

# CHAPTER 6

## ECONOMIC DISCOURSES OF DISABILITY IN AFRICA: AN OVERVIEW OF LAY AND LEGISLATIVE NARRATIVES

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### **Summary**

*The article presents the dominant economic discourses of disability in Africa cutting across both charity and medical models. Within such discourses, persons with disabilities are depicted as unproductive and as dependents of the welfare system, and by extension, as dependents of non-disabled tax payers or non-disabled benefactors. This perceived dependence is fuelled by the vicious nexus between poverty and disability where poverty triggers disability and disability in turn leads to further impoverishment. The article also discusses the pros and cons of economic policy instruments that aim to economically empower persons with disabilities, including by increasing the demand for disabled workers via financial and tax-related incentives to employers. It focuses, in relatively greater detail, on the dilemmas facing persons with disabilities in accessing social welfare at the risk of facing discrimination by the disability-insensitive public. The article discusses the employment challenges faced by and opportunities presented to persons with disabilities, including in the area of self-employment and entrepreneurship. The latter is related, amongst others, to efficiency/productivity and human capital considerations that underlie investments in education, which might exclude children with disabilities from education services now and in the future from employment opportunities later in youth and adulthood. The article suggests a shift in both mindset and practice away from charity/economic dependence discourses to an independent living paradigm, where the focus is on the socioeconomic self-reliance and independence of persons with disabilities.*

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## 1 The multiple faces of the 'economic discourse' of disability: Introduction

The article concentrates, on (categorical) social welfare that targets persons with disabilities and the dilemmas associated with accessing social welfare, namely that of claiming (mostly through medical/scientific certification) one's 'injured' identity at the risk of facing discrimination by the disability-insensitive public. The article ends with some suggestions on possible ways of advancing economic emancipation, empowerment and independent living of persons with disabilities.

## 2 Disability and poverty: The nexus

Poverty<sup>1</sup> and disability are intertwined. Disability often leaves people without education and employment or with low paid jobs, hence it is a trigger of poverty, which in turn exacerbates peoples' exposure to disablement.

Poverty can delay people from seeking medical help when sick or prevent women from getting access to skilled birth attendance or pregnant women from getting badly-needed mineral supplements.<sup>2</sup> Such delays might also be caused by the distant location of health facilities combined with lack of money for transport and treatment. For instance, Asphyxia during birth, often resulting from the absence of a skilled attendant, leads to an estimated 1 million children with learning difficulties and impairments such as cerebral palsy.<sup>3</sup> About 70 per cent of cases of spina bifida – a disability that affects from 1000 to 3000 children per million in Africa – are preventable if folic acid supplements are taken by women before and after pregnancy and during the first trimester.<sup>4</sup> Similarly, maternal iodine deficiency leads to 18 million babies being born with mental disabilities annually and vitamin A deficiency leaves about 350000 children blind in developing countries.<sup>5</sup>

1 Poverty is understood here to refer to both income poverty and deprivation (the attainment of states of being that are fundamental to living an acceptable quality of life such as being well-sheltered, being well-nourished, being able to move about freely, or being able to form and maintain a family). See J Braithwaite & D Mont Disability and poverty: A survey of World Bank poverty assessments and implications' SP Discussion Paper (2008) 13.

2 UNESCO (United Nations Educational, Scientific and Cultural Organization) *EFA global monitoring report 2010: Reaching the marginalized* (2010) 181.

3 As above.

4 Spina Bifida Association of America (2009) cited in ACPF *The lives of children with disabilities in Africa: A glimpse into a hidden world* (2011) xi.

5 UNESCO (n 2 above) 181.

Poor people also live under worse hygienic conditions (lack of sewage systems, lack of access to clean water and nutritious food),<sup>6</sup> which may compound their risks of being disabled. Similarly, children living in poor, urban slums are exposed to the debilitating effects of some poisonous chemicals. In many African cities, urban slum dwellers come into contact with stockpiles of obsolete pesticides such as Polychlorinated Biphenyls (PCBs), dioxins, and dichlorodiphenyltrichloroethane (DDT) and e-waste that contaminate soil and water, causing reproductive and developmental disorders and damaging the nervous system.<sup>7</sup> Exposure to heavy metals, also common in urban waste dumpsites, poses serious threats, particularly to children and during foetal development.<sup>8</sup>

Equally important, disability leads to poverty, evident in the fact that persons with disabilities account for the predominant majority of the world's poor. The Convention on the Rights of Persons with Disabilities (CRPD), in its preamble, not only recognises the fact that the majority of persons with disabilities live in conditions of poverty but also calls for addressing the negative impact of poverty on persons with disabilities.<sup>9</sup>

About 20 percent of the poor in developing countries are reportedly disabled.<sup>10</sup> While one in six or seven of the world's population is disabled,<sup>11</sup> one in five of the world's poor lives with a disability.<sup>12</sup> This may be due to exclusion from education and employment opportunities, low-pay, and a very high cost associated with care, mobility and support facilities and services. Further, according to Slee:<sup>13</sup>

The impoverishment of disabled people revolves around segregation from the paid labour market, enforced dependency, the high costs of support and housing for independent and community living, and the pervasive impact of economic rationalism on the public policy and welfare provision.

In addition, persons with disabilities have extra needs, such as medicines, hearing aids, glasses, sticks, wheelchairs, special diets (due to allergies), extra clothing, extra hearing, special beds, guide dogs, readers for the blind, incontinence pads, breathing apparatuses and the like. Persons with disabilities also have to pay for adaptations to the home, or personal care, as well as for items such as individualised cars and freezers, which are

6 B Ingstad & AH Eide 'Introduction- disability and poverty: A global challenge' in AH Eide & B Ingstad (eds) *Disability and poverty: A global challenge* (2011) 5.

7 B Gordon et al *Inheriting the world: The atlas of children's environmental health and the environment* (2004) 36.

8 As above.

9 UN General Assembly 'Convention on the Rights of Persons with Disabilities', adopted 24 January 2007, A/RES/61/106 (CRPD) Preamble.

10 A Elwan *Poverty and disability: A survey of the literature* (1999) 15.

11 World Health Organization (WHO) & World Bank *World report on disability* (2011) 29.

12 Elwan (n 10 above) 15.

13 R Slee 'Disability, class and poverty: School structures and policing identities' in C Christensen & F Rizvi (eds) *Disability and the dilemmas of education and justice* (1996) 100.

otherwise considered a luxury for a non-disabled person.<sup>14</sup> Persons with disabilities also have to pay more for some of the basic items. For instance, people with limited mobility may have to use the nearest shops, rather than the cheapest shops.<sup>15</sup> These accommodation requirements translate into direct financial costs that drain limited available resources, hence compounding their poverty. For example, households with persons with severe or very severe disabilities in Sierra Leone spent on average 1.3 times more on health care than their non-disabled counterparts.<sup>16</sup>

To do the same things as an able-bodied person, a person with physical disabilities may need more income ... With the same level of income a disabled person may be able to do far fewer things, and may be seriously deprived in terms of the capabilities that he or she has reason to value.

