'economic, social and cultural rights'⁸⁶ but a thorough reading of the Convention shows that the same are immediately realisable.⁸⁷ The CRPD therefore clears the debate regarding the implementation of civil and political rights, and socio-economic rights in the context of PWDs since it provides for the same realisation of these rights. This is a strong step which was taken by the CRPD in that progressive realisation of socio-economic rights was likely to create illusory benefits for PWDs. If PWDs are to be guaranteed full and effective participation and inclusion in society, it is ideal to make socio-economic rights immediately realisable. The nature of disability rights therefore requires dispensation with the notion of progressive realisation of human rights.⁸⁸

There might be implications in that some states parties which do not subscribe to the idea of immediate realisation of socio-economic rights may be reluctant to become parties to the CRPD since it appears that it provides for the immediate realisation of the same. However, one has to understand that the CRPD only makes provision for the immediate realisation of socio-economic rights in a limited context, that of disability only.

⁸⁵ Art 2(1) of the CESCR provides for the progressive realization of economic, social and cultural rights. See also M Sepúlveda *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) 120.

⁸⁶ See Art 4(1) of the CRPD.

⁸⁷ See Art 4(1) of the CRPD which places an obligation on States Parties to 'ensure and promote the full realization of *all human rights* and fundamental freedoms for all persons with disabilities' (emphasis added).

⁸⁸ Unpublished: AB Dube 'Protection of the rights of persons living with disabilities under the African Human Rights System' unpublished LLM thesis, University of Pretoria, 2007 22.

Thus, when it comes to PWDs, states have a paramount obligation to provide when they are unable, for reasons beyond their control, to fully and effectively realise their rights.⁸⁹

On top of blending civil and political rights with economic, social and cultural rights, the CRPD also embodies further generations of human rights. Collective rights which are loosely termed third-generation rights for example the rights to research, development and to social protection are included in the CRPD.⁹⁰ Universal equality measures which are sometimes conceptualized as fourth-generation rights⁹¹ for example the right to an accessible environment were also not forgotten during the formulation of the CRPD.⁹² Lastly but not least, fifth-generation rights like the right to leisure, tourism and recreation are equally provided for.⁹³

The combination of all the generations of human rights and their applicability to PWDs is what is referred to as disability rights. The CRPD is undoubtedly a manifestation of the best contents and practices when it comes to the realisation of the rights of PWDs.

However, one need to be reminded that the CRPD is a negotiated instrument meaning that it would be highly unrealistic and not unsurprising 'to expect it to reflect a fully coherent or comprehensive exposition of disability rights.'⁹⁴ It has got its own weaknesses but this is not the subject of this thesis.

⁸⁹ W Vandenhoe *Non-discrimination and equality in the view of the UN Human Rights Treaty Bodies* (2005) 237.

⁹⁰ See Articles 4, 8, 28 & 32 of the CRPD.

⁹¹ Kayess & French (n 26 above) 32.

⁹² Arts 3 & 9 of the CRPD.

⁹³ Art 30 of the CRPD.

⁹⁴ Kayess & French (n 26 above) 33.

2.8 Contextual understanding of disability

To lessen the difficulties surrounding the understanding of the concept of disability, it also needs to be shown in what context is the concept being defined. Usually, disability is defined according to culture, knowledge base, beliefs and values of a society, among other factors.⁹⁵ Thus, disability varies from one socio-cultural context to another. Further, there are also barriers which the culture itself creates that prevent full, equal and active participation in societies. From a religious perspective, disability is also commonly viewed as a punishment for sins committed either by the parents of the PWD or by any of the family members. Such an interpretation results in disability being associated with shame, stigma and discrimination.

One also need to show whether disability is understood as born with a disability or acquired at some point in life. The purpose of defining disability should also be illustrated for example disability for the purposes of social assistance may vary from disability for the sake of census or that of employment.

2.9 Conclusion

On top of it being difficult if not impossible to come up with an exhaustive and a universally acceptable definition of disability, it is not advisable to define the concept. One has to appreciate that disability is an evolving concept which is incapable of being given a single universal label. The past trends at international level in which disability was viewed as a medical condition have led to an unwanted gap in which PWDs have been viewed as objects and not subjects in their own right.

The coming into force of the CRPD has been hailed as the dawn of a new era since it filled in the gap by discarding the medical model of disability and

⁹⁵ Choruma (n 4 above) 7.

opting for the social and human rights models of disability. By any standards, the combination of the social and the human rights models as is the case under the CRPD provides satisfactory results for the effective realisation of the rights of PWDs.

In terms of the social model of disability, the problem with disability is not in PWDs but arise from attitudinal, physical and institutional barriers that systematically exclude PWDs from fully participating in society. The physical and social environments need some adjustments so as to meet the needs of PWDs. In terms of the human rights model which the author strongly supports, PWDs are viewed as holders of all human rights. It is the paramount duty of the state to tackle all obstacles in order to ensure full respect for the dignity and equal rights of all persons.

The CRPD further places obligations upon states parties which require dispensation with the notion of progressive realisation of economic, social and cultural rights, and makes them immediately realisable. It therefore represents best practices at international level.

Given such a background in which the CRPD is hailed as the best Convention for the effective realisation of the rights of PWDs largely due to the abandonment of the medical model of disability in favour of the social and human rights models, Chapter Three is going to analyse the extent to which the Zimbabwean legal and institutional frameworks conform to the best standards when it comes to the concept of disability.

CHAPTER THREE

THE ZIMBABWEAN LEGAL AND INSTITUTIONAL FRAMEWORKS ON DISABILITY

3.1 Introduction

In Chapter Two, the highly contentious definition of disability and the main models of disability were all discussed. It has been indicated that the social and human rights models of disability are the best models for the full and effective realisation of the rights of Persons with Disabilities (PWDs). It has also been indicated that the Convention on the Rights of Persons with Disabilities (CRPD) embodies the best contents for the realisation of the rights of PWDs. Against such a background, this Chapter is going to present a critical analysis of the legal and institutional frameworks for the realisation of disability rights in Zimbabwe.

Zimbabwe is one of the first countries in the world to enact disability discrimination legislation and this has been done in the form of the Disabled Persons Act (DPA).⁹⁶ However, discrimination of PWDs is still a major problem⁹⁷ since the Act lacks a proper implementation strategy and is tailored along the outdated Medical Model of disability. The Constitution does not help either given the fact that its non-discrimination clause only embodies physical disability to the exclusion of mental, intellectual and sensory disabilities.

Other Acts which also address the issue of disability are the Mental Health Act, the Social Welfare Act, the State Service (Disability Benefits) Act, the War Victims Compensation Act and the Criminal Law (Codification and Reform) Act. These Acts have their own strengths and weaknesses when put in

⁹⁶ Lang *et al* (n 8 above) 7.

⁹⁷ According to P Thornberry *International Law and the Rights of Minorities* (1991) 258, discrimination is understood to be any treatment which offends against the principle of equality and dignity of human beings.

comparison to the best standards at international level especially the provisions of the CRPD. It is also saddening to note that despite the various Acts in force in Zimbabwe, PWDs continue to face uncountable barriers in their participation and inclusion as equal members of society.

Institutions which deal with the concept of disability in Zimbabwe include the Ministry of Labour and Social Welfare, the National Disability Board (NBD), the Child Welfare Council (CWC), the courts of law and the recently appointed Special Advisor on Disability and Rehabilitation to the President and Cabinet (the Special Advisor). Most of these institutions are poorly resourced and therefore invisible. All this has led to the multiple attitudinal, environmental and institutional barriers that militate heavily against the full and effective realisation of the rights of PWDs within the Zimbabwean society.

