

**UNIVERSITY OF PRETORIA**

**CENTRE FOR HUMAN RIGHTS**

**LLM IN HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

**REFORM OF LEGAL PROTECTION OF PERSONS WITH DISABILITIES  
IN MOZAMBIQUE**

October 2011

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“if a person with disabilities is an error, it is the society that is wrong, thus we live in the wrong society. It is urgent that the situation is changed so as to guarantee a good future for new generations.”

*Living Conditions among People with Disabilities in Mozambique: A National Representative Study* (2009)  
INE/FAMOD REPORT.

## **Glossary of Terms**

### **Assistive devices**

Assistive devices are any device and ergonomic solution capable of reducing the handicap experienced by an individual.

### **Community based rehabilitation (CBR)**

Community based rehabilitation is a strategy within community development for the rehabilitation, equalisation of opportunities and social integration of all people with disabilities. It is implemented through the combined efforts of disabled people themselves, their families and communities, and the appropriate health, education, vocational and social services. (ILO/WHO/UNESCO Joint Position Paper, 1994). It is therefore a strategy for enhancing the quality of life of disabled people by improving service- delivery, by providing more equitable opportunities and by promoting and protecting their human rights. (Helander, UNDP, 1994)

### **Disabled person**

'An individual whose prospects of securing and retaining suitable employment are substantially reduced as a result of physical or mental impairment' (ILO Convention 159).

### **Environmental accessibility**

The term encompasses both accessibility of the built environment and accessibility in terms of access to communication, for example, (a) design of buildings, nature trails, urban and rural infrastructure that will ensure inclusive use by all citizens, including wheelchair users and parents with prams; (b) use of technology

that will ensure inclusive use by all consumers, e.g. the use of Sign Language on television, availability of documents in Braille and/or on cassette.

### **Human resource development (HRD)**

Human resource development is a set of social investments which support the development of a healthy, educated, stable and productive population. It addresses the development of human capabilities, abilities, knowledge and know-how to meet people's evergrowing needs for goods and services, to improve their standard of living and quality of life. It is a process in which citizens acquire and develop the knowledge and skill necessary for occupational tasks and for other social, cultural, intellectual and political roles that are intrinsic to a vibrant democratic society.

### **Inclusion**

Inclusion implies a change from an 'individual change model' to a 'system change model' that emphasises that society has to change to accommodate diversity, i.e. to accommodate all people. This involves a paradigm shift away from the 'specialness' of people to the nature of society and its ability to respond to a wide range of individual differences.

### **Independence**

Independence is a state of being whereby available and adequate support services, assistive devices and personal assistance to people with all disabilities at all levels enables people with disabilities to exercise choice, bear responsibility and participate fully in society.

### **Independent living**

Independent living implies the ability of a person to live just like anyone else with opportunities to make decisions that affect ones life, being able to pursue activities of ones own choosing. Independent living is having the right and opportunity to pursue a course of action. It is also having the right to fail and to learn from ones failures, just as non-disabled people do.

## **Mainstreaming**

Mainstreaming focuses on the individual and small groups within the present system, without any necessary assumption that the system may be flawed and needs to be changed to make inclusion possible.

## **People with speech disabilities**

People with limited or no speech (non-speaking people) are people with normal hearing, but who are unable to express themselves due to a physical or intellectual impairment or are unable to express themselves through speech.

## **Personal assistance services (PAS)**

Personal assistance services enable people with severe disabilities to exercise their rights to choice and dignity within their own homes. Examples of PAS include readers for persons with visual disabilities; drivers for persons with visual or severe physical, intellectual disabilities, including people with epilepsy; interpreters/facilitators for Deaf persons and non-speaking persons; personal care assistants for people with severe disabilities; service dogs for people with visual and severe disabilities; advocates for people with severe intellectual disabilities.

## **Rehabilitation**

The UN Standard Rules define rehabilitation as: ' . . . a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.'

## **Social services**

Social services is a collective term for services within the health, welfare and education sectors.

## **Special Needs Education**

Special Needs Education focuses on the education system and its ability to accommodate learner with different special needs (social model), and refers to the education of learners with a wide range of educational needs of a specialised nature. It includes:

1. learners who require psychological and educational guidance, career and counselling service and life-skills;
2. learners with sensory, physical and neurological disabilities;
3. learners with varying degrees of mental disabilities;
4. learners with emotional and/or behavioural difficulties;
5. learners with severe developmental and health disturbances;
6. learners with speech and language difficulties;
7. disadvantaged learners (in poverty, suffering from chronic malnutrition, street children);
8. learners with general and specific learning disabilities;
9. gifted and talented learners.

## **Support services**

Any device, mechanism or strategy that lessens or limits the handicap and enables people with disabilities to maintain their dignity and to live independent lives within their communities. It could include personal assistance services (PAS), assistive devices and specialised equipment.

## **Vocational rehabilitation**

'That part of the continuous and co-ordinated process of rehabilitation which involves the provision of those vocational services, e.g. vocational guidance, vocational training and selective placement, designed to enable a disabled person to secure and retain suitable employment' (ILO Convention 159).



## **Disability**

Is a condition which makes an individual unable to function normally in a particular social-cultural context.

## Acronyms

ADEMO	Mozambican Association of the Disabled
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CEDAW	Convention for the Elimination of all Forms of Discrimination against Women
DPOs	Disabled People's Organizations
DPP	Disability and Development Partners
LDC	Least developed countries
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MBT	Mine Ban Treaty
PLWA	People Living with AIDS
PWD	People with disability
UN	United Nations
WHO	World Health Organization

## **Acknowledgements**

The academic and moral support of Prof. Frans Viljoen, Gilles Cistac and of the different staff of the Centre for Human Rights and that of different colleagues of the 2011 HRDA class, the financial assistance of OSISA is hereby acknowledged. To my patient wife thank you for all the support.

## Chapter one

### 1.1 Introduction and background

Mozambique is a least developed country (LDC),<sup>1</sup> and is among the five lowest on the Human Development Index<sup>2</sup> and is known to have no specific protection of people with disabilities (PWDs) with as up to specific legislation has been adopted but g but general laws on social welfare. Although the 2004 Constitution has a generic protection norm nothing much can be found in the whole system. Unfortunately, the 1990 Constitution was more protective and more specifics; the former roughly reduced the extent of protection that existed before. It can be said that Mozambique does not have any protection of PWDs at all.

The African Decade for Persons with Disabilities<sup>3</sup> estimated in 2008 that there were approximately 1.6 million PWDs in Mozambique, equivalent to 9.9% of the total population.<sup>4</sup> To date, all systematic collection of data regarding the numbers of PWDs living in the country is not accurate. However, due to the civil war, a large number of PWD have acquired their impairments by war injuries. The 2007 Landmine Monitor Report estimated that there were at least 30,000 survivors from landmines in Mozambique. The 1997 Census estimated that approximately 2% of the total population had a disability. It also found that 77% of PWDs had mobility impairment, and that 16 % attributed their impairment to "mental health problems". This is to be expected, given that many people will have been traumatised during the long period of civil strife within the country. The 1997 Census also found that 80% of PWDs lived in rural areas, where there was virtually no access to appropriate medical care.<sup>5</sup> Furthermore, the Census showed that 54% of disabled people were men and that 48% were women. Again, this gender disparity could be partially explained by the fact that men are more likely to be involved in war and therefore disproportionately more likely to become impairment through landmines. Notwithstanding the fact that these statistics are more than 10 years old, there is no reason to believe that the overall scenario described above has fundamentally changed during the

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<sup>1</sup> LDC is the name given to a country which, according to the United Nations, exhibits the lowest indicators of socioeconomic development, with the lowest Human Development Index ratings of all countries in the world. The concept of LDCs originated in the late 1960s and the first group of LDCs was listed by the UN in its resolution 2768 (XXVI) of 18 November 1971. A country is classified as a Least Developed Country if it meets three criteria: (a) low-income (three-year average Gross National Income per capita of less than US \$905, which must exceed \$1,086 to leave the list); (b) human resource weakness (based on indicators of nutrition, health, education and adult literacy) and (c) economic vulnerability (based on instability of agricultural production, instability of exports of goods and services, economic importance of non-traditional activities, merchandise export concentration, handicap of economic smallness, and the percentage of population displaced by natural disasters - <http://hdr.undp.org/en/reports/global/hdr2011/> (accessed 20 August 2011).