The mainstreaming of disability in the poverty reduction agenda is therefore an urgent development priority. Persons with disabilities need to be given access to education and employment opportunities without discrimination. Awareness should be built around issues that impede the socioeconomic participation of persons with disabilities and persons with disabilities should be given greater access to community activities and social networks. Factors that compound the vulnerability of persons with disabilities to deprivation should be addressed through appropriately designed social protection measures. Legislative provisions that uphold the right to employment opportunities should be accompanied by concrete programmatic and budgetary responses, including those that ensure accessibility of the work environment.

The socio-cultural barriers that resulted in chronic poverty and economic deprivation of persons with disabilities have left many of them with no economic options other than begging, and its attendant debilitating influences. Now with the introduction of more and more progressive national legislation and greater awareness around the issue of disability, especially following the adoption of the CRPD, encouraging efforts are being made in many countries to ensure that persons with disabilities enjoy the right to access social welfare benefits as well as the right to opportunity of employment (including self-employment). It is to the latter issue that we now turn.

14 L. Reith 'Exploring the Link between poverty and disability' in Combat Poverty Agency *Disability, exclusion and poverty: A policy conference* (1994) 60.

15 Reith (n 14 above) 61

16 J. Trani et al *Disability in and around urban areas of Sierra Leone* (2010) 36.

### 3 Employment of persons with disabilities

#### 3.1 Formal employment and its challenges

Given their often limited access to education and the attitudinal and physical barriers to overcome, people with disabilities are more likely to be unemployed.<sup>17</sup> The International Labor Organization (ILO) estimates that the level of unemployment worldwide amongst disabled people is two to three times higher than for other people.<sup>18</sup> In some countries one in every six to eight persons with disabilities is unemployed. According to the 2005 figures, only 12,4 percent of persons with disabilities in South Africa were employed.<sup>19</sup> There is a complex picture when attempts are made to disaggregate the employment pattern by disability type. For example, a study found that people with intellectual impairments were three to four times less likely to be employed than people without disabilities. Besides being less likely to be competitively employed and more likely to be employed in segregated settings, persons with intellectual impairments were also more likely to have more frequent and longer periods of unemployment.<sup>20</sup>

The low level of employment of persons with disabilities may be due to a lack of adequate education or training, preconceived ideas about people with disabilities on the part of employers, lack of physical accessibility to the workplace, and lack of adequate transportation.<sup>21</sup> Persons with disabilities may also face physical barriers to job interviews, to the actual work setting, and to attending social events with fellow employees<sup>22</sup> as well as facing obstacles to accessing labour market information in disability-friendly formats.<sup>23</sup>

Perhaps the most important challenge relates to the tendency of employers considering the employment of persons with disabilities as a less productive venture, or as one that entails high 'maintenance' costs. Although data for Africa is hard to come by, studies elsewhere have revealed a positive rate of return of investments in the employment of

17 Ingstad & Eide (n 6 above) 5.

18 M Turmusani *Disabled people and economic needs in the developing world: A political perspective from Jordan* (2003) 31.

19 S Mitra 'The recent decline in the employment of persons with disabilities in South Africa, 1998-2006' (2008) 76 *South African Journal of Economics* 480.

20 MM Verdonschot et al 'Community participation of people with an intellectual disability: A review of empirical findings' (2009) 53 *Journal of Intellectual Disability Research* 303.

21 Handicap International *Good practices for the economic inclusion of people with disabilities in developing countries: Funding mechanisms for self-employment* (2006) 17.

22 International Labour Organization *Strategies for skills acquisition and work for people with disabilities* 2006 [http://www.hsrc.ac.za/research/output/outputDocuments/4388\\_Schn\\_eider\\_Strategiesforskills.pdf](http://www.hsrc.ac.za/research/output/outputDocuments/4388_Schn_eider_Strategiesforskills.pdf) (accessed 8 June 2014).

23 SE Butler et al 'Employment barriers: Access to assistive technology and research needs' (2002) 96 *Journal of Visual Impairment & Blindness* 664.

persons with disabilities. In the Six Mary's Place guesthouse project, for every £1 invested in Six Mary's Place Guest House, almost £6 is returned in social added value, in the form of savings in mental health and welfare benefits, new tax income, and increased personal income.<sup>24</sup>

In cases where persons with disabilities get employment, they are often paid very low salaries<sup>25</sup> and are less likely to get promoted.<sup>26</sup> The flexibility of work schedules and other aspects of work preferences of persons with disabilities, including having proper time to prepare for work, to travel to and from work, and to deal with health concerns, often translate into low paying contingent and part-time work arrangements.<sup>27</sup>

### 3.2 Self-employment and its challenges

Whenever formal employment becomes an uphill struggle, persons with disabilities often resort to self-employment, which requires, amongst others, a start-up capital, which can be obtained from family savings, grants and loans from relatives, moneylenders, non-governmental organisations (NGOs), microfinance institutions or banks.<sup>28</sup> Given the predominately poor status of disabled people, savings are less likely to present themselves as a source of capital, and people with disabilities might turn to microcredit schemes. But, even the latter option has not been very successful. According to Handicap International, persons with disabilities constituted less than 0,5 per cent of the clients of microfinance services in developing countries.<sup>29</sup>

A number of factors contribute to the limited access to microcredit of people with disabilities, such as the practice of relying on personal skills and character in evaluating the viability of loans,<sup>30</sup> and the related attitude of considering persons with disabilities as unworthy of credits.<sup>31</sup> Further, those socioeconomic factors that exclude poor people from such services such as 'elite capture' also exclude people with disabilities, and at a greater rate. This is partly tied to the tendency of considering persons with disabilities as less productive and hence less capable of paying back. But

24 S Durie & L Wilson *Six Mary's Place: Social return on investment report* (2007) <http://www.socialfirms.org.uk/FileLibrary/Resources/Quality%20&%20Impact/SROI%20report%20-%20Six%20Marys%20Place.pdf> (accessed 7 June 2014).

25 Ingstad & Eide (n 6 above) 5.

26 Elwan (n 10 above) 14.

27 WHO & World Bank (n 11 above) 239.

28 Handicap International (n 21 above) 18.

29 Handicap International (n 21 above) 3.

30 Leonard Cheshire Disability and UNECA *UN Convention on the Rights of Persons with Disabilities: A call for action on poverty, discrimination and lack of access* (2008) 37.