3.2 Legal framework

3.2.1 The Constitution and disability provision

Prior to 2005, the non-discrimination clause in the Constitution of Zimbabwe did not include disability as a ground upon which discrimination was prohibited. In 2005, the Constitution was amended so as to include physical disability as a prohibited ground of discrimination.⁹⁸ Now the Constitution provides that:

‘...a law shall be regarded as making a provision that is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of that law or treatment, persons of a particular description by race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability are prejudiced—
(a) by being subjected to a condition, restriction or disability to which other persons of another such description are not made subject; or
(b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition

⁹⁸ See Section 4 of Act 5 of 2005, the Constitutional Amendment No.17.

of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability of the persons concerned.’⁹⁹

Whereas the Constitutional Amendment is applauded for the sentiments behind it,¹⁰⁰ one wonders if those who formulated it have thought carefully enough about the other types of disability recognized at international level. Mental, intellectual and sensory disabilities are the other types of disability recognized at international level¹⁰¹ which the Constitution apparently excludes. What this may mean is that one can be lawfully discriminated on the grounds of mental, intellectual or sensory disability. This confirms the observation by Quinn and Degener that equality norms in constitutions and other legislation often fail to cater adequately for the difference of disability.¹⁰²

To further worsen the situation, the non-discrimination clause’s scope is limited due to the fact that it is a self-contained clause.¹⁰³ In other words, the non-discrimination clause is not open-ended. It was going to be a different position if the non-discrimination clause was open-ended or indeterminate like that of the African Charter on Human and Peoples’ Rights (ACHPR)¹⁰⁴ or the South African Constitution¹⁰⁵ under which possible grounds of discrimination not

⁹⁹ Section 23(2) of the Constitution of Zimbabwe.

¹⁰⁰ See ‘Constitution of Zimbabwe Amendment No. 17 Bill, 2005 (hb 2005)-Representations made by the Zimbabwe Human Rights NGO Forum to the Portfolio Committee on Justice, Legal and Parliamentary Affairs’ available on <http://reliefweb.int/sites/reliefweb.int/node/181818/pdf> (accessed 15 August 2011).

¹⁰¹ Article 1 of the CRPD.

¹⁰² Quinn & Degener (n 16 above) 16.

¹⁰³ See AF Bayefsky ‘The principle of equality or non-discrimination in international law’ (1990) 11 *Human Rights Law Journal* 1 5 where it is indicated that a structural dimension of an equality or non-discrimination norm which will affect its scope is whether it is open-ended or self-contained.

¹⁰⁴ See Art 2 of the ACHPR which is the non-discrimination clause and makes use of the term ‘or other status.’

¹⁰⁵ Section 9 of the South African Constitution makes use of the term ‘including’ showing that the list of grounds upon which unfair discrimination is prohibited is not exhaustive.

specifically mentioned are also captured by the use of terms like ‘other status’ or ‘including’ on the list of the grounds.

As has been pointed earlier, PWDs in Zimbabwe are one of the most disadvantaged groups.¹⁰⁶ Despite this fact, the Constitution does not make any provision for specific affirmative action in favour of PWDs except for a general provision that ‘[t]he implementation of affirmative action programmes for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination’ shall not be construed as discrimination.¹⁰⁷ There is no express reference to the need to take the affirmative action programmes. This is a sad observation in that the equal treatment of PWDs and their non-disabled counterparts may lead to injustice. Quinn and Degener said ‘[t]o insist on strict equality between persons with disabilities and other persons would be to ignore real difference.’¹⁰⁸ In the same angle, the Human Rights Committee stated that ‘[t]he enjoyment of rights and freedoms on an equal footing...does not mean identical treatment in every instance.’¹⁰⁹

A similar provision on the need to take affirmative action like that under CRPD¹¹⁰ or that of the South African Constitution which states that ‘[t]o promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken’¹¹¹ is called for. There is a great need to take affirmative action to secure the advancement of PWDs in order to ensure equal

¹⁰⁶ Choruma (n 4 above) 5.

¹⁰⁷ Section 23(3)(g) of the Constitution of Zimbabwe.

¹⁰⁸ Quinn & Degener (n 16 above) 11.

¹⁰⁹ See Human Rights Committee’s General Comment No. 18 Non-discrimination: CCPR (Thirty-seventh session) 21 Nov 1989.

¹¹⁰ Art 27(1)(h) of the CRPD.

¹¹¹ See Sec 9(2) of the South African Constitution.

enjoyment of human rights and fundamental freedoms,¹¹² and the acceleration of *de facto* equality.¹¹³ Thus, the failure to take into account relevant differences or the treatment of unequal persons as equals is as discriminatory as treating equals differently.¹¹⁴

3.2.2 The Disabled Persons Act

Firstly, the term ‘disabled persons’ which is used by the Act is unpleasant as it reflects a medical and diagnostic approach to disability which ignores the imperfections and deficiencies of the surrounding society. The terminology used by the Act is therefore at variance with that used at the International level which is ‘persons with disabilities.’ It is submitted that the term ‘persons with disabilities’ include contextual factors like the disabling social and environmental factors.

A disabled person has been defined as:

[a] person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.¹¹⁵

This definition follows the Medical Model of disability. It fails to appreciate that disability is not only limited to individual impairments but also to barriers caused by both attitudinal and environmental factors. This confirms the observation by

¹¹² See for instance the provision of Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination.

¹¹³ See for instance the provision of Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women.

¹¹⁴ Bayefsky (n 103 above) 11.

¹¹⁵ Section 2 of the DPA.

Kayess and French that the Medical Model has had the most powerful influence on the conceptualization of disability in modern history.¹¹⁶

By giving a fixed definition of disability, the DPA also fails to appreciate the fact disability is an evolving concept which changes over time. The major drawback of having a single and fixed definition of disability is that there is a high risk of time-locking the Act, which is a very unfortunate and undesirable consequence.

Further, the Act establishes the NDB¹¹⁷ which is empowered to issue and serve adjustment orders to ensure access by all PWDs to mainstream public services. The Act states that where the NDB considers that any premises to which members of the public are ordinarily admitted or any premises in which services or amenities are ordinarily provided to members of the public are inaccessible to PWDs, it may serve an adjustment order requiring the owner of the premises or the provider of the service to undertake action at his/her own expense to secure reasonable access by PWDs.¹¹⁸ Due to the nature of many impairments, the inhospitable physical infrastructure, particularly in rural areas, profoundly hampers PWDs from accessing mainstream public services like health, education and justice. Adjustment orders are therefore in line with the best practices at international level in as much as they guarantee the realisation of the right to access mainstream public services and enable PWDs to live independently and to participate fully in all aspects of life.

Section 7(8) makes it a criminal offence to fail to comply with an adjustment order. It is also a criminal offence to deny PWDs admission into any premises to which members of the public are ordinarily admitted or to deny

¹¹⁶ Kayess & French (n 26 above) 6.

¹¹⁷ Sec 4 of the DPA.

¹¹⁸ Sec 7 of the DPA.

provision of any public service or amenity.¹¹⁹ All these are positive steps to ensure the right of access to essential services by PWDs. The Act is therefore largely commendable to this extent.

Notwithstanding the above observations, the Act has its own shortcomings in that it only makes provision for adjustment orders relating to already constructed buildings but does not give any reference to new buildings under construction or to those to be constructed. The Act should have gone further to disallow the continued construction of public buildings that are inaccessible to PWDs so as to fully guarantee the right of access. It was going to be a different case if the Act had adopted a similar provision like that of the CRPD which provides for the identification and the elimination of obstacles and barriers to accessibility of all buildings or facilities open to the public.¹²⁰ There is no doubt that such a broad provision equally disallows the continued construction of inaccessible buildings to PWDs as it refers to the elimination of *all* obstacles when it comes to access to public buildings.

Furthermore, the Act only provides for adjustment orders relating to premises only to the exclusion of roads, transport and communications. It is a common scenario that most roads and modes of communication are inaccessible in Zimbabwe or if accessible, are not user-friendly to PWDs for example persons with visual impairments and those on wheelchairs. Unlike the CRPD which explicitly covers transportation, communication and information in its access clause,¹²¹ it is very unfortunate to note that the Act deliberately left unaddressed the issue of inaccessible modes, means and formats of communications, information and transport. What this basically means is that there is no guarantee for the full and effective realisation of the right to access to public

¹¹⁹ Sec 8 of the DPA.