<sup>2</sup> The Human Development Index (HDI) 2010. HDI is estimated and reported by United Nations Development Program (UNDP) and Mozambique is at position 165 out of 169 countries. Available at <http://hdrstats.undp.org/images/explanations/MOZ.pdf> (accessed 26 May 2011).

<sup>3</sup> The African Union declared the first decade of the new millennium (1999-2009) as the African Decade for Persons with Disabilities.

<sup>4</sup> R Lang *Disability Policy Audit in Namibia, Swaziland, Malawi and Mozambique* (2008) 81.

<sup>5</sup> Ibid.

interim period.<sup>6</sup> Again, ninety-five per cent of Mozambicans with disabilities are illiterate, as compared to 60 per cent in the overall population.<sup>7</sup>

Many disabilities in Mozambique could be prevented by better healthcare conditions including greater access to primary health care. A simple example of this is that a number of people needlessly become disabled in Mozambique through snake bites which can be readily pleaded if the victim can reach a health post and be given an antidote quickly enough. The right to 'assistance' for disabled people is provided in article 95 of Mozambique's Constitution and article 8 provides specific rights for people disabled as a result of the National Liberation War, and for those who became disabled during the Civil War that led to the 1992 Peace Accord, including their dependants. In rural areas, however, disabled people are not aware of the limited rights that do exist (Disability and Development Partners, 2008: 6).<sup>8</sup>

Mozambique needs to change its attitude towards PWDs and it needs to face reality: a society that believes that “if a person with disabilities is an error, it is the society that is wrong, thus we live in the wrong society. It is urgent that the situation is changed so as to guarantee a good future for new generations.”<sup>9</sup>

South Africa though is an emerging economy and one of the most developed countries in Africa (ninth),<sup>10</sup> and yet it

“... is beginning to recognize the rehabilitation needs and civil rights of persons with disabilities, the impact of impairment, activity limitations and participation restrictions as well as the resulting disadvantage they experience on national indicators of health, education and economic prosperity. Information needs range from basic counts of persons with disabilities in the population to information on more complex issues such as the difference in the quality of life between persons with and without disabilities.”<sup>11</sup>

Further, in spite of the fact that attention has been appropriately drawn to the need to put into place structures, policies and strategies that promote the social inclusion of disabled persons, minimal success has

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<sup>6</sup> Ibid.

<sup>7</sup> Venter, Rickert, Maunder 'Improving access and mobility of people with disabilities' available at [http://www.transport-links.org/transport\\_links/filearea/publications/1\\_800\\_pa3911.pdf](http://www.transport-links.org/transport_links/filearea/publications/1_800_pa3911.pdf) (accessed 21 August 2011).

<sup>8</sup> No. 4 above

<sup>9</sup> *Living Conditions among People with Disabilities in Mozambique: A National Representative Study* (2009) available at <http://www.sintef.no/upload/Helse/Levek>

<sup>10</sup> Ibid, although in the world ranking it is a medium human developed country.

<sup>11</sup> Statistics South Africa *Prevalence disability in South Africa: Census 2001*, available at <http://www.statssa.gov.za/census01/html/Disability.pdf> (accessed 26 May 2011).

been achieved.<sup>12</sup> The Integrated National Disability Strategy takes note of the fact that the majority of PWD in South Africa has been excluded from the mainstream of society and has thus been prevented from accessing fundamental social, political and economic rights. The exclusion experienced by disabled persons and their families is the result of a range of diverse demographic, economic and social factors. The key forms of exclusion responsible for their disadvantage are poverty, social isolation and the fact that a high number of them are unemployed.<sup>13</sup>

The two countries are very much different and the research should come with the perspective of these countries with a huge gap in the human development record. This paper seeks to address on the reasons why it is so and to what can be done to improve the situation in Mozambique taking South Africa as an inspiration as it has already started its legal reform towards the protection of PWD.

## **1.2. Scope of study**

The study should point the reasons of the poor protection of the rights of PWD and still look into the possible actions for change through legal instruments, pointing specific recommendations to stakeholders and both Governments.

## **1.3. Structure of dissertation**

This thesis is structured as follows. Chapter is an introduction and background, chapter two the nature and extent of the existing legal protection of PWDs in Mozambique and in South Africa, chapter three is an analyses of the CRPD and of the best practices and its applicability to Mozambique, chapter four focus on the obstacles and how can Mozambique and South Africa can learn from each other to overcome them, chapter five focus on the concluding remarks and recommendations.

The methodology to be used at the presentment dissertation is analytical mainly carried out through analyses of primary (municipal laws, official publications and jurisprudence) and secondary sources (books, articles and researches and other publications, such as internet and in-depth interviews whenever possible as

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

going back to Mozambique). A desk research will look into South African legal protection as a perspective of a country that has already a legal protection in place.

#### **1.4. Problem statement**

There is a general trend of poor protection of the rights of PWDs, yet resources are there, political will and lack of awareness are the real impairment.

#### **1.5. Research question**

What are the (main) obstacles to the (full) protection of PWDs in Mozambique?

The dissertation seeks to address this question by contrasting the policies in place for the protection of PWDs in the Mozambique or the lacunas that may exist. To achieve this purpose the following sub questions have to be considered:

- a. Is there a legal framework for the protection of PWDs in place?
- b. What changes could be made to improve the situation/what can be done to change the *status quo*?
- c. Are there any real obstacles or other factors are at play?
- d. Can Mozambique learn from South Africa?

#### **1.6. Significance of study**

The study should point the reasons of the poor protection of the rights of PWDs and still look into the possible actions for change through legal instruments, pointing specific recommendations to stakeholders and both Governments.

#### **1.7. Assumptions**

The study takes as an assumption the fact that the numbers of PWDs indicated in the surveys in both countries are much likely to be the same when it comes to poor protection. Thus, one of the first assumptions is that both countries are somehow similar in poor protection, yet Mozambique goes further as simply does not have any protection at all.

## **Chapter 2**

### **Nature and extent of the existing legal protection of PWDs in Mozambique and in South Africa**

#### **2. Legal Framework**

##### **2.1. Constitutional protection**

The Constitution of the Republic refers to the protection of persons with disabilities in its article 125 as follows:

1. The disabled shall have a right to special protection by the family, the society and the State.
2. The State shall promote the creation of conditions for learning and developing sign language.
3. The State shall promote the creation of conditions necessary for the economic and social integration of the disabled.
4. The State shall promote, in co-operation with associations of the disabled and with private entities, a policy that will guarantee:
  - a) the rehabilitation and integration of the disabled;
  - b) the creation of appropriate conditions to prevent them from becoming socially isolated and marginalized;
  - c) priority treatment of disabled citizens by public and private services;
  - d) easy access to public places.
5. The State shall encourage the establishment of associations of the disabled.