31 The judgments made towards one's creditworthiness or credit-unworthiness are more than just about lack of savings, mobility challenges or stigmatisation. Karl Marx observed, a long time ago, that one of the situations in which credit is conceivable is that a rich creditor extends credit to a poor man whom he regards as industrious and orderly. According to Marx, credit is 'the greatest possible recognition [and judgment] of man's worth by economics' or indeed 'the economic judgment on the morality of

there are other equally important factors, including those related to the design of the credit schemes. The first of these factors relate to lack of sufficient start-up capital, credit history and being unable to produce the collateral required,<sup>32</sup> which is also linked to lack of flexibility in these credit operations to facilitate inclusion of persons with disabilities.<sup>33</sup> The second set of factors are attitudinal and include stigmatisation and discrimination, the reluctance to buy goods and services from people with disabilities, leading to their lack of self-confidence and self-exclusion, as well as negative self-image and lack of confidence that is inculcated from a lifetime of being denigrated.<sup>34</sup>

The third set of factors are impairment-related such as mobility and transportation challenges and the attendant difficulties to make weekly repayments and attend meetings and market products, further compounded by inaccessible buildings and marketplaces, contributing to their limited participation in entrepreneurship education and training.<sup>35</sup> Difficulties in keeping accounts, compared to non-disabled people, are also cited as a challenge especially facing persons with visual impairments.<sup>36</sup>

### 3.3 Employment of persons with disabilities: Opportunities

In light of these and related employment challenges, the CRPD obliges states parties to protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value. It also urges states parties to enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training. The Convention calls for the promotion of employment opportunities, including self-employment and entrepreneurship, and career advancement

man'. The man in need of credit is not defined just by his deprivation but also by the demoralising judgment that he has to put up with that 'he does not inspire confidence, that he is, in short, a social pariah and a bad man'. See R Livingstone 'Elements of political economy' in Q Hoare (ed) *Karl Marx: Early writings: Introduction by Lucio Colletti* (1974) 263. There is, therefore, more ignominy on a man who seeks and is denied credit because he is not worthy of it than the man who just seeks credit. Denial of credit to a person – who is already in a poorer state than his creditor – amounts to recognising that that person is less than poor, less moral, less human than the poor, and is, therefore, degrading in moral and economic terms.

32 JM Cramm & H Finkenflugel 'Exclusion of disabled people from microcredit in Africa and Asia: A literature study' (2008) 19 *Asia Pacific Disability Rehabilitation Journal* 22.

33 Handicap International (n 21 above) 32.

34 M Albu *Economic empowerment of disabled people: Lessons from Northern Uganda about developing the market for enterprise-based skills development services* (2005) 11.

35 Cramm & Finkenflugel (n 32 above) 22.

36 As above.

for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.<sup>37</sup>

At the national level, with a view to improving access to employment opportunities of persons with disabilities, some countries have put in place legislation to prohibit discrimination to employment or to equal pay on the basis of disability, while others have more progressive legislation that requires appropriate steps be taken to ensure that persons with disabilities get access to gainful employment, including access to microfinance and income-generation schemes.

Non-discrimination is often addressed through constitutional provisions in the majority of countries and through disability-specific legislation such as those in effect in Ghana, Kenya, Uganda and Sierra Leone. Other countries have taken legislative steps to address some of these obstacles, through non-discrimination provisions contained in generic employment equity legislations such as in South Africa.

There are, for example, laws that entitle employers of persons with disabilities to tax exemptions – often covering a wide range of areas. The Ugandan Persons with Disabilities Act of 2006 entitles private employers who employ ten or more persons with disabilities either as regular employees, apprentices or learners on a full time basis to a tax deduction of 15 percent of all payable tax upon proof to the Uganda Revenue Authority.<sup>38</sup> The Act requires employers to carry out appropriate modifications in their work premises to facilitate the employment of persons with disabilities, and claim tax exemption on any costs incurred as a result of such modifications.<sup>39</sup>

Kenya's Persons with Disabilities Act, 2003 potentially increases not just the demand for disabled employees, but also accessibility of the work/office environment for disabled customers. The Act entitles a private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities for additional deductions from his net taxable income equivalent to 50 percent of the direct costs of the improvements, modifications or special services.<sup>40</sup>

Similarly Ghana's Persons with Disability Act 715 of 2006 not only requires the government to grant a person who employs a person with a disability an annual tax rebate of the taxable income in respect of each person with a disability employed but also allows tax exemption to manufacturers of technical aids or appliances for use by persons with

37 CRPD (n 9 above) art 27.

38 Ugandan Persons with Disabilities Act, sec 17.

39 Ugandan Persons with Disabilities Act, sec 13(4).

40 Kenyan Persons with Disabilities Act, sec 16(2).

disabilities.<sup>41</sup> Section 10(2) of the Act requires the government to grant special incentives to persons with disabilities engaged in business and also to business organisations that employ persons with disabilities. Section 11(a) and (b) requires employers to provide the relevant working tools, and appropriate facilities required by the person with disabilities for the efficient performance of the functions required by the employment. These provisions emanate from the prevalent perception amongst employers that 'employing persons with disabilities ... will necessarily entail high costs for the employer'.<sup>42</sup>

The good intentions of these provisions notwithstanding, financial incentives to increase the demand on disabled labour might connote tendencies of commodification<sup>43</sup> of disability, as the willingness to employ a person with disability or to manufacture assistive and adaptive devices might be triggered more by the anticipated financial gain from the transaction than anything else.<sup>44</sup> In other words, these discourses run the risk of approximating disability to just financial benefits.<sup>45</sup>

On the employee side, there are some legislative examples that attempt to raise the take-home-pay of disabled employees, hence their quality of life. For example, section 12(3) of Kenya's Persons with Disabilities Act<sup>46</sup> states:

An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.

Although this is an attempt to raise the amount of take-home pay by exempting employees with disabilities from income tax provisions, it might also be argued that such a provision might deprive such a person the right to make contributions to the public good from which he/she is equally a beneficiary. The potential of such discourses to perpetuate the

41 Ghanaian Persons with Disabilities Act, secs 10(1) & 36.

42 The UN Economic and Social Council cited in UN Enable 'Mainstreaming Disability in the development agenda'. Economic and Social Council: Commission for Social Development: Note by the Secretariat (2007) para 30(d). Ugandan Persons with Disabilities Act, sec 17.