¹²⁰ See Art 9 of the CRPD.

¹²¹ Art 9 and see also para v of the preamble of the CRPD.

services and amenities by PWDs. By way of an example, there is no signage in Braille or any notice in easy to read and understand forms to PWDs in virtually all public places in Zimbabwe.

The Act should have empowered the NDB to issue adjustment orders against Rural District Councils (RDCs), Urban Councils (UCs) and the Government at large to make roads accessible to persons with different impairments. The NDB should also be empowered to issue adjustment orders to communication services providers to make their services accessible to PWDs. The same would equally apply to transport services providers.

Another issue is that the NDB is ineligible to give adjustment orders to state hospitals, clinics, nursing homes, schools or educational training centres without the consent of the relevant Minister of the institution concerned.¹²² This has resulted in many government workplaces, Magistrates Offices and state recreational facilities being not accessible to PWDs¹²³ because the required ministerial consent is very difficult to come by. As an example, it is very difficult if not impossible for PWDs to access government offices housed at the Government Complex in Gweru¹²⁴ given the fact that there are no guiding rails, the elevators have no recorded voices for persons with visual impairments and are too narrow to accommodate wheelchairs, and the toilet cubicles are too high for persons with physical disabilities.¹²⁵

Coming to the critical area of employment, there is merely prohibition of discrimination against PWDs in employment¹²⁶ and criminalization of

¹²² See Sec 7(7) of the DPA.

¹²³ Eide *et al* (n 61 above)

¹²⁴ This is the building that houses most of the government ministries in the Midlands province of Zimbabwe.

¹²⁵ This is a personal observation that was made by the author during a visit to the Complex.

¹²⁶ Sec 9 of the DPA.

discrimination against PWDs in employment.¹²⁷ Whereas the spirit underlying these provisions may appear to be progressive, it is saddening to note that the Act does not mention the right to employment of PWDs. It is not surprising to note that although there are high rates of unemployment currently in Zimbabwe, PWDs are the worst affected.¹²⁸ It was going to be far much better if the Act had embodied an explicit provision on the right to employment of PWDs in a similar fashion like that of the CRPD.¹²⁹

The Act is also silent on other critical issues such as education despite the fact that school attendance is lower among PWDs as compared to their non-disabled counterparts.¹³⁰ The Act again does not include rehabilitation and the provision of assistive devices and aides to PWDs.¹³¹

Conclusively, the Act does not provide for wide participation of PWDs and their organizations in decision-making or implementation of disability-related policies.¹³² This is the direct opposite of the best standard at international level in which the involvement of PWDs and their representative organizations in implementation of disability-related issues is called for.¹³³ The failure to provide for the participation of PWDs in disability issues defeats the clarion call of the disability movement that is 'nothing without us about us.'¹³⁴

Further, there are also no formal policies, strategies and agreed standards to monitor the implementation of the Act. Basically, there is no evidence to suggest that disability issues are included in critical services like

¹²⁷ Sec 10 of the DPA.

¹²⁸ Eide *et al* (n 61 above) 79.

¹²⁹ See Art 27 which guarantees PWDs the right to work and further states that work environments should be open, inclusive and accessible to all PWDs.

¹³⁰ Eide *et al* (n above) 70-72 states that the proportion of those who have never attended school is almost three times high among PWDs as compared to the non-disabled.

¹³¹ Lang *et al* (n 8 above) 29.

¹³² Choruma (n 4 above) 10.

¹³³ Art 33 of the CRPD.

¹³⁴ See Kayess & French (n 26 above) 4; Lang *et al* (n 8 above) 29.

education and health. All this leads to an inescapable conclusion that the Zimbabwean legal framework does not provide an environment that is conducive for the adequate realisation of the rights of PWDs.

3.2.3 The Mental Health Act

This Act provides for the consolidation and amendment of the law relating to the care, detention and after care of persons who are mentally disordered or intellectually handicapped, whether for the purposes of treatment or otherwise. It also provides for the establishment of various Boards including the Mental Hospital Board which is tasked with the treatment, rehabilitation and general welfare of mental patients among other functions,¹³⁵ the Special Boards which make reports in relation to mental patients detained in various institutions¹³⁶ and the Mental Health Review Tribunal which primarily hears applications and appeals made by or on behalf of mental patients detained in institutions concerning their treatment or general welfare or for release from detention.¹³⁷

Thus the care, detention and after care of persons who are mentally disordered or intellectually handicapped as advocated for by this Act is appreciated in that it assists in the realisation of the right to the highest attainable standard of health without discrimination on the basis of disability and is accordingly in line with the best standards at international level.¹³⁸ Further, rehabilitation as advocated for by the Act¹³⁹ enables persons with mental disability to at least attain and maintain maximum independence, social and vocational ability.

¹³⁵ Secs 68(1) & 69-72 of the Mental Health Act.

¹³⁶ Sec 73 of the Mental Health Act .

¹³⁷ Secs 75-81 of the Mental Health Act.

¹³⁸ See Art 25 of the CRPD.

¹³⁹ See Part II of the Act.

However, Section 30 provides for the indefinite detention of a prisoner found to be ‘mentally disordered or intellectually handicapped.’ It is submitted that this is a clear violation of the right to liberty, among other rights. It was going to be far much better if the Act had provided for the maximum period of detention and treatment not an indefinite one.

3.2.4 The Social Welfare Act

This Act provides for the granting of social welfare assistance to destitutes or indigent persons¹⁴⁰ and their dependents. The Act states that the physically and mentally handicapped automatically qualify to be destitutes or indigent persons and are therefore eligible to receive social welfare assistance from the Department of Social Welfare.¹⁴¹ It is very clear that the Act was drafted alongside a misconception that disability is always associated with poverty (indigence). Disability may be associated with poverty but it is not always the case as some PWDs are capable of self-support and are sometimes in economically better situations as compared to their non-disabled counterparts.

Further, the Act follows the outdated Medical Model which depicts PWDs not as subjects with legal rights but as objects of welfare.¹⁴² It fails to reorient the focus from needs to rights. As long as PWDs are portrayed as incapable of supporting themselves and are always made objects of charity or welfare, it becomes very difficult to talk of their human rights. This is a poor position which is the direct opposite of the principles underlying the CRPD like respect for independence of PWDs, individual autonomy, inherent dignity and, full and effective participation and inclusion in society.¹⁴³ By way of an illustration, the

¹⁴⁰ According to Section 2, a destitute or indigent person has been defined as any person who lacks means of subsistence.

¹⁴¹ Sec 6 of the Social Welfare Act.

¹⁴² Quinn & Degener (n 16 above) 1.

¹⁴³ Art 3 of the CRPD.

rights to live independently and to be fully included in the community¹⁴⁴ cannot be realised if PWDs are taken to be always objects of social welfare or charity. The position taken by this Act therefore impacts negatively on the realisation of the rights of PWDs and should be discarded.

Notwithstanding the above argument, it should be noted that PWDs have been represented to be amongst the World's 'poorest of the poor'¹⁴⁵ and this is equally true in the Zimbabwean context in which PWDs are highly vulnerable to poverty.¹⁴⁶ By making provision for social welfare assistance in the form of cash, rehabilitation, institutional nursing, boarding or foster home care, counselling services, provision of orthopaedic and orthoptic appliances, occupational training, pauper burials, the supply of food and clothing¹⁴⁷ to PWDs, the Act assists in the reduction of poverty as advocated for at the international level.¹⁴⁸ The Act is highly commendable to the extent that it assists in guaranteeing the right to an adequate standard of living and social protection of PWDs.

However, just like the DPA, this Act lacks a clear enforcement mechanism. More so, the Department of Social Welfare in Zimbabwe 'is probably the most impoverished and demoralized of all government departments.'¹⁴⁹ This then means that there is no actual translation of the Act's provisions from paper into tangible results. Those PWDs who are in need of assistance continue to be among the suffering lot as the Department of Social Welfare has failed to ensure the realisation of their right to an adequate

¹⁴⁴ Art 19 of the CRPD.