Unfortunately, the 2004 Constitution brought a large reduction in the already established PWD rights. In fact, disability issues are both directly and indirectly addressed within the 1990 Mozambique



Constitution. The former article 13 (War Disability) ensured special protection to PWD during the armed conflict that ended with the signing of the General Peace Agreement in 1992, as well as the orphans and other direct dependants. In addition the State has the legal duty to protect those who have been disabled in the performance of public service or a humanitarian act.<sup>14</sup> Article 35 (Principle of universality) ensured that all citizens were equal before the law, and they should enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession or their political preference. Article 37 (Disability) explicitly addressed disability issues in a very largely and specific manner. Thus, the Constitution explicitly stated that PWD should enjoy fully the rights enshrined in the Constitution and should be subject to the same duties, except those where their disability prevented them from exercising or fulfilling such duties. Article 35 also stated that:

- (a) the State shall encourage the establishment of associations of disabled people;
- (b) disabled people shall have the right to special protection by the family, the society and the state;
- (c) the State shall promote the creation of conditions for learning and developing sign language;
- (d) the State shall promote the creation of conditions necessary for the economic and social integration of the disabled;
- (e) the State shall promote, in co-operation with associations of the disabled and with private entities, a policy that will guarantee:
  - i. the rehabilitation and integration of the disabled;
  - ii. the creation of appropriate conditions to prevent them from becoming socially isolated and marginalised;
  - iii. priority treatment of disabled citizens by public and private services.

Article 95 (Right to assistance of the disabled and the aged) stated that all citizens shall have the right to assistance in the case of disability or old age. In addition the State should promote and encourage the creation of conditions of realising this right.<sup>15</sup>

## **2.2. Municipal laws protection**

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<sup>14</sup> No. 7 above.

<sup>15</sup> As above.

One of the sole anti-discrimination disability legislation was passed in Mozambique in 1990 (Act number 20), which established a policy for PWDs. This is premised on the foundation of non-discrimination and endorses a commitment to the following list of rights:

- a) The right to an independent life;
- b) The right to integration into the family and the community;
- c) The right to rehabilitation and access to compensation;
- d) The right to general, special and vocational rehabilitation;
- e) The right to access to the workplace;
- f) The right to benefit from measures of social protection;
- g) The right to access to social services;
- h) The right to private and public transport as well as reserved places
- i) The right to influence, individually or through representative organisations, in decision-making of subject matters affecting people with disabilities;
- j) The right to be informed and to inform; and
- k) The right to recreation.

In addition to these disability-specific constitutional and legislative rights, the Government of Mozambique is signatory to a number of international human rights treaties, which by implication include PWDs. These international treaties include the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child (including its optional protocol on children, child trafficking and prostitution); the Convention for the Elimination of all Forms of Discrimination against Women; and the 1997 Mine Ban Treaty.

Although the Mozambique Government signed the CRPD on the 30 March 2007 only on 27 October 2011 the Mozambican parliament unanimously ratified the CRPD and the Optional Protocol and as the Government says this shall ‘... promote, protect and ensure the enjoyment of all human rights and

fundamental freedoms by people with disabilities'. Thus, the State must adopt legislative and administrative measures to ensure that Mozambicans PWDs really enjoy the rights envisaged in the convention. In particular, measures were required to ensure that disabled women and girls could fully enjoy their human rights, and that disabled children could express themselves freely and in equality with other children.<sup>16</sup> Notwithstanding these extensive constitutional and political rights that exist, it is far from clear to what extent they are effective in promoting and upholding disability rights at this stage. However, it seems unlikely that such legal provisions will have any sustainable effect in a short term period, primarily because there is no judicial and administrative architecture to ensure their enforcement, endemic political corruption, and the relatively new engagement that civil society institutions have with government in advocating for and promotion of human rights, not least within the disability sector.

The Labour Law (No. 23/2007, of 20 of August) also protects PWDs in the workplace.

### 2.3.1. Other municipal laws and Government strategies and plans

- a) 2006 adoption of the first PNAD - *National Disability Action Plan* (2006-2010).
- b) In 2008 it was adopted the *Construction and Accessibility of Public Buildings for People with disabilities or Reduced Mobility regulation* (Decree no.53/2008).
- c) Adoption of the *Strategy for People with Disabilities in Public Service* (2009-2013) (Resolution
- d) no.68/2009).
- e) Foundation of the *National Disability Council* (Decree no.78/2009).
- f) Adoption of the *National Strategic HIV/AIDS Control Plan- PEN III* (2010-2014).
- g) Setting up of the *National Disability Council*.
- h) Development of the second PNAD - *National Action Plan for Disability* (2011-2015)

### 2.4. National Policy on Disability (1999)

Through Resolution 20/99 of the Council of Ministers, the Government of Mozambique produced its first National Policy on Disability in the year 1999. This was developed in close collaboration with key stakeholders working within the disability sector, including DPOs. However, despite the fact that this Policy has been approved by policy-makers in 2002, it has yet to be enacted by Parliament. The Policy explicitly deals with the underlying principles and strategies to ensure that disabled people are able to effectively

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<sup>16</sup> Available at <http://www.daa.org.uk/index.php?mact=Blogs,cntnt01,showentry,0&cntnt01entryid=288&cntnt01returnid=98>, also see <http://allafrica.com/stories/201010280280.html>.

participate in every aspect of contemporary society, particularly in relation to economic development.<sup>17</sup> Notwithstanding the publication of the Policy, most of its provisions have never been implemented, mainly due to the fact that the Government does not have sufficient financial resources to do so. Consequently, PWD do not have adequate access to public services, buildings and public transportation systems remain inaccessible, and the vast majority of disabled children do not benefit from receiving a basic primary education.<sup>18</sup> "This scenario is further compounded by negative social attitudes held by the public at large, including politicians and senior servants."<sup>19</sup>

In concluding its analysis of the social, economic and political situation of disabled people in Mozambique, Disability and Development Partners state:

As a very general rule, the quality of life enjoyed by disabled people varies in direct proportion to the prosperity and overall level of human development of the country in which they live. However, it is an order to qualify this statement by emphasising the reality that, because poverty tends to impact most upon those least able to protect themselves, both relative and absolute measures of life find that inequalities in fact magnified in the poorest countries. Mozambique exemplifies this dynamic, exhibiting in addition to abiding poverty among its disabled population characteristics of stigma and discrimination, some founded on unenlightened belief systems, which serve to compound that poverty and render escaping it even more difficult. Mozambique, however, is better placed and more enlightened than many other sub-Saharan countries in that it has many instruments that exist to protect and promote disabled people's rights: and so often is the case in developing countries, and agglomeration of poverty related factors such as insufficient resource allocation, a weak disability movement and DPOs, and limitations on infrastructure create and perpetuate the gulf between principle and practice, even when the argument for the disability rights has been won" (Disability and Disability Partners, 2008: 10).<sup>20</sup>

## **2.5. South African legal and institutional framework**

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<sup>17</sup> As above.

<sup>18</sup> As above, page 84.

<sup>19</sup> As above.

<sup>20</sup> As above.

In the South African legal framework the Department of Labour has put in place several pieces of legislation that promotes the integration of people with disabilities in the workplace. These are:

- a) The Labour Relations Act of 1995
- b) The Employment Equity Act of 1998
- c) The Skills Development Act of 1998

South Africa also has approved the Integrated National Disability Strategy (1997) and has been working with a specialised institution dedicated to PWDs, the Office on the Status of Disabled People (OSDP). However, a more elaborated legal framework follows.