43 In effect, such provisions not only increase the demand for workers with disabilities, but also boost the demand for assistive and adaptive devices – leading to the growing *commodification* of disability itself. Here, disability is 'marked, circumscribed, and commodified by designated products, spaces, and abstracts that not only brand its members but position them as a target market segment ripe for commodification and economic exploitation'. See E DePoy & S Gilson 'Disability, design, and branding' in LJ Davis (ed) *The disability studies reader* (2013) 489.

44 Special education as an industry further exemplifies this, the very existence of which depends on finding disabled students, discovering new categories of disability, establishing special university programs for special educators, funding federal grants for special education, and relying on the participation of special educators in awarding themselves these grants. See W Roth *The assault on social policy* (2002) 83

45 Roth (n 44 above) 83.

46 Kenyan Persons with Disabilities Act.

dependency myth surrounding persons with disabilities, namely that of considering the disabled as the tax payer's burden cannot be denied.

Many countries also have specific measures, for example quotas, aimed at increasing employment opportunities for people with disabilities.<sup>47</sup> In South Africa, the country's National Skills Strategy, Sectoral Education and Training Authorities require the allocation of four per cent of traineeships to people with disabilities.<sup>48</sup> The country also binds its government departments and state bodies to ensure that at least two per cent of their workforce must consist of people with disabilities.<sup>49</sup>

The Code of Good Practice: Key Aspects on the Employment of People with Disabilities (Disability Code)<sup>50</sup> – issued as required by the South African Employment Equity Act 55 of 1998 – requires employers to make 'reasonable accommodation' for people with disabilities, which will include the elimination of obstacles at the workplace and the introduction of positive measures to adapt policies, practices and the working environment in promoting the disability-accessibility of the workplace. The Code also provides for safeguards to be put in place against unfair discrimination throughout the full cycle of employment – from recruitment to promotions and termination of employment.<sup>51</sup>

On the self-employment front, some countries have attempted to address the factors that impede disabled peoples' access to microfinance and loans by including them in the development and implementation of microfinance and income generating schemes as well as in the management of microfinance and vocational programmes. Malawi's Technical, Entrepreneurial and Vocational Education and Training Authority Act 6 of 1999, for instance, requires a person with a disability be represented in the board of Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA).<sup>52</sup>

The Kenyan Persons with Disabilities Amendment Act 11 of 2003 (as amended in 2007)<sup>53</sup> states:

The Minister responsible for matters relating to credit unions, co-operatives and other lending institutions, on the advice of the Council shall establish a

47 WHO & World Bank (n 11 above) 235.

48 W Rowland *Nothing about us without us: Inside the disability rights movement of South Africa* (2004).

49 Department of Labour *Commission for Employment Equity: Annual report 2007-2008* (2008).

50 Department of Labour Employment Equity Act 55 of 1998: Code of Good Practice: Key Aspects on the Employment of People with Disabilities GG 23702, GN 1345, 19 August 2002, Item 6.

51 Code of Good Practice (n 50 above), Item 7.

52 The Technical Entrepreneurial and Vocational Education and Training Authority Act, sec 6(i).

53 Kenyan Persons with Disabilities Act, sec 37.

scheme through which such institutions shall extend credit facilities to persons with disabilities.

Ghana's Persons with Disabilities Act not only legislated the right to get access to loans of persons with disabilities, but also the right to be provided with appropriate training to start a business.<sup>54</sup> According to section 13(1) of the Act,

Where the name of a person with disability remains on a job search list for more than two years, the Ministry shall take the name of that person off the list, and where applicable –

- (1) Give that person appropriate training,
- (2) Provide that person with necessary working tools and materials, and
- (3) Assist that person to access loan capital for that person to start a business

Some countries have also implemented projects where persons with disabilities are included through their representatives. The Ethiopian Federation of Persons with disabilities and the National Union of Persons with Disabilities in Uganda were involved in the work of mainstream microfinance institutions to ensure better outreach of such services to disabled beneficiaries.<sup>55</sup> To conclude, the limited access to employment opportunities of persons with disabilities is compounded by their lack of access to education services, which may be attributed to factors ranging from attitudinal barriers that consider children with disabilities as 'uneducable' to school-related factors such as physical and epistemic (subject matter/curricular content) accessibility challenges, and the ethos and philosophy of organisation of contemporary schools.<sup>56</sup> The economic efficiency/future productivity rationale of investments in education also lies at the heart of this challenge. The next section takes a look at this aspect through an economic lens.

#### **4 Economic efficiency discourse of education of children with disabilities**

The economic efficiency argument – relating to the use of future productivity and rate of return logic in making investment decisions in the education of children with disabilities – assumes that the education of children with disabilities is very costly and cost-ineffective, when compared with the education of non-disabled children.

<sup>54</sup> Ghanaian Persons with Disability Act, secs 13(1) & 10(2).

<sup>55</sup> A Leymat 'Inclusive microfinance: Reaching disabled people through partnership development' (2010) [http://www.gre.ac.uk/\\_data/assets/pdf\\_file/0005/451976/6\\_Leymat\\_FullPaper.pdf](http://www.gre.ac.uk/_data/assets/pdf_file/0005/451976/6_Leymat_FullPaper.pdf) (accessed 11 June 2014).

<sup>56</sup> ST Tesemma 'A critical analysis of law and policy on education of disabled children in South Africa' unpublished DEd thesis, University of South Africa, 2013 225.

Existing schemes for funding education are dictated more by efficiency,<sup>57</sup> and less by equity<sup>58</sup> rationales, which in turn derive their inspiration from the current political ideology of education that envisions that the best quality education is a good to be rationed and competitively sought after, leading to increasing commoditisation and *markertisation* of education services. Education as a commercial commodity promotes (neoliberal) values of competitive individualism, separation, exclusion,<sup>59</sup> and eventually inequality. As Rioux<sup>60</sup> observes, the school system is one that perpetuates structural inequality being ‘an important pillar of the meritocracy’.<sup>61</sup> The meritocracy is justified because social and economic efficiency and progress – presumed essential in any society – are dependent on searching and rewarding people whose natural capacity is the source of sustenance of the social wellbeing, culture and progress of society.<sup>62</sup>

In such a system where both excellence and failure are considered as individualised attributes,<sup>63</sup> and where there is a competition amongst schools for enrolling exceptionally clever learners, learners with disabilities might be seen as ‘non-marketable commodities’.<sup>64</sup> This is referred to by some writers as the ‘human capital approach’ – a reductionist notion that strips education of its basic purpose and substance and lends it an economic subservient role. Here, education’s function is limited to merely structuring the supply of qualified people over a long period in accordance with economic demands.<sup>65</sup> In short, this approach emphasises the ‘economic value of education, the rate of return on schools and the productive utility of human knowledge’.<sup>66</sup> Beiter acknowledges the significance of economic progress in creating the resources badly needed to realise rights, but at the same time cautions against seeing economic progress as the sole or the most important function of education.<sup>67</sup>

57 Efficiency is generally understood to mean ‘reducing the cost of achieving a given level of effectiveness, or improving the volume and quality of outcome achieved from fixed budgets’. See J Beecham & M Knapp ‘Inclusive and special education: Issues of cost-effectiveness’ in OECD *Inclusive education at work: Students with disabilities in mainstream schools* (1999) 328.