¹⁴⁵ WHO 'Global Programming Note 2006-2007: Call for resource mobilization and engagement opportunities' available at http://www.who.int/entity/nmh/donorinfo/mental_health/en/index.html (accessed 21 August 2011).

¹⁴⁶ NASCOH 'Disability in Zimbabwe' available at <http://www.nascoh.org.zw/?> Page id =82 (accessed 9 April 2011); Choruma (n above) 12.

¹⁴⁷ Sec 5 of the Social Welfare Act.

¹⁴⁸ See Article 28 of the CRPD.

¹⁴⁹ King George VI School and Centre for Children with Physical Disabilities 'Disability in Zimbabwe' available at <http://www.kinggeorge6.org/home/the-centre/disability-in-zimbabwe> (accessed 9 April 2011).

standard of living. Thus, to a large extent, the legal framework in Zimbabwe does not adequately cater for the realisation of the rights of PWDs.

3.2.5 The State Service (Disability Benefits) Act

This Act provides for the payment of Compensation on the death or disablement of members or former members of the Defence Force, the Police Force and the Prison Services and also payment of Compensation on the death or disablement of any person whilst assisting the mentioned forces.¹⁵⁰ Whereas financial assistance to persons acquiring disabilities as a result of rendering services to the state is appreciated, the tone of the Act appears to make references to physical disabilities only and disregards other types of disabilities recognized at the international level like mental, intellectual or sensory disabilities.¹⁵¹ By way of an example, a member of the Defence Forces may be involved in an accident during drills that severely injures the head and thereby resulting in a case of mental disability. It would appear that such a case will not be covered under the Act. It is therefore unfortunate to note that the drafters of the Act had only physical disability in mind to the exclusion of the other types of disability.

Disablement for the purposes of the Act has been defined as permanent injury or disfigurement.¹⁵² This again means that those members who acquire physical disabilities which are long-term or short-term but not necessarily permanent are not covered by the Act. The disability only has to be permanent for one to be eligible for compensation. Thus the right to receive compensation for disabilities resulting from state services as envisaged by the Act, notwithstanding the fact that it is a noble idea, is very limited in its scope. This then confirms the observation that the Zimbabwean legal framework does not

¹⁵⁰ Sec 37 of the State Services (Disability Benefits) Act.

¹⁵¹ See Sec 15 and the First Schedule of the Act which only gives an outline the degrees of physical disablement that will be considered before compensation is payable. This has been done to the expense of other types of disabilities like mental or sensory.

¹⁵² Sec 2 of the State Services (Disability Benefits) Act .

provide an adequate platform for the full and effective realisation of the rights of PWDs.

This Act also provides for vocational training and a temporary allowance for such training to the permanently disabled members.¹⁵³ By Zimbabwean standards, vocational training has been defined as including any form of education or training which permits a disabled person to support himself or herself, and his/her dependants or will increase the capacity to do so.¹⁵⁴ The provision of vocational training as advocated for by the Act is largely commendable since it assists PWDs to attain and maintain maximum independence and full inclusion and participation in all aspects of life, and is in line with the best practices at international level.¹⁵⁵

Furthermore, the Act also provides for a clothing allowance.¹⁵⁶ Thus, in the event that the condition of a disabled person who is eligible for compensation under the Act requires the wearing of say an artificial limb or to use crutches or any other appliance which may result in tear of the clothing, a clothing allowance is provided for. This sounds positive but the problem that is there is absence of the actual translation of the Act's provisions into tangible benefits.¹⁵⁷

3.2.6 War Victims Compensation Act

This Act provides for the payment of compensation in respect of disablement or deaths of persons caused by war. If a disability results out of repercussions of a war, the victim is entitled to compensation after the assessment of the degree of

¹⁵³ Sec 26 of the State Services (Disability Benefits) Act .

¹⁵⁴ See Sec 13 of the War Victims Compensation Act.

¹⁵⁵ See Art 26 of the CRPD which calls for the need to ensure vocational ability to PWDs.

¹⁵⁶ Sec 31 of the State Services (Disability Benefits) Act.

¹⁵⁷ Interview with Mr Munaro Vhimbo on 17 September 2011 in Gutu District who has not yet received any benefit under the Act notwithstanding the fact that he filed his application about a decade ago, see Annexure 1.

disablement by the Commissioner of War Victims Compensation.¹⁵⁸ Just like the State Service (Disability Benefits) Act, the Act appears to make reference to physical disabilities only.¹⁵⁹

Despite its shortcomings, it is the only Act that embodies special provisions for women with disabilities (WWDs) and children with disabilities (CWDS), although it is in the context of disabilities directly or indirectly linked to a war.¹⁶⁰ It provides for high amounts to disabled females.¹⁶¹ As of children acquiring disabilities as a result of a war, the Act makes provision for educational allowance on top of the compensation payable.¹⁶² The educational allowance is also available to children with disabled parents who are entitled to compensation under the Act.¹⁶³ These are welcome provisions which are in line with best standards at international level¹⁶⁴ in as much as they seek to cushion the doubly marginalized WWDs and CWDS although it is to a limited context. It is a widely acceptable position that WWDs and CWDS require concerted action as they are victims of double marginalisation.¹⁶⁵

3.2.7 Criminal Law (Codification and Reform) Act

This is the Act that enumerates various criminal offences in Zimbabwe. Sexual conduct involving a mentally incompetent adult is charged as rape and is highly

¹⁵⁸ Sec 12 of the War Victims Compensation Act.

¹⁵⁹ See Sec 7 and the First Schedule of the Act for the assessment of degrees of physical impairments.

¹⁶⁰ Part VI of the Act.

¹⁶¹ Sec 24(1) of the War Victims Compensation Act.

¹⁶² Sections 25 & 26 of the above.

¹⁶³ Sec 26(1) of the above.

¹⁶⁴ See Articles 6 & 7 of the CRPD on women and children with disabilities.

¹⁶⁵ SA Djoyou Kanga 'The rights of women with disabilities in Africa: Does the Protocol on the Rights of Women in Africa offer any hope' (2011) *Barbara Faye Waxman Fiduccia Papers on Women and Girls with Disabilities, Center for Women Policy Studies* 3; R Traudstadottir 'Women with disabilities: The double discrimination: Part 1' available at <http://thechp.syr.edu/womdis1.htm> (accessed 7 April 2011); Grobbelaar-du Plessis (n 12 above) 405; Combrinck (n 13 above) 299.

punishable under the Act.¹⁶⁶ The Act is welcome in as much as it strives to protect the rights to privacy, not to be treated in an inhuman and degrading manner,¹⁶⁷ bodily integrity and dignity of women with mental disability. Women with mental disability are commonly victims of rape as they may not be in a position to positively identify their perpetrators and are also incapable of being competent witnesses in courts of law.¹⁶⁸

However, the Act falls short of the international standards as it fails to guarantee protection to women with other types of disabilities.¹⁶⁹ For example, women with visual impairments are also at a high risk of being raped as they cannot see their perpetrators.¹⁷⁰ To further worsen the situation, disability of the rape victim is not captured among the aggravating factors to be considered by the Judge or Magistrate when meting out an appropriate sentence to the Accused under the Act.¹⁷¹ The Act therefore needs some amendments so as to be at par with the best standards at international level which is to protect all WWDs from any form of sexual exploitation, violence and abuse.

3.3 Institutional framework

3.3.1 The National Disability Board

As has been indicated above, the DPA establishes the NDB¹⁷² whose main functions, among others, are to formulate and develop measures and policies that are designed to achieve equal opportunities for PWDs by ensuring that they

¹⁶⁶ Sec 64 of the Criminal Law (Codification and Reform) Act.