### **2.5.1. South Africa's Constitutional Obligations with regard to Social Security**

The Constitution of the Republic of South Africa Act 108 of 1996 calls on the state to “respect, protect, promote and fulfill the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and environment.”<sup>21</sup> The Equality Clause in the Bill of Rights further affirms this. However despite the progress in legislation and the attempts by certain governments departments to speed up service provision to disabled people, the disability sector still faces multiple challenges.<sup>22</sup> In examining the constitutional rights of access to social security, it is important that these rights are not examined and analysed in isolation. The Constitution protects a wide range of rights, many of which affect and have implications for the right under discussion.<sup>23</sup>

This section will provide an overview of the right to equality and the right to human dignity. Both these rights should underpin the realisation of the rights of people with disabilities. Section 9 of the Constitution provides for the right to equality and section 9(1) provides in no uncertain terms that everyone is equal before the law and has the right to equal protection and benefit of the law. The term “everyone” in this provision clearly ensures its application to adults and children with disabilities. Section 9(2) of the Constitution recognises that equality includes the full and equal enjoyment of all rights and freedoms. As the Constitution provides for economic and social *rights*, section 9(2) of the Constitution effectively ensures that all persons including people with disabilities enjoy these rights on the basis of equality.<sup>24</sup>

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<sup>21</sup> Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>22</sup> Social security policy options for people with disability in South Africa: an international and comparative review (2001)

<sup>23</sup> Ibid.

<sup>24</sup> Ibid

The section further provides that in order to 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 undertaken. As people with disabilities clearly constitute a group that have been disadvantaged by unfair discrimination, they would be included within the ambit of this section. This subsection does accordingly require that the State undertake concrete positive measures to promote equality for adults and children with disabilities. Section 9(3) of the Constitution further provides that the State may not unfairly discriminate directly or indirectly against anyone on a host of grounds. When the Constitution mentions direct discrimination refers to laws, policies, practices and conduct that are overtly discriminatory. It should be further noted that section 9(3) prohibits discrimination on *one or more grounds*. This provision recognises that particular individuals or groups of individuals may experience unfair discrimination on a multiplicity of grounds as opposed to unfair discrimination, solely on the ground of disability for example.<sup>25</sup>

### **2.5.2. The Right of Access to Social Security The Right of Access to Social Security**

Section 27(1)(c) of the Constitution provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to social security.

### **2.5.3. The Integrated National Disability Strategy. 1997**

The Integrated National Disability Strategy (INDS) states that "the present social security legislative framework, its administration and allocation systems; tend to be discriminatory, punitive, insensitive to the specific needs of people with disabilities, uncoordinated, inadequate and riddled with high levels of fraud". It goes on to say that an equitable and just social security system that aims to meet the basic needs of people with disabilities who are unable to support and maintain themselves, should include:

- a) Appropriate assessment mechanisms;
- b) Accessible information and pay-out facilities;
- c) Appropriately trained officials and administrative staff;
- d) Effective feedback mechanisms; and
- e) A co-ordinated social security safety net.

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<sup>25</sup> Ibid

#### **2.5.4. Draft Strategy on Social Assistance to Persons with Disabilities**

This strategy is still not in discussion.

#### **2.5.5. The Draft National Strategy Framework for Children Infected and Affected by HIV/AIDS 2000**

The draft document recognizes that the HIV/AIDS epidemic is the principal challenge/threat facing South Africa and that the epidemic will have an enormous impact on children in the next ten years.

#### **2.5.6. Discrimination Act (No.4, 2000)**

The Promotion of Equality and Prevention of Unfair Discrimination Act (No 4, 2000) was passed on the 2nd February 2000. It gives special attention to unfair discrimination on the ground of disability.

#### **2.5.7. Employment Equity Act (No. 55 of 1998)**

“The Employment Equity Act is of great importance in order to ensure equal opportunities for people with disabilities in the workplace” (Truter 1999:19642).

#### **2.5.8. Compensation for Occupational Injuries and Diseases Act (COIDA) (No. 130 of 1993)**

This Act provides for the oldest form of employment-based social security existing in South Africa.

#### **2.5.9. Social Assistance Act (No. 59 of 1992) and Regulations (1998)**

The Social Assistance Act provides for the rendering of social assistance to persons, national councils and welfare organizations.

*The Disability Grant for Adults*

The Act stipulates qualifying criteria for the disability grant: the applicant must be over the age of 18 years and have a physical or mental disability of no longer than six months duration which renders him or her unfit to provide sufficiently for his or her maintenance.

#### *The Care Dependency Grant for Children*

Section 2 (g) of the Act stipulates that the Minister of Welfare shall make "a care-dependency grant to a parent or foster parent in respect of a care-dependent child."

#### **2.5.10. Draft Social Assistance Amendment Bill and Draft Regulations 2000**

In all the sections of the proposed Amendments to the Social Assistance Regulations that affect adults with disabilities there are no substantial amendments suggested, as they are all referred to the Disability Task Team's outcomes.

#### **2.5.11. Draft Child Care Bill (2000)**

The South African Law Commission has been mandated by the Minister of Welfare to draft a new Child Care Act. The SALC Project Committee on the Review of the Child Care Act has published an issue paper outlining the areas it hopes to cover in the new Act.

## **Chapter 4**

**What are the obstacles and how can Mozambique and South Africa can learn from each other to overcome them?**

Throughout the developing world disabled people suffer a high incidence of poverty caused and perpetuated by a lack of access to socio-economic opportunities. Attempts to alleviate poverty by



improving mobility tend to focus on the majority of travellers, thus ignoring those with special needs such as mobility, sensory and cognitive impairments.<sup>26</sup>

It is largely said and assumed that poverty and corruption are amongst the largest problems when it comes to development in most African countries. Thus, Mozambique and South Africa are no exception. However, more than to these factors other concur as major obstacles:

#### **4.1 HIV/AIDS and Disability**

HIV/AIDS is becoming a major issue for disabled people throughout sub-Saharan Africa, not least in Mozambique. The latest estimate of HIV/AIDS prevalence rates in the country, is that in 2004, 16.2% of those aged between 15 and 49 were HIV/AIDS positive this being equivalent to approximately 2 million people. Disability and Development Partners (DPP), who are based in the UK have recently conducted research regarding HIV/AIDS and disability in Mozambique. The results and influences emanating from this research are really sobering. In collaboration with ADEMO, DPP interviewed 220 disabled people in Maputo and Sofala provinces regarding their views and knowledge of this very sensitive issue. From the 220 disabled people who were interviewed, it was shown that:

- a) 57% considered that they were at risk of contracting HIV/AIDS;
- b) 84% did not know what HIV/AIDS was;
- c) 70% did not know how HIV/AIDS was transmitted; and
- d) 61% did not know whether disabled people were more at risk of becoming infected by HIV/AIDS than their able-bodied counterparts.<sup>27</sup>

What the DPP study shows is that there is indeed a great deal of lack of knowledge regarding the catastrophic consequences of contracting HIV/AIDS. DPP says that disabled people are as just as likely to be HIV/AIDS infected as their able-bodied counterparts, if not more so. One other confounding factor is that disabled women are often considered not eligible to become married, and therefore are more likely to have a series of short-term serial relationships throughout the course of their life.<sup>28</sup>

#### **4.2 Provision of Disability Services**

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<sup>26</sup> Venter, Rickert, Maunder 'Improving access and mobility of people with disabilities' available at [http://www.transport-links.org/transport\\_links/filearea/publications/1\\_800\\_pa3911.pdf](http://www.transport-links.org/transport_links/filearea/publications/1_800_pa3911.pdf) (accessed 21 August 2011).