58 Equity takes into consideration the varying characteristics of learners and uses the concept of equal treatment being possible only when the system provides unequal resources as a means of compensating for the unequal needs of various learners. See DD Sage & LC Burrello *Policy and management in special education* (1986) 126-127.

59 Tomlinson (1994) cited in AD Vlachou *Struggles for inclusive education* (1997) 5, 170.

60 M Rioux ‘Disability rights in education’ in L Florian (ed) *The SAGE handbook of special education* (2007) 113.

61 Rioux (n 60 above) 113.

62 Rioux (n 60 above) 115.

63 Vlachou (n 59 above) 1.

64 J Blackmore ‘Big change questions: Can we create a form of public education that delivers high standards for all students in the emerging knowledge economy?’ (2000) 1 *Journal of Educational Change* 381.

65 Tesemma (n 56 above) 43.

66 KD Beiter ‘The protection of the right to education by international law’ (2006) 19 *International Studies in Human Rights* 607.

67 Beiter (as above).

Although the reduction of costs through the elimination of resource wastage and leakage is an important principle of efficiency, the tendency of making investment decisions in education solely on the basis of its rate of (economic) returns and future productivity estimations would have unwelcome effects for disabled learners who may not always be highly productive in economic terms.<sup>68</sup> The economic efficiency argument would also trigger a resource prioritisation frenzy, whereby the financing of the education of disabled children – which may not necessarily pay off financially in the near future – might be considered an ‘irrelevant luxury’ in the face of competing demands for scarce resources for apparently more urgent demands such as food. This is observed by Mittler:<sup>69</sup>

To some such issues [related to the education of disabled children] may seem an irrelevant luxury when the day-to-day concerns of families with a disabled child are with the basic necessities of food and drink, the beliefs and superstitions of neighbours about disability and their inability to secure a school place for their child.

A further extension of this idea is the link between inclusive education reform efforts and future gains in productivity and wealth accumulation, as well as between inclusive education and reduction in future dependence on social welfare.<sup>70</sup> Of course, empirical studies have established a clear link between education and future productivity and growth. For instance, it was estimated that a 20 per cent increase in the primary school enrolment would increase economic growth by 0,3 percentage points per year.<sup>71</sup> Another estimate found that investment in one extra year of primary education will increase future productivity by 10 to 30 per cent.<sup>72</sup>

Other studies have estimated the economic loss resulting from failure to provide education – also termed the economic cost of exclusion – and found that it is, in general, very costly.<sup>73</sup> For example, the Gambia loses (in income terms) approximately 10 per cent of its Gross Domestic Product (GDP) by excluding so many children from education. In Mali and

68 A Artiles & A Dyson ‘Inclusive education in the globalization age’ in DR Mitchell (ed) *Contextualizing inclusive education: Evaluating old and new international perspectives* (2005) 43.

69 P Mittler ‘Childhood disability: A global challenge’ in P Mittler et al (eds) *World yearbook of education 1993: Special needs education* (1993) 9.

70 R Rieser *Implementing inclusive education: A commonwealth guide to implementing article 24 of the UN Convention on the Rights of Persons with Disabilities* (2008) 38.

71 E Anderson & S Hague *The impact of investing in children: Assessing the cross-country econometric evidence* (2007).

72 J van der Gaag & J-P Tan *The benefits of early child development programs: An economic analysis* (1998) 7.

73 Children with disabilities are disproportionately represented amongst the educationally excluded in developing countries. In many countries one in 100 children with disabilities are excluded from education services. See ST Tesemma *Educating children with disabilities in Africa: Towards a policy of inclusion* (2011) 19. It is estimated that 76 per cent of children with disabilities in Sierra Leone are out of school. See Leonard Cheshire disability/UNECA (n 30 above) 113. In Ethiopia, less than one per cent of children with special needs have access to education. See UNESCO *A human rights-based approach to education for all* (2007) 7. Ninety-eight per cent of children with

Nigeria, for example, the projected cost of non-school-going children is worth over two years of average GDP growth.<sup>74</sup>

These types of economic arguments seem to have formed part of the rationale for the (inclusive) education reforms of some countries.<sup>75</sup> For instance, the White Paper on Education and Training<sup>76</sup> has, years back, echoed the efficiency and productivity purpose of South African education:

The productivity of the system [of education and training] – what it produces in terms of personal learning, marketable skills, and examination results, in relation to what it has cost – is very low in much of the system. Improving *efficiency and productivity* is essential in order to justify the cost of the system to the public, to secure more funds for development when they are needed, to raise the quality of performance across the system, and thus improve the life chances of the learners.

The following provision of the Consultative Paper 1 (South Africa)<sup>77</sup> juxtaposes the *economic efficiency discourse* with the *human capital approach*, as an apparent justification for the country's inclusive drive:

Rates of return on a high per capita investment of public resources in, 'special' or 'specialized' schools are low, and few disabled learners are able to secure jobs on completion of learning. This is so since learning has until now not imparted the generic competencies that allow for transferable skills and lifelong learning, and few employers have taken the employment of the disabled as their responsibility.

On a similar note, *White Paper 6 on Special Needs Education: Building on Inclusive Education and Training System*<sup>78</sup> promotes the education of disabled children with an eye on ensuring future productivity and economic efficiency and as a means of combating economic and charitable dependence:

Given the serious human resources constraints in the country and the demands for justice, there is an onus on the Government to ensure that all human resources are developed to their fullest potential. In the long run such a policy will lead also to a reduction in the Government's fiscal burden as the

disabilities in Malawi did not have access to education. See EM Chilemba 'The right to primary education of children with disabilities in Malawi' (2013) 1 *African Disability Rights Yearbook* 4.

74 M Thomas & N Burnett *Exclusion from education: The economic cost of out-of-school children in 20 countries* (2013) 13.

75 C Acedo et al (eds) *Defining an inclusive education agenda: Reflections around the 48th session of the International Conference on Education* (2008) 9.

76 Department of Education *White Paper on Education and Training (South Africa)* (1995) para 4(23) (emphasis added).

77 Department of Education Consultative Paper No 1 on Special Education: Building an Inclusive Education and Training System, First Steps (1999) chap 6, para 2.6.