¹⁶⁷ On top of being an inhuman and degrading treatment, rape has also been classified as torture in the cases of *Aydin v Turkey* ECHR (25 September 1997) and *Mejia v Peru* IACHR (25 November 2004).

¹⁶⁸ See AL Pillay 'Competency examinations with rape survivors having mental retardation' available at <http://behavmed.ukzu.ac.za/upload/> (accessed 8 May 2011) in which it is indicated that women with mental retardation are commonly victims of rape due to the inability to protect themselves, insufficient understanding of sexual behaviour and the fact that they are stigmatized, marginalized and vulnerable to exploitation.

¹⁶⁹ Art 16 of the CRPD.

¹⁷⁰ Interview with Ms Potsai Vhenge, a single mother who is visually impaired and is a victim of rape, 18 September 2011, see Annexure 1.

¹⁷¹ Sec 65(2) of the Criminal Law (Codification and Reform) Act.

¹⁷² Sec 4 of the DPA.

obtain education and employment. It is also tasked to ensure that PWDs participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services, and to issue the above-discussed adjustment orders.¹⁷³ These objectives are in line with the principles outlined under the CRPD especially equality of opportunity of PWDs and accessibility.¹⁷⁴

In addition, the NDB recorded some success although few. It lobbied successfully for the inclusion of PWDs in the Constitution which saw persons with physical disabilities being included in the non-discrimination clause, it established the Disability Fund in 2003 and 2006 and received funding from the national reserves¹⁷⁵ and it also successfully lobbied for the inclusion of CWDs in the Basic Education Assistance Module (BEAM).¹⁷⁶

However, this institution is largely invisible due to lack of resources since it operates under the financially ailing Department of Social Welfare. In addition, the Minister of Labour and Social Welfare (the Minister) has more powers on the operations of the NDB. Again, the Minister is the only one administratively responsible for the NDB. This means that it is very difficult if not impossible to hold other ministries accountable for the operations of the NDB. This cumulatively leads to the NDB simply neglecting disability issues and this negatively impacts the realisation of the rights of PWDs generally.¹⁷⁷

3.3.2 The Child Welfare Council: Inadequate protection of the rights of CWDs

As has been indicated above, CWDs are vulnerable. The major Act which deals with children's issues in Zimbabwe is the Children's Act.¹⁷⁸ The Act establishes a

¹⁷³ Sec 5 of the DPA.

¹⁷⁴ See Articles 5 & 9 of the CRPD.

¹⁷⁵ Lang *et al* (n 8 above) 31.

¹⁷⁶ According to N Marongwe 'Observatory Case Studies: The Basic Education Assistance Module (BEAM) in Zimbabwe' available at http://www.aidsandemergencies.org/cms/documents/5_Agency.pdf (accessed 10 October 2011), BEAM is the largest form of educational assistance in Zimbabwe that was launched by the Government as a response to the worsening social conditions and high drop outs of school children.

¹⁷⁷ As above 30.

¹⁷⁸ Act 22 of 1971, the Children's Act [Chapter 5:06] as amended.

CWC¹⁷⁹ with one of its functions being ‘to promote and encourage the co-ordination of the activities of organizations which have as their object the promotion and protection of the rights of children.’¹⁸⁰ The CWC is active when it comes to the promotion and protection of the rights of children notwithstanding the fact that it is starved of adequate resources especially financial resources to function properly.

However, the composition of the CWC does not expressly include organizations which deal with the rights of CWDs. Section 2A(1)(C) simply states that six representatives from Private Voluntary Organizations (PVOs) or other organizations which the Minister¹⁸¹ considers deal with issues concerning the welfare and upbringing of children form part of the membership of the CWC. It is submitted that there are many organizations in Zimbabwe that deal with issues of welfare and upbringing of children which are not necessarily DPOs or any representatives of PWDs. Further, not all PVOs are aware of the rights and entitlements of CWDs. The Minister may therefore appoint any six organizations that do not deal with at least rights of CWDs as the members of the CWC. This may mean that the rights of CWDs may not receive special attention in the activities of the CWC. Failure to expressly include organizations that deal with the rights of CWDs is regrettable and may lead to neglect of the rights of CWDs among the various functions of the CWC.

3.3.3 The Special Advisor

The recent appointment of the Special Advisor on Disability and Rehabilitation to the President and Cabinet is highly commendable since the office acts as a focal point within government for the implementation of disability-related policies.

¹⁷⁹ Sec 2A(1) of the Children’s Act.

¹⁸⁰ Section 2B(C) of the above.

¹⁸¹ Minister refers to the Minister of Labour and Social Welfare.

This is in line with the CRPD which calls for focal points within governments for matters relating to the implementation of disability rights.¹⁸²

However, it is still not clear what are the priorities of the new office, what coherent strategies will be implemented¹⁸³ and on what merit was the Special Advisor appointed. The activities of the Special Advisor are not yet known. Currently, the Special Advisor is Retired Brigadier-General Felix Muchemwa as appointed by the President. This raises concerns as the appointment of the Special Advisor may be open to political manoeuvres. Nilsson states that there is a need to question the role, mandate and appointment of this new structure.¹⁸⁴

3.3.4 The Ministry of Labour and Social Welfare

The Ministry of Labour and Social Welfare is responsible for the rights and needs of PWDs in Zimbabwe. Together with the Ministry of Health and Child Welfare, it is responsible for the provision of wheelchairs and other assistive devices or appliances to PWDs among other activities. According to Eide *et al*, less than one fourth of PWDs who claimed that they need assistive devices have received them.¹⁸⁵ This shows that the Ministry is failing to deliver according to its responsibilities.¹⁸⁶ Furthermore, the Ministry has no budget at all addressing the needs of PWDs which may be the reason why it is failing in its obligations. In this regard, the Ministry is failing to live up to expected standards at the international level which require the availability of mobility aids, devices and assistive technologies to PWDs, among other essentials.¹⁸⁷ To a large extent therefore, the Zimbabwean institutional framework provides a weak foundation for the adequate realisation of the rights of PWDs.

¹⁸² See Art 33 of the CRPD.

¹⁸³ See Lang *et al* (n 8 above) 29 and Nilsson (n 14 above).

¹⁸⁴ Nilsson (n 14 above).

¹⁸⁵ Eide *et al* (n 61 above) 103.

¹⁸⁶ As above.

¹⁸⁷ See Art 4 of the CRPD.

3.3.5 Disability through the courts

Courts of law play a very crucial role when it comes to the realisation of the rights of PWDs. In Zimbabwe however, it is saddening to note that only one case on disability has been decided by the Supreme Court sitting as a Constitutional Court. This is the case of *Simon Mvindi and 5 Others v the President of the Republic of Zimbabwe and Others* (the *Simon Mvindi case*).¹⁸⁸ After making a finding that a myriad of factors like lack of accessible polling stations, lack of voting materials in accessible formats, lack of accessible campaign literature and inaccessible transportation to and from polling stations renders the right to vote by PWDs hollow, the Supreme Court found that PWDs have a right to vote in secret like any other person. Political parties and the Government through the electoral authority were accordingly ordered to consider developing political communications and voting materials in sign language and ballot papers in large print or Braille.

The judgment is welcome in that it is in line with the best practices at international level in which the right of PWDs to vote by secret ballot and the use of appropriate assistive technologies are guaranteed.¹⁸⁹ However, the Government and political parties were not given any deadline to implement the decision and one wonders if the decision is going to be implemented before the forthcoming presidential elections to be held next year.

3.4 Conclusion

In this Chapter, the various Acts of Parliament and institutions which deal with disability issues have been critically analysed. As of the Acts, the DPA is the only Act specifically dealing with the concept of disability in Zimbabwe. One of the striking features embodied in the DPA is the issue of adjustment orders. The NDB is empowered to issue adjustment orders if it considers that any premises to

¹⁸⁸ *Simon Mvindi case* (n 27 above).