<sup>27</sup> No. 7 above.

<sup>28</sup> As above.

Firstly, this section must be premised by stating that Mozambican society in general continues to consider people with disability as useless and incapable; subjects them to constant marginalisation and discrimination; and gives them no space to participate in the massive effort of recovery and development of the country.<sup>29</sup>

It is fair to say that education, transport, health and employment services do not exist or are very scarce and do not satisfy the needs of disabled people.<sup>30</sup> The mass media do not give attention to the specific needs of people with disability. A plausible contributory factor to the poor health status of disabled people may be the high levels of illiteracy among the general population. Particularly in rural areas, the vast majority of the population has limited and often misguided information regarding basic health care. For example, it was estimated that 64.2% of newly born children did not have their mothers vaccinated against tetanus during pregnancy. This precarious situation was exasperated by the fact that only 2.1% of children were born with appropriate, medical care being provided.<sup>31</sup>

In the aftermath of Mozambique's protracted 30 year civil war, the healthcare infrastructure is in a total state of disrepair, which cannot meet the medical needs of its population. Primary health care centres in local areas invariably are only able to provide first aid and by necessity have preferred a more complex cases to provincial and national centres. Health services are provided by the private sector, international non-governmental organisations and religious organisations. However, the Landmine Monitor Report for 2006 states that there is an acute shortage of trained surgeons, medical equipment and that drugs are in very short supply.

#### **4.3 Provision of Health and Rehabilitation Services**

The Ministry of Health has primary responsibility for providing rehabilitation centres. The Ministry of Women and Social Action is responsible for coordinating psychosocial and economic reintegration activities, which includes community-based rehabilitation. Both Ministries share responsibilities for providing physiotherapy and orthopedic services. Within Mozambique, there are 10 rehabilitation centres, which are located in the provincial capitals, nine of which are Government-funded. Physiotherapy is provided in hospitals where there are also surgical units. In 2006 the Ministry of Health reported that approximately 250

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<sup>29</sup> As above.

<sup>30</sup> As above.

<sup>31</sup> As above.

nursing staff were employed to supply prosthetics, orthotics and physiotherapy. In addition, the International Committee of Red Cross provided raw materials to rehabilitation centres as well as undertaking a needs assessment physiotherapy services throughout the country. It has also provided training for 23 orthopaedic technicians. However, the effective provision of rehabilitation services is seriously hampered by a lack of coordination between the relevant Government Ministries and the lack of trained physiotherapists, raw materials and modern equipment. This unsatisfactory situation is further compounded by the fact that disabled people are not aware that such services are available. Moreover, the high cost of transport and accommodation means that the vast majority of disabled people cannot access such services in any event.

#### **4.4 Disability and Employment Policy**

With regard to employment opportunities, disabled people face enormous barriers, due to, on the one hand, their low level of education, lack of vocational and or professional training, and on the other hand, the negative attitudes of employers who continue to discriminate against this social group. However, in 1999 the Council of Ministries approved a new policy for people with disability, which says that the employment system in Mozambique must assure the following:

- a) promote and develop specific professional training for people with disability, in appropriate technical, human and pedagogical conditions;*
- b) to create conditions which allow the professional maintenance, integration or insertion of people with disability in labour market, through the measures of professional rehabilitation;*
- c) the need to create progressively, through percentage mechanisms and targets, the guarantee of access by people with disability in public and private sectors; and*
- d) the need to create alternative ways of employment for people with disability and to ensure the implementation of the adopted measures.<sup>32</sup>*

Although this policy was approved by Council of Ministers in June 1999, which intends to promote professional training and to create all conditions leading to inclusion of people with disability in labour market, there is an enormous reality gap between policy pronouncements and what actual happens in practice. According to Mozambican law, the Ministry of Labour is responsible to promote the development of specific professional training for people with disability in appropriate conditions. Therefore, the Ministry of Labour should work to assure the professional training of all people with disability as soon they finish

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<sup>32</sup> As above.

medical treatment, action which must be coordinated with the Ministry of Education. There is scant evidence to suggest that such a coordinated 'joined-up' approach is in operation.<sup>33</sup>

#### **4.5 Landmine Survivor Assistance**

Since 2004 the Mozambican Government has been attempting to develop a strategy for supporting landmine survivors and others with injuries that have been caused by civil strife. At a conference held in Nairobi in 2004, Mozambique was identified along with other 23 African states as having "the greatest responsibility to act, but also the greatest needs and expectations for assistance", for providing vocational and medical rehabilitation for survivors. However, according to the Landmine Monitor Report 2007, "no objectives for data collection and medical care have been developed; the other objectives have no timeframe and are not specific". In 2004 the Mozambique Government identified the following objectives for its Victim Assistance Plan which were:-

- a) Physical Rehabilitation: services provided in all provinces, the establishment of a staff training centre, an improved referral system, and the development of an inclusive transportation system;
- b) Psychosocial Support and Social Reintegration: improve the provision of psychosocial counselling: the strengthening of disabled people's organisations, and increased mobility for children with physical disabilities;
- c) Economic Reintegration: identify opportunities for the effective employment of disabled people; and
- d) Laws and Public Policies: creation of a national coordination body for disability.<sup>34</sup>

Mainly, there has been no progress with regard to any of the objectives outlined above and this is indicative of the lack of political will to really take forward a rights-based agenda to disability issues in Mozambique.

#### **4.6 Training and awareness**

Despite the fact that people with disabilities consistently identify driver attitudes and behavior as one of the most critical issues to be addressed, this aspect receives scant attention from authorities. Distant examples of good practice is Mexico City's public information campaign to publicize the integrated system of accessible

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<sup>33</sup> As above.

<sup>34</sup> As above.

pedestrian and transport services, and to raise awareness amongst the general public. The Federal District also plans to contract out sensitivity training for *micro* and taxi drivers.<sup>35</sup>

When reviewing the progress made on accessibility a progression of approaches becomes evident. While some countries have made significant progress towards accommodating a range of needs on urban public transport, others are only starting out along this path. In general, the level of response to access and mobility issues is closely related to the status of people with disabilities in a society. More mature transport responses are generally accompanied with greater public and political awareness of the issues affecting people with disabilities. This is indeed the result of a mutually reinforcing cycle. Greater awareness and political influence create greater pressure for transport improvements; and improved mobility creates greater visibility which in turn reinforces public awareness.<sup>36</sup> This is the kind of difference between Mozambique and South Africa and Mozambique should learn from this kind of appliances. Three stages of responses are evident: a first stage where the focus is on basic rights and personal mobility; a second stage where some strategies and regulations start to be put into place; and a third stage where physical improvements to public transport are achieved.<sup>37</sup>

#### **4.7 First stage responses: Basic rights and personal mobility**

Among countries that have not given much attention to access and mobility issues, a major focus of activity is simply the promotion of disability advocacy and awareness in a general sense. For this to be successful from a transport point of view, advocacy needs to be coupled with a move away from the welfare model of disability towards a more inclusive social model – as advocated by the UN Standard Rules for various sectors. A process is in place to create a new UN Convention on the rights of disabled persons that should further promote this more inclusive model. In the transport sector, one of the basic needs in societies finding themselves in this stage is access to personal mobility devices (such as wheelchairs and white canes), which is constrained both by poverty and by inadequate social service delivery. Many of the least developed countries fall within this tier – including Malawi, Mozambique, and India in the study sample.<sup>38</sup>

On the positive side, some countries in the first stage of development are starting to take legislative action by enacting basic anti-discrimination legislation. These efforts are putting into place a legal framework on which further action can be leveraged. Given the severe shortage of resources and the competing

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<sup>35</sup> As above.