78 Department of Education *White Paper 6 on Special Needs Education: Building on Inclusive Education and Training System* (2001) para 2.1.3.

inclusive education and training system increases the number of productive citizens<sup>79</sup> relative to those who are dependent on the state for social security grants.

White Paper 6<sup>80</sup> further states that:

... [t]he important features of this strategy are its emphasis on cost-effectiveness<sup>81</sup> and exploiting the economies of scale that result from expanding access and provision within an inclusive education and training system.<sup>82</sup>

The economic efficiency discourse is also echoed in the country's Disability Strategy<sup>83</sup> albeit shrouded in an emancipatory rhetoric where it states that 'Access to ABET [Adult Basic Education and Training] is the key to the economic liberation of adults with disabilities'.

In spite of the good intentions of such arguments, experts caution against such orientations where economic productivity is considered as the sole or the most important function of education.<sup>84</sup> They also warn against the reliance purely on the 'economic value of education, the rate of return on schools and the productive utility of human knowledge'<sup>85</sup> in making investment decisions. Katarina Tomaševski, the former Special Rapporteur of the Commission on Human Rights on the Right to Education, had the following to say:

To refuse to educate children with disabilities on the grounds that there is no evidence that such an investment would help eliminate poverty or enhance

79 Although rare in Africa, studies in the USA conclude that the additional costs of special education are reimbursed to the community 35 times over through output and taxes paid within 10 years. Cost-benefit analyses show that for every dollar spent on special education, the disabled adult will earn 11 dollars. See UNESCO 1978 cited in R Brouillette 'Theories to explain the development of special education' in P Mittler et al (eds) (n 69 above) 259.

80 White Paper 6 (n 78 above) para 4.4.12.1.

81 In fact, although studies are limited in the African context, and without forgetting the local specificity of cost estimations, there is no conclusive evidence as to whether or not an inclusive education system is more or less efficient than a special education system. A study conducted in the context of the US, for example, found that 'inclusive education programs do not necessarily cost more or less than traditional special education programs. The costs are simply different from those carrying out traditional special education programs'. See LW Jones & LA Power-deFur 'Financing inclusive education programs' in LA Power de-Fur & FP Orelove *Inclusive education: Practical implication of the least restrictive environment* (1997) 63. In contrast, according to study in the UK, public school-based inclusion (in early childhood education) was found to be 41 per cent less costly than the traditional, more segregated, special education classroom model. For instance, total instructional costs per hour are eight per cent lower for inclusion than for the traditional model (USD 5,77 versus USD 6,28). See SL Odom et al *The costs of inclusive and traditional special education preschool services* (2001) [http://csef.air.org/publications/related/jsel/odom\\_hik.PDF](http://csef.air.org/publications/related/jsel/odom_hik.PDF) (accessed 15 June 2014).

82 White Paper 6 (n 78 above) para 4.4.12.1.

83 Office of the Deputy President Integrated National Disability Strategy White Paper of 1997, chap 3.

84 Beiter (n 66 above) 82.

85 Beiter (n 66 above) 607.

the rate of economic growth will be cruel ... no state admits to doing it. Nevertheless, children with disabilities may be excluded from school because providing wheelchair access might not be commercially viable,<sup>86</sup> or because their learning is deemed not to yield a sufficient marginal return on investment. This type of reasoning challenges the very assumptions of human rights, namely that there should be equal human rights for all.<sup>87</sup>

In spite of the above challenges plaguing the funding of education of children with disabilities, the key to ensuring the full enjoyment of the right to education of disabled children is to acknowledge that access to publicly funded education services is a right that cannot and should not be calculated in terms of input-output terms.<sup>88</sup> As Hegarty rightly observes, people should be able to enjoy their entitlement to the resources that their education requires, regardless of the fact that education may or may not succeed in making them employable or economically self-sufficient.<sup>89</sup>

Thus, seen through a human rights lens, education should not be geared towards just economy-related knowledge but more importantly towards fostering the full development of human personality and towards strengthening respect for human rights. Education should not just prepare pupils to be wage earners and tax payers, but also for fulfilling their role, *inter alia*, as parents, as political activists, as agents of social cohesion and tolerance and as equal members of society.<sup>90</sup> If the purpose of education falls short of the latter ideal, then it might run the risk of compromising inherent human dignity,<sup>91</sup> as well as compromising the right to education of children with disabilities, especially those with severe impairments.

## 5 Social welfare and disability

### 5.1 Social welfare schemes for persons with disabilities and their impact

In some societies a work-based system emerges for those who can work and a needs-based system for those who cannot. Society then takes on an obligation to support those who may be excluded from the paid labour

86 Rieser cites World Bank estimates that it costs between two and four times as much to educate a child with a disability in an inclusive setting as a non-disabled child. See Rieser (n 70 above).

87 K Tomaševski *Education denied: Costs and remedies* (2003) 33.

88 As above.

89 S Hegarty *Educating children and young people with disabilities: Principles and the review of practice* (1995) 16.

90 Beiter (n 66 above) 607.

91 As above.

mechanism,<sup>92</sup> which translates into social welfare;<sup>93</sup> in different countries, it is also termed (amongst others): a disability grant, 'Invalid's Pension', or Disability Allowance.

**Table 1: Social assistance programmes for disabled people in developing countries.**<sup>94 95</sup>

Country	Type	Transfer amount	Eligibility
Lesotho	Disability pension (cash transfer)	USD16.6 per month	Destitute and disabled
Mauritius	Basic Disability Pension	USD 82 per month	People aged 15-59 certified by a Medical Board as either permanently or substantially incapacitated to work to a physical degree of 60 per cent
	Carer's Allowance	USD 50 per month	Paid to beneficiaries of the basic disability pension who need the constant care and attention of another person. The allowance is paid for children with disabilities younger than age 15 if their parents' annual income does not exceed USD 4900.
	Child Allowance	USD 31 per month for a child under 10; USD 29 for children aged 10 or older	Payable to the first three children of a basic disability pensioner. Children must be younger than age 15 (age 20 if a full-time student)
	Carer's Allowance for beneficiaries of Invalid Basic Pension	USD 42 per month	Beneficiaries of Invalid Basic Pension who need the constant care and attention of another person
Namibia	Disability grant (DG) and Blind person's grant	USD 25 per month	Disabled and/or blind

92 Turmusani (n 18 above) 8.

93 These may include the provision of pensions, attendant care allowances, health-care support, mobility allowances and the provision of adaptive equipment.

94 T Guthrie et al *Social security policy options for people with disabilities in South Africa: An international and comparative review* (2001) 40.