¹⁸⁹ See Art 29 of the CRPD which further states that PWDs should be assisted by persons of their own choice in the voting process.

which members of the public are ordinarily admitted or any premises in which services or amenities are ordinarily provided to members of the public are inaccessible to PWDs. The owner of the premises or the provider of the service is then required to undertake action on his/her own expense to secure reasonable access by all PWDs. Adjustment orders are commendable and are in line with best practices at international level in as much as they ensure the right of access to mainstream public services and enable PWDs to live independently and to participate fully in all aspects of life. However, the major drawback is that the whole Act is drafted along the outdated medical approach to disability which does not treat PWDs as subjects of human rights.

Other laws in force include the Constitution which only covers physical disability in its non-discrimination clause to the exclusion of mental, intellectual and sensory disabilities. The Mental Health Act is largely commendable in that it provides for the care, detention and after care of persons who are mentally disordered or intellectually handicapped in the same line as the CRPD. Financial compensation for disablement is provided for under the State Service (Disability Benefits) Act and the War Victims Compensation Act. The latter Act is also commendable in that it is the only Act in Zimbabwe that embodies special provisions for women and children with disabilities although it is in the context of disabilities directly or indirectly linked to a war.

However, the major problem in Zimbabwe is the lack of financial resources to translate the legal provisions from paper into tangible benefits for PWDs. This same problem equally hinders the implementation of the Social Welfare Act which establishes a regime of social welfare assistance in the form of cash, rehabilitation, institutional nursing, boarding or foster home care, counselling services, provision of orthopaedic and orthoptic appliances, occupational training, pauper burials, the supply of food and clothing to PWDs among other persons.

The NDB, CWC, Special Advisor, Ministry of Labour and Social Welfare, and the Courts of law are some of the institutions that deal with disability. The Ministry has no budget at all addressing the needs of PWDs and is failing to deliver according to its responsibilities. Both the NDB and the CWC are active but are starved of adequate resources to function properly. This shows that to a large extent, both the legal and institutional frameworks in Zimbabwe do not provide an environment that is conducive for the full and effective realisation of the rights of PWDs.

The Special Advisor is a newly established structure which acts as a focal point within government for the implementation of disability-related policies. But as things currently stand, the role and mandate of this new structure is not clear. When it comes to disability issues through the courts of law, only the *Simon Mvindi Case* has been decided by the Supreme Court sitting as a Constitutional Court. In this celebrated case, the Court duly found that PWDs have a right to vote in secret like any other person and voting information and materials are supposed to be made in accessible formats to PWDs.

Having made a salient conclusion that most if not all the Acts of Parliament and institutions dealing with the concept of disability in Zimbabwe are weak, Chapter Four is going to proffer general and peculiar recommendations.

CHAPTER FOUR

THE WAY FOWARD

4.1 Introduction

In Chapter Three, it was shown that the legal and institutional frameworks for the realisation of the rights of Persons with Disabilities (PWDs) have a lot of gaps. This Chapter Four presents suggested reforms which the author thinks may assist in addressing some of the problems which PWDs face in their bid to be fully and effectively included as equal members of the Zimbabwean society.

Basically, it has been shown that the Constitution, the Disabled Persons Act (DPA) and other laws addressing the concept of disability are in need of urgent reforms so as to capture the best practices at international level.¹⁹⁰ The Constitution has to include other types of disability in its non-discrimination clause and not only to give reference to physical disability. The DPA has to be amended starting with its name which the author suggests that it should be changed to 'Persons with Disabilities Act' so as to be in line with the terminology currently used at the international level.

The mandates of institutions like the Special Advisor on Disability and Rehabilitation to the President and Cabinet (the Special Advisor) and the Child Welfare Council (CWC) have to be revisited in order to foster the realisation of the rights of PWDs. In developing and implementing the legal and institutional reforms, PWDs or their representative organisations should be involved and participate fully.

However, the suggested reforms in this Chapter are presented not as the ultimate panacea, but as possible solutions to the current problems faced by

¹⁹⁰ See pages 39 to 47 above.

PWDs in Zimbabwe. Further, the suggested reforms are by no way the only ones that are needed to ensure an improved realisation of rights of PWDs in Zimbabwe.

4.2 Legal reforms

4.2.1 Ratification of the CRPD

The first recommendation is for Zimbabwe to be a party to the Convention on the Rights of Persons with Disabilities (CRPD), since it embodies the best contents and practices for the realisation of the rights of PWDs. There is no doubt that the ratification and the ultimate domestication of the CRPD will have far reaching implications for reform of major sectors like education, health, housing, employment and politics. This will ensure full and effective inclusion of PWDs in the facets of life.

In the meantime, the following are the suggested reforms to the legal and institutional frameworks for the realisation of the rights of PWDs in Zimbabwe:

4.2.2 Constitutional amendment

As indicated in Chapter Three, Section 23 prohibits discrimination on the ground of physical disability, among other grounds. It has been shown that physical disability is not the only type of disability recognized at international level.¹⁹¹ So in order to match the best practices at international level, Section 23 should be amended so as to explicitly include mental, intellectual and sensory disability.¹⁹² Alternatively, this may be done by the adoption of the term ‘any other status’ following the list of the grounds upon which discrimination is prohibited. Any

¹⁹¹ See page 40 para 3.2.1 above.

¹⁹² See for example Section 9(3) of the South African Constitution which includes disability as a prohibited ground of discrimination without necessarily enumerating the different types of disability.

form of discrimination on unstated grounds will then be equally covered.¹⁹³ Referring to the International Covenant on Economic, Social and Cultural Rights which does not explicitly lists disability as a ground upon which discrimination is prohibited, the Committee on Economic, Social and Cultural Rights (CESCR) concluded that the concept of 'other status' clearly applies to discrimination on the grounds of disability.¹⁹⁴

Further, it is advisable for the Constitution to have a specific provision on the rights of PWDs.¹⁹⁵ The Ugandan Constitution provides that PWDs have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.¹⁹⁶ In addition, it also provides that Parliament shall enact laws appropriate for the protection of PWDs.¹⁹⁷ The author suggests that the Constitution of Zimbabwe should adopt a similar provision on the rights of PWDs.

However, unlike the Ugandan Constitution, the suggested provision should not be limited to mental and physical potential but has to include intellectual and sensory disabilities. More so, the suggested provision has to address the plight of women and children with disabilities who are doubly marginalised. This is the subject I now turn to briefly discuss:

4.2.2.1 Women with disabilities

Women with Disabilities (WWDs) face the same spectrum of human rights abuses that the able-bodied women face. However, their abuses are magnified

¹⁹³ See Nyirinkindi (n 53 above) 57 where it is stated that an expansive interpretation of the term 'other status' included in the grounds of discrimination can serve to bring all types of disability into its ambit.

¹⁹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 5, *Persons with Disabilities*, (Eleventh Session, 1994) UN DOC E/1995.22 para 5.

¹⁹⁵ See for example Section 35 of the 1995 Ugandan Constitution.

¹⁹⁶ See Section 35(1) of the above.

¹⁹⁷ Sec 35(2).

due to dependence and social isolation. They suffer double discrimination.¹⁹⁸ Arnade and Haefner observed that while women with disabilities have much in common with men with disabilities, they face multiple discrimination in many cases, so that they are often more disadvantaged than the latter in similar circumstances.¹⁹⁹

In Zimbabwe, the situation of WWDs is particularly precarious. They are subjected to harassment, sexual abuse and exploitation.²⁰⁰ In addition, Zimbabwe being a highly patriarchal society, WWDs are less likely to benefit from any developmental initiatives that are available as compared to their male counterparts. The author therefore suggests that the Constitution should have a provision that places an obligation upon the Government to take measures so as to ensure the full and equal enjoyment of all human rights and fundamental freedoms by WWDs.²⁰¹

4.2.2.2 Children with disabilities

Children with Disabilities (CWDs) are doubly marginalized firstly as children and secondly as PWDs. There is a big concern for CWDs' vulnerability, welfare and the need to ensure that their rights are protected.²⁰² A common scenario in Zimbabwe is that CWDs are less likely to complete primary education as compared to their non-disabled counterparts.²⁰³ This results in spill over effects in that due to lack of education and requisite skills, it is difficult if not impossible for CWDs to secure any form of employment. At the end, a vicious cycle of

¹⁹⁸ Kanga (n 165 above); Traudstadottir (n 165 above); Grobbelaar-du Plessis (n 12 above) 405; Combrinck (n 13 above) 299.