<sup>36</sup> As above.

<sup>37</sup> As above, page 85.

<sup>38</sup> As above.

objectives for development in these countries, rights-based disability legislation may be particularly important in ensuring that disability issues become mainstreamed into government programs.<sup>39</sup>

#### **4.8 Second stage responses: Environmental access and special programs**

In the second stage of actions, more detailed regulations and strategies appear to address particular mobility problems. Sometimes regulations are in follow-up to anti-discrimination legislation; sometimes they precede them in a more *ad hoc* fashion. Regulatory attention is often paid first to the built environment: countries like South Africa, Brazil and Uruguay have adopted national accessibility standards for buildings and public space. However the degree to which these standards are actually followed is not always clear.<sup>40</sup> In some countries a growing awareness of disability issues leads to specific but limited responses in the transport sector. First steps are typically in the form of fare concessions and mobility grants to start addressing problems of affordability of transport. Responses in stage two tend to stop short of physical improvements to the public transport system. These trends mirror to some extent the introduction of concessionary schemes in Europe and North America to make bus travel more affordable, which preceded many of the access improvements to vehicles and infrastructure that were later adopted.<sup>41</sup>

#### **4.9 Third stage responses: improvements to public transport**

Significant improvements to the physical accessibility of public transport are typically achieved only once legislative and regulatory frameworks for equality of access are in place. At this point a sufficiently large number of people with disabilities are economically empowered and mobile enough to effectively advocate for accessibility. Opportunities for taking first steps towards accessibility are often presented during upgrading or construction of large-scale mass transit systems in major cities. Governments tend to have more leverage and resources (often via lending agency support) to improve bus and rail systems that are either publicly owned, or privately owned but well regulated. However, traditional mass transit systems are losing market share in most countries. While incorporating universal design features on formal systems may contribute towards stemming this tide, it is clear that this will not solve all mobility problems. Steps that extend accessibility interventions to systems outside major cities, and to systems that are less well regulated, are where major needs currently lie. Addressing the access issues of privately operated jitneys or small buses –

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<sup>39</sup> As above.

<sup>40</sup> As above.

<sup>41</sup> As above.

which are increasingly important as transport providers in many developing countries – therefore present significant challenges.<sup>42</sup>

#### 4.10 Conclusion

The general framework describes the basic progression that has been observed in countries in the developing world, with regard to the development of responses to access and mobility needs of passengers with disabilities. It groups responses into three stages: a basic rights and personal mobility stage, an environmental access and special programs stage, and lastly a focus on public transport stage. Most of the least developed nations are dealing with problems and issues in the first and second stages, while a few more developed societies have progressed beyond these to implement responses in the third stage.

This common progression of responses suggests some critical issues that may need to be considered by professionals and advocates for accessible transport. The issues that need to be addressed urgently in order to make progress depend in part on where in the framework a country finds itself. Some of the critical issues that have been raised by the study so far include:

- Advocacy by disability organizations plays a major role in putting access issues on the social agenda. In countries where very little progress has been made in accessibility, the strengthening of effective advocacy may be amongst the most important immediate interventions needed.
- Issues of access to personal mobility devices, and affordability of public transport, are still major challenges in many developing communities. It may be sensible to focus constrained government budgets on improving access to wheelchairs, canes and the like as a matter of priority. Concessionary fare schemes should be applied with caution to suit local circumstances.
- In countries where anti-discrimination legislation has laid the foundation for moving forward towards greater inclusiveness of transport, there is a need to translate legal principles into concrete actions for implementation. It is at the level of strategy formulation and program development for transport that many developing countries may benefit most significantly from the sharing of international experience.
- As long as local circumstances are taken into account, there can be significant benefits to transferring technical standards and good practice across countries.

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<sup>42</sup> As above.

- Finding sustainable solutions to the accessibility problems (and general quality of service problems) of jitneys or small buses is a major challenge. These modes carry significant numbers of passengers – in many African cities minibuses are the sole providers of public transport – and are thus of major importance to the mobility of disabled people. Solutions should address physical issues, as well as the regulatory and financial conditions which currently disincentivise drivers and owners to improve access.
- A number of low-cost improvements can be made to vehicles, infrastructure, and driver practices to improve the accessibility of transport systems. As first steps, they would benefit the great majority of passengers without severe mobility impairments. The adoption of such measures would decrease the barriers to moving from second-stage to third-stage implementation of accessibility.<sup>43</sup>

#### 4.11 Disability, poverty and mobility

Disability and poverty are closely linked in many developing countries. The incidence of disability is more than twice as high among the lowest income groups than among the others. Poverty and disability reinforce each other. Figure 2 illustrates the cycle of exclusion and impoverishment that results. Disability often leads to exclusion from education and employment opportunities, thereby causing economic hardship. In developing societies strong social and cultural attitudes persist in isolating and excluding people with disabilities from mainstream society. People with disabilities who are denied education are frequently unable to find employment, driving them deeper into poverty. The consequences of this vicious cycle are evident in many developing countries. In India, nearly 50 per cent of people with disabilities have never been to school, while only five per cent of children with disabilities regularly attend school (1). (2). Employment is very low: in India, for instance, the rate of employment of disabled people in the top 100 companies is only 0.4%, while the share of disabled women in employment is less than 0.3% (3).

Physical and visual disabilities predominate. It has also been noted that at any one time, far higher numbers of people (20 to 30%) are “mobility impaired” by environmental barriers – including people with temporary health conditions, pregnant women, children, and vendors carrying goods (ECMT, 1999).<sup>44</sup> Within the developing world, the provision of services for disabled people is still largely seen as a welfare function of the state and of civil society. The human rights approach to disability, in terms of which every citizen has the right to be included in social and economic opportunities, is slowly gaining acceptance – although much less

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<sup>43</sup> Venter, Rickert, Maunder ‘Improving access and mobility of people with disabilities’ available at [http://www.transport-links.org/transport\\_links/filearea/publications/1\\_800\\_pa3911.pdf](http://www.transport-links.org/transport_links/filearea/publications/1_800_pa3911.pdf) (accessed 21 August 2011).

<sup>44</sup> CJ Venter et al ‘Improving accessibility for people with disabilities in urban areas’ Unspecified year.



so than in the developed world.<sup>45</sup> Throughout the developing world disabled people suffer a high incidence of poverty caused and perpetuated by a lack of access to socio-economic opportunities. Attempts to alleviate poverty by improving mobility tend to focus on the majority of travellers, thus ignoring those with special needs such as mobility, sensory and cognitive impairments.<sup>46</sup>

Taking it Work does not use the term “best practice” because this suggests there is only one way to do something well. In the global context there will always be many different ways to achieve inclusive development. “Best practice” implies something is perfect, even though all practices can be in some way refined or improved. Indeed “best practice” implies knowledge of all existing practices, with a comprehensive analysis to select which is “best”. Of course, this is not possible. Therefore, to acknowledge a diversity of contexts, circumstances and effective ways of working, Making it Work uses the term “good practice”.

The process of selecting examples of good practice always requires making a value judgment. What is considered to be ‘good’ will often vary from one context to another. As such, any projects using the Making it Work methodology must set their own criteria to identify and select examples of good practice, relevant to the topic and the context. This should be a multi-stakeholder process, and not just one organization identifying its own practice.