95 US Office of Retirement and Disability Policy *Social security programs throughout the World: Africa* (2009) <http://www.ssa.gov/policy/docs/progdesc/ssptw/2008-2009/africa/mauritius.html> (accessed 20 May 2014).

South Africa	Disability grant – cash transfer (means tested)	Maximum USD 95 per month	Working-age adults unable to work due to disability, plus means test (permanent and temporary)
	Care dependency grant – cash transfer	USD 77 per month	Primary carer of child with severe disabilities in need of full-time care plus means test

Some of the disability grants and benefits being implemented in various countries are very encouraging in terms of alleviating deprivation amongst persons with disabilities. Some have been more effective while others have been plagued by challenges, such as those related to the determination of eligibility, bureaucratic hurdles, and the high opportunity cost of accessing these benefits.

In terms of impact of social welfare grants, Marriott and Gooding conclude, on the basis of limited anecdotal evidence, that social welfare grants had a positive impact<sup>96</sup> in terms of reducing deprivation, including in household health and economic status<sup>97</sup> as well as having a positive impact on self-esteem by enabling persons with disabilities to contribute to the household budget. They also noted, however, that disabled people often lack control over spending of the grant.

At times, even with welfare grants, notwithstanding the mixed picture in terms of reducing deprivation, disability-related costs are so high that they offset any chances of coming out of poverty for the majority of the disabled population.<sup>98</sup> A study in South Africa gives an indication of the size of the additional costs such as medical expenses and special foods of a little over half the grant amount compared to the disability grant amount, which is a maximum USD 95 per month.<sup>99</sup> For instance, 31 percent of grant beneficiaries indicated that medical expenses with a mean amount of USD 15 were spent on medical expenses as a result of impairment, which also included an additional USD 6 on therapy or treatment, while 16 per cent indicated that they had to pay a mean amount of USD 9 a month to assistants or people who take care of them. Sixteen percent indicated that

96 There is, however, a concern echoed by some that welfare grants would create dependency and discourage employment. A report by the South African Department of Social Development suggests that over 36 per cent of the disability grant recipients have 'physical disabilities that should not necessarily render them unable to obtain gainful employment'. See Department of Social Development *Linking social grants beneficiaries to poverty alleviation and economic activity* South Africa (2006) 3.

97 A Marriott & K Gooding *Social assistance and disability in developing countries* (2007) 5.

98 There is also the concern echoed by some that welfare grants would create dependency and discourage employment. A report by the South African Department of Social Development suggests that over 36 per cent of the disability grant recipients have 'physical disabilities that should not necessarily render them unable to obtain gainful employment'. See Department of Social Development (n 96 above) 3.

99 Marriott & Gooding (n 97 above) 39.

they regularly spend money on other expenses, such as nappies or special food, as a result of the beneficiary's disability, averaging USD 14 a month.<sup>100</sup>

In 1998, Zimbabwe introduced a disability pension to blind and disabled people that amounted to USD 5 per month. But, the cost of a bus ride to the district welfare office to collect the grant for a blind person accompanied by an assistant amounted to 80 per cent of the benefit value.<sup>101</sup>

One of the rationales for having such types of categorical grants, with the potential to stigmatise persons with disabilities, emanated from the concern that disabled people often have limited access to mainstream social assistance schemes. The reason is that such schemes rely on means testing, which may not necessarily take into account the extra costs encountered by disabled people.<sup>102</sup>

## **5.2 Social welfare versus discrimination: Dilemmas of 'injured' identity and independent living**

In addition to implementation challenges facing social welfare programmes, severe criticisms have also been levelled against social welfare benefits specifically targeted to persons with disabilities on account of their design and rationales. Most social welfare systems targeted for persons with disabilities rely on medical expertise and diagnostic examinations to determine eligibility. The person with a disability seeking the service is considered the patient, while the physician or rehabilitation counsellor is considered all-knowing and in control of making decisions he or she believes are in the best interest of the client or 'patient'.<sup>103</sup> The physician is assigned the role of 'scientifically' and medically (dis-)proving that the person is less productive or unproductive to be entitled for social welfare benefits, while the 'patient' or the 'client' is expected – indeed coerced – to passively and unquestionably accept what the professional advises to be in his/her best interests.<sup>104</sup>

According to Schweik, social welfare, itself is a more formalised, scientific and bureaucratic form of organised charity, executed under the auspices of professionals.<sup>105</sup> For some, there is a thin line between begging for alms and social welfare. As some people with disabilities were left with

100 De Koker et al (2006) cited in Marriott & Gooding (n 97 above) 58.

101 Marriott & Gooding (n 97 above) 44.

102 Marriott & Gooding (n 97 above) 32.

103 I Marini 'The history of treatment toward persons with disabilities' in I Marini et al (eds) *Psychosocial aspects of disability: Insider perspectives and strategies for counselors* (2012) 19.

104 As above.

105 SM Schweik *The ugly laws: Disability in public* (2009) 79.

no option but to exhibit their impairments<sup>106</sup> to the gaze of the non-disabled public<sup>107</sup> mostly on city streets to garner pity for alms, so too persons with disabilities seeking social welfare have to be gazed at by professionals to get medically certified as having an 'injured' identity. Further, as the beggar is 'the most conspicuous figure of dependency', and begging, a reflection of 'purposeful parasitism',<sup>108</sup> dependence on social welfare was also considered the result of 'willed incapacity'.<sup>109</sup>

An example is the Social Welfare Assistance Act of Zimbabwe,<sup>110</sup> which provides for the granting of social welfare assistance, in the form of cash, food, clothing, rehabilitation, occupational training or the provision of orthopaedic and orthoptic appliances, for what it refers to as 'destitutes' or 'indigent persons' and their dependents. The term destitute or indigent persons (also synonymous in common parlance with vagrant, pauper or beggar) is defined under section 2 as any person who lacks means of subsistence, and includes persons with physical and mental impairments.