¹⁹⁹ S Arnade & S Haefner 'Gendering the Draft Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities' available at http://vi.dpi.org/files/uploads/publications/gendering_convention/DPI_Gendering_UN_Convention_Jan_2006.pdf (accessed 6 October 2011).

²⁰⁰ See the Zimbabwe Human Rights Report (n 7 above); Lang *et al* (n 8 above) 7.

²⁰¹ See for example Art 6 of the CRPD which explicitly provides for WWDs.

²⁰² Nyirinkindi (n 53 above) 50.

²⁰³ Lang *et al* (n 8 above) 6.

poverty and disability is compounded. There is a need for a constitutional amendment placing an obligation upon the Government to ensure the full realisation of all human rights and fundamental freedoms by CWDs on an equal basis with other children.²⁰⁴

Not only WWDs and CWDs are in need of concerted attention but persons with dual or multiple disabilities also.²⁰⁵ Needs of persons with multiple disabilities may largely differ from those with a single type of disability. This means that the equal treatment of all PWDs without taking into account the specific individual impairments may as well leads to injustice.

Closely linked to the need to take targeted measures for the protection of WWDs and CWDs is the issue of affirmative action programmes in favour of all PWDs, which subject I now turn to:

4.2.2.3 Affirmative action

A genuinely equal society is the one that has a positive approach to and positively accommodates human difference. Formal equality as envisaged by Section 23 of the Constitution entrenches pre-existing patterns of social disadvantage in a number of fundamental ways²⁰⁶ and fails to 'reasonably accommodate' the difference of disability. Formal equality therefore creates illusory benefits for PWDs.²⁰⁷ The CESCR strongly asserted the need to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to PWDs in order to achieve the objectives of full participation and equality within society.²⁰⁸

²⁰⁴ See for example Art 7 of the CRPD which explicitly addresses the plight of CWDs.

²⁰⁵ See the Standard Rules (n 41 above).

²⁰⁶ S Fredman 'Providing equality: Substantive equality and the positive duty to provide' (2005) 21 *South African Journal of Human Rights* 163.

²⁰⁷ Quinn & Degener (n 16 above) 11.

²⁰⁸ See the Committee on Economic, Social and Cultural Rights, General Comment No. 5 (n 194 above) para 9.

The author suggests that the Constitution should be amended in order to include a provision on the need to take affirmative action programmes in favour of PWDs. Thus, there should be a constitutional provision laying a firm foundation for the increased participation of PWDs in critical sectors like education, employment, health and politics. As was recommended by the African Commission on Human and Peoples' Rights in the case of *Purohit and Another v The Gambia* that governments need to take 'concrete and targeted steps' to ensure that PWDs realise their right to health,²⁰⁹ the Zimbabwean Government has to act accordingly.

This may be done by the adoption of similar provisions like that in the Ugandan Constitution which provides that '...the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.'²¹⁰ The ultimate goal should be to frankly accommodate the difference of disability from a human rights perspective and in line with practices at international level

Of course, the affirmative action suggested should be only aimed at eliminating conditions which cause or perpetuate discrimination and exclusion of PWDs. In crafting the affirmative action clause suggested, care must be taken to ensure that the sole purpose will be to achieve equality, the action should be temporary and to be discontinued when the goal is achieved.²¹¹ All these measures are necessary in order to avoid a scenario whereby the affirmative action measures themselves may become discriminatory to persons without disabilities.

²⁰⁹ *Purohit and Another v The Gambia* (n 3 above) para 84.

²¹⁰ See Section 32(1) of the 1995 Ugandan Constitution.

²¹¹ See N Lerner 'The UN Convention on the Elimination of All Forms of Racial Discrimination' available at <http://www.untreaty.un.org/cod/avl/is/sicilianos HR.html> (accessed 6 October 2011).

4.2.3 Suggested amendments to the Disabled Persons Act

To start with, terminology matters when one is dealing with disability issues. According to Nyirinkindi, terms and labels become significant in colouring perceptions and determining what rights may be attached to PWDs.²¹² The name 'Disabled Persons Act' should therefore be discarded in favour of the internationally preferred terms like 'Persons with disabilities.'²¹³ The term 'disabled persons' is too medical and too centred on the individual. It does not clarify the fact that disability results from the interaction between persons with impairments and their surrounding societies. The author suggests that the name 'Persons with Disabilities Act' should be substituted in place of 'Disabled Persons Act.'

As indicated above, the Act does not address the issue of inaccessible modes, means and formats of communication and information at all.²¹⁴ The author suggests that the Act should place an explicit obligation upon the Government and private companies which provide communication services to members of the public to provide their services in accessible formats to PWDs. As an example, information should be provided in Braille, enlarged print or electronic format so as to be accessible to persons with visual impairments.

Further, the fact that the National Disability Board (NDB) is ineligible to give adjustment orders to state hospitals, clinics, nursing homes, schools or educational training centres without the consent of the relevant Minister of the institution concerned is unpleasant given the fact that ministerial consent is difficult to secure.²¹⁵ The Act should empower the NDB to issue adjustment

²¹² Nyirinkindi (n 53 above) 52.

²¹³ See the Standard Rules (n 41 above) para 19 in which the use of terminology which reflects a medical and diagnostic approach and, ignores the deficiencies and imperfections of the surrounding society is castigated.

²¹⁴ See page 44 above.

²¹⁵ See arguments at page 45 above.

orders against government institutions without the consent of the ministers. This will assist in increasing accessibility to state premises and services by PWDs as opposed to the current situation in which many government workplaces, Magistrates Offices and state recreational facilities are not accessible to PWDs.²¹⁶

The Act also has to address the issue of expensive and inadequate supply of aides and appliances like mobility aides, devices and prosthetics.²¹⁷ For persons with albinism, the major barrier is that of very expensive and inaccessible sunscreen products including skin lotions.²¹⁸ The reality in Zimbabwe is that there are far too low salaries meaning that a larger majority cannot afford aides and appliances for PWDs. The Act should make it clear that it is a governmental obligation to subsidise the purchase of aides and appliances which are in short supply and are very expensive. Such a move will assist to ease the suffering of PWDs and to give them self-determination. This will also go a long way in increasing the level of independence in the daily lives of PWDs and the exercise of their rights.²¹⁹

On another note, given the fact that both the Constitution and the DPA are silent when it comes to the critical area of education,²²⁰ the author suggests that the DPA should be amended so as to ensure that the education of PWDs is an integral part of the education system. A similar provision like that in the Ugandan Constitution which provides for the right to education of all may be an ideal provision to be adopted in the DPA.²²¹

²¹⁶ Eide *et al* (n 61 above).

²¹⁷ Lang *et al* (n 8 above).

²¹⁸ 'The agony of being an albino' *NewsDay* 21 July 2011.

²¹⁹ See the Standard Rules (n 41 above) Rule 4.

²²⁰ See pages 40 & 46 above.

²²¹ See sec 30 of the Ugandan Constitution.

When it comes to the right to access public buildings, the DPA should disallow the building of inaccessible public buildings in which services are ordinarily offered to members of the public or in which members of the public are ordinarily admitted. In a way, this then means that all the architects, construction engineers and others who are professionally involved in the design and construction of the physical environment should have the necessary knowledge on disability issues.²²²

4.2.4 Suggested amendments to the Children’s Act

The Children’s Act should be amended so as to make appropriate and desirable provisions catering for CWDs. As indicated earlier on, the right to education of CWDs is violated on a daily basis in Zimbabwe.²²³ From a human rights perspective, the Children’s Act should therefore make provision for inclusive education to all CWDs.²²⁴ Such a provision will ensure that the Government of Zimbabwe meets its international obligations.²²⁵

The author suggests that the Children’s Act should have similar provisions like that in the Ugandan Children’s Statute which provides that parents of CWDs should have their children assessed as early as possible as to determine the extent and nature of their disabilities and to ensure that they are afforded equal opportunities for education.²²⁶

²²² See the Standard Rules (n 41 above) Rule 5.