The articles of the CRPD, in particular the general principles outlined in Article 3, provide an international benchmark and a common starting point for all Making it Work projects to develop good practice criteria.

#### CRPD Article 3 – General Principles

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Equality between men and women;

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<sup>45</sup> As above.

<sup>46</sup> As above.

- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities. <sup>47</sup>

**Examples: Possible indicators for *disability*-relevant issues in *PRS***

Sector	Aim	Indicator
Health	To prevent impairments caused by malnutrition of mothers and children	<ul style="list-style-type: none"> <li>- No. of nutrition programmes</li> <li>- No. of persons reached</li> <li>- Percentage of women and men with disabilities who are HIV-positive in 2005 and 2010</li> <li>- No. of awareness campaigns Existence of adapted information material</li> </ul>
	“Reduce HIV and AIDS prevalence among woman and men with disabilities (among age group 15–35 years)” ( <i>PRSP</i> of the United Republic of Tanzania, 2005)	
	“Eliminate all forms of barriers to health care by exempting the poor, pregnant women, older persons and disabled persons, children, and by removing unofficial charges and reduce the distance to, and by improving treatment.” ( <i>PRSP</i> of the United Republic of Tanzania, 2005)	<ul style="list-style-type: none"> <li>- No. of people with disabilities receiving treatments in public hospitals</li> <li>- Studies on and evaluations of the availability of access for people with disabilities</li> </ul>
Social protection	"Decrease risk factors in specific high vulnerability groups. receiving attention" ( <i>PRSP</i> [...] Provide integrated assistance to poor, disabled people." ( <i>PRSP</i> of Republic of Honduras, 2001)	<ul style="list-style-type: none"> <li>- "No. of disabled receiving attention"</li> <li>- Studies and evaluations</li> </ul>

<sup>47</sup> <http://www.makingitwork-crpd.org/about-miw/overview-of-miw/good-practice-best-practice-who-decides/>

		on the availability for people with disabilities
Education	"Main objective: universal school attendance [...] Increase attendance in primary education by children of school age, especially girls and children with disabilities, by building low-cost school buildings within the communities and guaranteeing a safe and healthful environment for the children" (PRSP of the Republic of Mozambique, 2006)	- Percentage of children with disabilities in primary schools - Studies and evaluations with parents of children with disabilities with regard to access
	"Main objective: expand access to quality instruction.[...] proceed with the program to convert the <i>network</i> of trade schools (escolas de artes e ofícios) to vocational schools that are also able to serve young people with disabilities" (PRSP of the Republic of Mozambique, 2006)	- Percentage of people with disabilities in trade schools - Studies and evaluations on availability and access
	"Ensure that teachers will be trained for all educational subsystems, with a view to promoting education for all children and young people, including girls and those with disabilities." (PRSP of the Republic of Mozambique, 2006)	- No. of teachers attending training on inclusive education - Existing curricula
Employment	Increase employment opportunities for people with disabilities	- Unemployment rate of people with disabilities - Studies of availability of working places at the employer level
Infrastructure	"Increased access to clean, affordable and safe water, sanitation, decent shelter and a safe and sustainable environment and thereby reduced vulnerability to environmental risks at all public institutions – schools, health centres, markets and public places, including access for the disabled." (PRSP of the United Republic of Tanzania, 2005)	- Percentage of accessible public buildings - Studies and evaluations on the availability of access for people with disabilities
Legislation	Ensure equal human rights for people with	

## **Chapter 5**

### **Conclusion and recommendations**

#### **5.1. Conclusion**

Mozambique has no considerable legal system of protection of PWDs in place and the very few legal provisions existing are related to social security in general. South Africa though does have a more developed system in place, however complaints are that problems of PWDs are rampant anyway. Thus, although Mozambique has a lot to learn from South Africa when it comes to legislation, the practice in both countries is almost the same.

The Ministry of Women and Social Affairs Coordination is the institution of guardianship of the disability rights issues along with the Health Ministry. Recommendations have been suggesting by civil society organizations to be made to Mozambique in the UPR. Ratify the Convention on the Rights of Persons with Disabilities and create a specific legislative framework for disability.

- ii. Consider the creation of an institute for disability;
- iii. Although there is a National Plan for Disability, much remain to be done in the elimination of discrimination against people with disabilities in the professional development;
- iv. Make the food allowance for people with disabilities more comprehensive and define clear criteria for the selection of the beneficiaries.

#### **5.2. Recommendations**

Mozambique does have a lot to learn from South Africa. However, both have to consider the following recommendations:

##### **1. Non-discrimination**

There shall be no discrimination against disabled people and they shall enjoy equal opportunities in all spheres of life and they shall be protected against exploitation and all treatment of an abusive or degrading nature.

##### **2. Self-representation**

Disabled people shall be entitled to represent themselves on all matters affecting them and resources shall be made available to enable them to fulfil this role.

### **3. Health and rehabilitation**

Health and rehabilitation services shall be effective, accessible and affordable to all disabled people in South Africa.

### **4. Education**

- a) Disabled people shall have the right to mainstream education with personal assistance where necessary, appropriate assistive technology and specialised teaching.
- b) Parents of disabled children shall have the right to participate in the planning and provision of their children's education.

### **Article 5. Employment**

- a) All disabled people shall have the right to employment in the open labour market and appropriate measures, such as quota systems and training programmes, shall be implemented by government and employers to ensure that opportunities are created in the workplace which allow for the full enjoyment of this right.
- b) The state shall provide incentives to employers, such as tax concessions, to encourage them to employ disabled people.
- c) State assistance shall be provided to disabled people to encourage them to engage in income generation through workshops and self-help projects.

### **6. Sport and recreation**

Disabled people shall have the right to engage in sport and recreational activities and resources, such as sports facilities and financial assistance, as well as opportunities for participation, shall be made available to support this initiative in this regard.

### **7. Social security**

The state shall provide security to disabled people who are without adequate income and all measures used to determine the adequacy of such income shall take into account additional costs incurred by them as a result of their disability.

## **8. Housing**

The state shall embark on a programme aimed at ensuring adequate, accessible and affordable housing for all disabled people.

## **9. Transport**

Affordable and adequate transport shall be made available to disabled people.

## **10. Built environment**

All new environments shall be accessible and safe to disabled people and all reasonable steps shall be taken to make existing built environments accessible and safe.

## **11. Disabled children**

- a) Disabled children shall have the right to be treated with respect and dignity and shall be provided with equal opportunities to enable them to reach their full potential in life.
- b) The state shall ensure that all disabled children are properly cared for with adequate support.
- c) All forms of abuse of disabled children shall be prohibited and severe penalties imposed for such abuse.

## **12. Disabled women**

All disabled women shall be treated with respect and dignity. They shall be free to make their own decisions and shall be protected from all forms of abuse which undermine their integrity in any way.

## **13. Independent living**

Disabled people shall be entitled, encouraged and assisted to live independently in their communities and to develop the skills necessary to enable them to live in the broader society and they shall be provided with adequate and appropriate support systems to do so.

#### **14. Communication**

Disabled people shall have the right to communicate freely and measures designed to ensure the full enjoyment of this right shall include the provision of Braille and/or audio recorded material for blind people, the recognitions and use of sign language for people with hearing and/or speech disabilities and mentors/advocates for mentally disabled people.

#### **15. Participation on social life**

Disabled people shall have the right to make their own decisions in all areas of social life and this shall include freedom to engage in sexual relationships and to have a family.

#### **16. Prevention**

All effective and appropriate steps shall be taken by the state and society at large to prevent disability.