²²³ See page 46 above.

²²⁴ According to J Lynch ‘Inclusion in education: The participation of disabled learners’ available at <http://www.unesdoc.unesco.org/images/001234/123486e.pdf> (accessed 6 October 2011), inclusive education aims at the removal of all barriers to learning, and the participation of all learners vulnerable to exclusion and marginalization.

²²⁵ See K Kristensen ‘Can the Scandinavian perspectives on integration and inclusion be implemented in developing countries? How far can we get? Or what can be achieved?’ available at <http://www.ispaweb.org/colloquia/nyborg/kristensenkeynote.html> (accessed 6 October 2011).

²²⁶ See Sections 10(a) & 10(c) of the Children’s Statute of Uganda, 1996.

Further, Section 7 of the Act which addresses the issue of ill-treatment and neglect of children should be amended so as to make it clear that the existence of a disability shall in no case justify a deprivation of liberty among CWDs.²²⁷ One of the big problem in Zimbabwe is the deprivation of liberty and other fundamental rights of CWDs who are normally hidden when visitors arrive at home and are ordinarily locked indoors for very long periods.

4.2.5 Suggested amendments to the Social Welfare Act

Given the fact that the Social Welfare Act provides that persons with physical and mental disabilities automatically qualify for social welfare assistance,²²⁸ the author suggests that it should be amended so as to remove the apparent misconception that disability is always associated with poverty. The Act should therefore provide that those PWDs who are incapable of self-support are legible for social welfare assistance as opposed to the current position in which all PWDs are portrayed as indigent persons who are always in need of social welfare assistance. It goes without saying that a lot of PWDs are capable of self-support and are sometimes in economically better situations as compared to their non-disabled counterparts.

4.2.6 The Criminal Law (Codification and Reform) Act and suggested amendments

It has been observed that this Act deal with rape of women with mental disabilities to the exclusion of women with other types of disabilities. Further, is has been shown that the Act does not treat the disability of rape victims as a factor to be taken into account when sentencing the perpetrator.²²⁹ This Act should be amended so as to include women with all types of disability. More so, disability of the rape victim should be taken as one of the aggravating factors to

²²⁷ See for example a similar provision in Art 14(1) of the CRPD.

²²⁸ Sec 6 of the Social Welfare Act.

²²⁹ See page 53 above.

be considered by the Judge or Magistrate when meting out an appropriate sentence to persons convicted of the charge of rape.

In addition, the Act should provide for very high sentences in the event that WWDs fall victims to rape. This may help to deter would be rape offenders who normally target women with disabilities especially those with visual and mental impairments.

4.3 Institutional reforms

4.3.1 The National Disability Board

The NDB should be empowered to issue adjustment orders against governmental institutions without the consent of the ministers such that the process becomes speedy.

In its work, the NDB also needs to have a follow up mechanism for its resolutions. Recently, the NDB resolved that the Zimbabwe Revenue Authority (ZIMRA) exempts import duty on cars bought by PWDs but this is being overlooked and yet no action is being taken.

Generally, the objectives of the NDB need to be broadened so as to include the monitoring and enforcement of the rights of PWDs and their entitlements in Zimbabwe.

4.3.2 The Special Advisor on Disability and Rehabilitation to the President and Cabinet

It is not clear to tell what are the priorities of the Special Advisor, what strategies are supposed to be implemented and on what merit was the Special Advisor appointed.²³⁰ If the situation continues like that, there will be little confidence in the Special Advisor. The author suggests that the mandate of the Special Advisor needs to be clearly articulated. However, the articulation of such a mandate

²³⁰ See page 56 above.

should not result in unnecessary duplication and overlapping of roles with that of the NDB, the CWC and the Ministry of Labour and Social Welfare.

In order to leave no room for political appointments, there is a need to come up with a clear criterion for the appointment of the Special Advisor. The author proposes that the Special Advisor needs to be an individual with high qualifications and extensive experience in the field of disability.

4.3.3 Suggested reforms to the Child Welfare Council

As has been indicated above, the composition of the CWC is not satisfactory since it does not explicitly include organisations that deal with the interests of CWDs.²³¹ There is therefore an urgent need to revisit it so that organisations that deal with the rights of CWDs or PWDs in general are clearly included. This will go a long way in ensuring that the best interests of CWDs receive special attention in the functioning of the CWC.

Generally, the government should make it a point that disability matters are included in the regular annual budget. Of course, disability issues are covered under the budget allocated to the Ministry of Labour and Social Welfare. This position is not satisfactory and there is a need to allocate specific funds towards disability at the Parliamentary level.

Finally, the author is of a strong view that the suggested reforms should not be developed and implemented without the non-tokenistic involvement of PWDs or their representative organisations. This is in line with the clarion call of the disability movement which is 'nothing without us about us.'

²³¹ See page 55 above.

4.4 Conclusion

From Chapters Two to Four, this dissertation has answered the research question. Thus, the Zimbabwean legal and institutional frameworks do not provide an environment that is conducive for the full and effective realisation of the rights of PWDs to a great extent. There is an urgent need to define the rights and entitlements of PWDs in the legislative framework, be it in the Constitution or in the implementing legislation like the suggested 'Persons with Disabilities Act.' The institutions dealing with disability including the NDB and the Special Advisor need to have their objectives clearly articulated and even broadened so as to ensure the full and effective realisation of the rights of all PWDs in Zimbabwe. After that, there should be the actual translation of the rights from paper into real improvements.

Further, it is high time for Zimbabweans to be reminded that all human beings have something to contribute to humanity and that social structures should be built inclusively with human empowerment as a key goal.²³² All the human impairments should be viewed as infinitely various but universal features of the human condition.²³³ Disability is a universal human experience,²³⁴ meaning that it should be mainstreamed in major areas like education, health, employment and political participation, only to mention but a few.²³⁵

Word Count: 17 985 words (excluding title page, plagiarism declaration, abbreviations, table of contents, abstract and bibliography).

²³² Quinn & Degener (n 16 above) 12.

²³³ JE Bickenbach 'Minority rights or universal participation: The politics of disablement' in M Jones & LA Basser Marks (eds) *Disability, diver-ability and legal change* (1999) 101.

²³⁴ See WHO ICF (n 42 above).

²³⁵ D Jones & L Webster 'A handbook on mainstreaming disability' available at http://www.asksource.info/pdf/33903_vsomainstreaming_disability_2006.pdf (accessed 25 July 2011).

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“Annexure 1”

Schedule of interviews held with PWDs

Name of respondent	Name of organization	Mode of interview	Date of interview
Mr Munaro Vhimbo	Villager of Machakadze village, Gutu (PWD)	Personal interview	17 September 2011
Ms Potsai Vhenge	Single mother with visual impairment, Gweru	Personal interview	18 September 2011

P Bag 9055
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Zimbabwe

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223795

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A/EXECUTIVE DEAN

Email:



MIDLANDS STATE UNIVERSITY
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15th September 2011

To Whom It May Concern

Dear Sir/Madam

RE: FIELD RESEARCH ASSISTANCE

Esau Mandipa is a **Masters In Law (Human Rights and Democratisation in Africa)** , student from the University of Pretoria and an intern with the Midlands State University (MSU), Faculty of Law.

For his thesis, he is researching on disability rights issues, in particular, the protection of persons with disabilities under the Zimbabwean legal and institutional frameworks. Therefore, we kindly request your esteemed office to provide him with information relevant to the subject matter of his research.

Your assistance in this regard will be appreciated.

Yours faithfully

Manyatera G. (Mr)

A EXECUTIVE DEAN, LAW