#### **17. Positive action**

Positive action shall be applied to address existing discriminatory practices and disadvantaging conditions facing disabled people, giving special attention to the situation of under-represented groups such as disabled women and children, deaf people, mentally disable people, people with albinism and disabled people living in underdeveloped areas.

#### **18. Enforcement**

Appropriate and effective policies and legislation as well as accountable services shall be developed and enforced to provide all disabled people with opportunities for the full enjoyment of all these rights.

## Bibliography:

### International instruments:

1. Convention on the Rights of Persons with Disabilities and Optional Protocol.
2. Achieving Equal Employment Opportunities for People with Disabilities through Legislation – Guidelines *ILO Office* (2004).
3. C111 Discrimination (Employment and occupation) Convention, 1958 *ILO Office* (1958).
4. C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, *ILO Office* (1983).
5. CBR A Strategy for Rehabilitation, Equalization of Opportunities, Poverty Reduction and Social Inclusion of People with Disabilities *ILO Office* (2004).
6. United Nations Declaration on the Rights of Disabled Persons (1975).
7. Guidelines on Active Training and Employment Policies for Disabled People in Central and Eastern Europe *ILO Office* (1955).
8. Proceedings of the International Symposium on Job Retention and Return to Work Strategies for Disabled Workers *ILO Office* (1998).
9. R99 Vocational Rehabilitation (Disabled) Recommendation, *ILO Office* (1955)
10. R111 Discrimination (Employment and Occupation) Recommendation, *ILO Office* (1958)
11. R168 Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, *ILO Office* (1983)

### National instruments:

12. Constitution of the Republic of Mozambique
- 13.
14. Integrated National Disability Strategy, South Africa.
15. South African Human Rights Commission policy paper.
16. South Africa - Employment equity bill

### Books:

Armstrong, F & Barton, L (1999) *Disability, Human Rights and Education: Cross-cultural perspectives*  
Buckingham: Open University Press.



Degener, T & Koster-Dreese, Y (1995) *Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments* London: Martin Nijhoff Publishers.

Kruger, H (ed) (2010) *The Law of persons in South Africa* Cape Town: Oxford University Press Southern Africa (pty) Ltd.

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

Sepúlveda, M (2003) *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* Oxford: Intersentia Publishers.

Sloth-Nielsen, J (ed) (2008) *Children's rights in Africa: A legal perspective* Burlington: Ashgate Publishing Co.

### **Journal articles, papers and thesis**

Baldo, M. 'Discourse patterns in first language use at home and second language use at school: an ethnographic approach' (1987) Unpub. PhD thesis, Univ. London. (Mozambique).

Bastos, I. 'Otitis Media and hearing loss among children in developing countries (Angola, Brazil, Tanzania, Philippines)' (1994) Unpub. PhD thesis, Lunds Univ. (Hearing loss, schoolchildren).

Baderin, MA 'Recent Developments in the African Regional Human Rights System' (2005) 5 *Human Rights Law Review* 117.

Despouy, L, 'Human rights and disabled persons' (1993), Study Series 6, Centre for Human Rights.

DFID, 'Disability, poverty and development' (2000) London.

Djoyou-Kamga, S.A. '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 Fidducia Papers on Women and Girls with disabilities* 1.

ECMT, 'Improving transport for people with mobility handicaps: a guide to good practice' (1999) European Conference of Ministers of Transport.

HJERMANN, R.K. 'Child Soldiers: Psychological reaction and possibilities for rehabilitation' (1995) Abo, Finland: Abo Akademi Univ. (Mozambique).

HONWANA, A. M. (1999) Appeasing the spirits: healing strategies in postwar Southern Mozambique. In: JR Hinnells & R Porter (eds) *Religion, Health and Suffering*, 237-255. London: Kegan Paul Intl.

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

Kodjo, E 'The African Charter on Human and Peoples' Rights' (1990) 11 *Human Rights Law Journal* 271.

Inter-American Development Bank (2001) *Social Development Newsletter*, 11/01.

JOHNSON, T.F. Infertility and high infant mortality as reflected in Tsonga songtexts concerned with childrearing (1974) *Acta Ethnographica* (Budapest) 23: 105-113. (incl. Mozambique).

LUIS A (1991) Deficientes, que passos para a sua integraçào na sociedade? *Tempo* 1070 (14 April) 9-11. (Mozambique).

MAKATI-NDALA, L.T. *Report: Disability and Human Rights Workshop, Gabarone, Botswana, 21-(1998)* Bulawayo: SAFOD 47 (Inc. Angola, Botswana, Malawi, Mozambique, Namibia, Zambia, Zimbabwe, etc).

MARRATO, J. G. 'Condições de enquadramento familiar da criança deficient mental' (1992) Instituto Superior Pedagógico, Faculdade de Ciências Pedagógicas, Maputo.

MEDI, E. 'Proposta de Curso de Capacitacao para organizadores provinciais de programas de Atendimento Baseado na Comunidade (ABC)' (1993). Maputo, Secretariat of State for Soc. Action (SEAS).

MEDI, E. 'How can a disability programme based in the Ministry for Social Action help disabled children's education? Education and disabled children in Mozambique, and the case of deaf children' (1997) *A Primary Education Booklet Theme Paper*. London: Save the Children Fund (UK).

MILES, S. The deaf dilemma (1995) *CBR News* 20: 10. (Educ. for deaf people in Mozambique).

MILES, S. 'Engaging with the disability rights movement: the experience of community-based rehabilitation in southern Africa' (1996) *Disab. & Socy* 11: 501-17. (incl. Zimbabwe, Mozambique).

MILES, S. & MEDI, E. 'Disabled children in post-war Mozambique: developing community based support' (1994) *Disasters. J. Disaster Studies and Management* 18: 284-91.

MONGU L (1991) La traitement physiotherapique du Zoma. *Homme comme toi* 4/1991: 2-5.

MOZAMBIQUE. *Relatório Final. Seminário Sobre Reabilitação dos Deficientes 9 a 11 de Fevereiro 1982*. (Min. Health, Mozambique) 17.

MOZAMBIQUE. Ministerio da Coordenacao da Acção Social 'Relatório da Avaliação de Médio Prazo do Programa de ABC' (1995) Maputo.

MOZAMBIQUE. Ministerio da Educacao 'The training of teachers for psychological rehabilitation of children affected by war: the Mozambique example' (1990) Maputo: Min. Educ. & UNICEF.

MOZAMBIQUE. Min. Hlth 'Mantakassa: an epidemic of spastic par paresis associated with chronic cyanide intoxication in a cassava staple area of Mozambique' (1984) *Bull. WHO* 62: 477-92.

MUIANGA, L. 'Rehabilitation and empowerment of children in difficult circumstances: the experiences of Mozambique' (1995) *in*: J Balch et al (q.v.) 149-58.

NEVES, Angelina 'Nos tambem queremos viver' (We Want To Live) (1992) Maputo: Govt. Mozambique, Office of Secretary of State for Social Action (SEAS), & UNICEF.

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

Stanbury, J. & Hugo, J.S. 'Formulation of policy for transportation of Special Needs Passengers' (2000) Proceedings: CODATU IX. Mexico City.

Venter, C. and Mokonyama, M. 'A comparison of two accessible transport service designs in South Africa' (2001).

Proceedings: 9th International Conference on Mobility and Transport for Elderly and Disabled People (2001) Warsaw.

ROBERTS, S. et al 'After the Guns Fall Silent: the enduring legacy of landmines' (1995) Washington DC: Vietnam Veterans of America Fndn. 554 pp. (includes Angola & Mozambique).

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Word count: 10,871