Therefore, for some social welfare merely replaced the *tin can*, where '... scenes of proving worthiness for aid ... shifted from the street to the offices of certifying doctors'.<sup>111</sup> When doctors are assigned to determine who is entitled to welfare benefits, the political issue of redistribution thus becomes a clinical problem, a medical concern,<sup>112</sup> also referred to as the medicalisation of social welfare.<sup>113</sup>

The dilemma is that when persons with disabilities are proved and 'certified' with a 'disabled identity' – by extension – put on an 'injured identity' to access benefits from the state, the values and beliefs that cast that identity in a demeaned social location in the first place are reinforced, thereby heightening discrimination against them. This is a manifestation of the tension between the definition of disability in anti-discrimination law and in social welfare law, where discrimination and differential treatment may be allowed when they work for the benefit of persons with disabilities, especially when the system requires that the person with a disability be treated as such in order to gain access to welfare benefits. For Jones and Marks,<sup>114</sup> for persons with disabilities seeking social welfare services, it is often the case that:

106 Schweik (n 105 above) 59.

107 Schweik (n 105 above) 55.

108 SL Snyder & DT Mitchell *Cultural locations of disability* (2006) 40.

109 Snyder & Mitchell (n 108 above) 56.

110 Social Welfare Assistance Act 10 of 1988 (Chapter 17:06).

111 Schweik (n 105 above) 79.

112 Sundby (1990) cited in Schweik (n 105 above).

113 M Holmqvist *The institutionalization of social welfare: A study of medicalizing management* (2008) 12.

114 M Jones & LAB Marks 'Law and social construction of disability' in M Jones & LAB Marks (eds) *Disability, Divers-ability and legal change* (1999) 17.

Having once suffered the ordeal of proving and providing evidence of, for example, a permanent loss of limb or loss of mobility or level of intellectual capacity, it is not unusual to be required to re-establish this on a regular basis when welfare entitlements are reviewed.

The dilemma facing persons with disabilities between claiming an 'injured' identity and risking discrimination is heightened by welfare laws that require certificates of invalidity to access social welfare benefits. According to Zatu 86 – 5 of January 1986 related to the adoption of social measures in favour of persons with disabilities of Burkina Faso, the Ministry of Health has instituted a card called *Carte d'invalidité* (Card of Invalidity) to entitle them to enjoy fee and tariff reductions in public health, transport and recreation facilities.<sup>115</sup> Persons with disabilities are allowed to get privileged access to economic and social benefits upon producing this *Carte d'invalidité*. To access public funds, they have to strangely enough prove that they are economically incapable, or to use the French term – *invalide*.

On a similar tone, the Kenyan National Social Security Fund Act (as revised in 2009) entitles a person to what it termed 'invalidity benefits' if:

- (a) he is subject to such physical or mental disability as to be suffering from permanent total incapacity, or
- (b) he is subject to such physical or mental disability as to be suffering from partial incapacity of a permanent nature and is unable by reason of such disability to earn a reasonable livelihood.<sup>116</sup>

The 2000 *loi portant statut, protection et promotion de la personne handicapée* (law for the protection and promotion of the rights of persons with disabilities) of Central African Republic<sup>117</sup> stipulates that:

a person with disabilities should have a *certificate attesting to their disability*, automatically entitling them to acquittals, exemptions, discounts and subsidies when buying orthopaedic equipments or when accessing medical and hospital services; and when undergoing laboratory and radiological tests and surgical interventions. This certificate also entitles persons with disability to reduced tariffs related to public transport, leisure and sports and school enrolment.

The Tanzanian Disabled Persons (Employment) Act 2 of 1982 requires the Commissioner (of Social Welfare) to establish and maintain a register of persons with disabilities to be known as the Persons with Disabilities Register. According to article 3, a person whose name is for the time being in the register is in this Act referred to as a 'person registered as

115 *Ministère de la promotion des droits humains* (Burkina Faso) Zatu 86 – 5 of January 1986 related to the adoption of social measures in favour of persons with disabilities of Burkina Faso of 1986, art 3.

116 Kenyan National Social Security Fund Act (as revised in 2009), sec 22.

117 *République centrafricaine Loi portant statut, protection et promotion de la personne handicapée* of 2000, title 2, chap 3, art 20 (emphasis added).

handicapped by disablement'.<sup>118</sup> Under of the Kenyan Persons with Disabilities Act, the National Council for Persons with Disabilities is entrusted with the function, inter alia, of registering persons with disabilities to facilitate their full enjoyments of the rights and privileges provided by the Act.<sup>119</sup>

According to these provisions, welfare law in favour of people with disabilities can be activated when, first of all, it is proved that 'the person concerned has the sort of disability which the legislation is designed to address'.<sup>120</sup> To establish evidence of the disability, the person with a disability must seek the opinion of medical and paramedical professionals, who carry out screening and testing to establish his/her 'invalid' status. For instance, it would appear that a person with intellectual disabilities might have to be 'judged to be incapable of controlling his/her affairs' to access welfare benefits.<sup>121</sup> Although such procedures are intrusive, it is equally mandatory for the welfare system to 'ensure that only genuine applicants benefit from the law'.<sup>122</sup> Persons with disabilities are thus made to offer themselves for public appraisal, while, at the same time, scrutinising others to guard against social counterfeits.<sup>123</sup>

Thus, the quest of people with disabilities to be treated as ordinary or 'normal' members of the community is challenged by laws which are only available on proof of abnormality<sup>124</sup> – the *carte d'invalidité*.<sup>125</sup> Therefore, the emphasis becomes placed on 'what disabled people cannot do' instead of what they can.<sup>126</sup> In fact, this dilemma has been plaguing welfare systems the world over for quite a long time, leading to efforts to ensure access to social welfare benefits of persons with disabilities without compromising dignity.

Under such circumstances, where disability becomes a 'ticket to a grant',<sup>127</sup> no wonder that some non-disabled persons may be tempted to falsify their medical documents in an attempt to 'appear' disabled and access social welfare benefits. Such discourses might lead to the *commodification* and proliferation of disability itself where new disabled identities are claimed for the sake of (economic) welfare economic benefits. There is thus a need to decide exactly what constitutes a disability, which would make the 'bureaucrat ... suspicious of the supplicant [of the social welfare system], for there are incentives for the

118 Tanzanian Disabled Persons (Employment) Act, art 7(1).

119 Kenyan Persons with Disabilities Act, sec c(i).

120 M Jones & LAB Marks 'Law and social construction of disability' (n 114 above) 17.

121 M Jones & LAB Marks 'Law and social construction of disability' (n 114 above) 18.

122 M Jones & LAB Marks 'Law and social construction of disability' (n 114 above) 17.

123 Kasson (1990) quoted in Schweik (n 105 above) 87.

124 M Jones & LAB Marks 'Law and social construction of disability' (n 114 above) 19.

125 Ministère de la promotion des droits humains (Burkina Faso) (n 115 above).

126 Marriott & Gooding (n 97 above) 44.

127 N Nattrass *Disability and welfare in South Africa's era of unemployment and AIDS* (2006) 8.

supplicant to act as if belonging to a particular category'.<sup>128</sup> Contrary to the legal dictum: presumed innocent until proved guilty, 'persons with disabilities and other supplicants are presumed fraudulent in seeking benefits and must prove their veracity'.<sup>129</sup> Embedded within these notions is the presumption that disability might be faked, manufactured.<sup>130</sup> According to the Kenyan Persons with Disabilities Act,<sup>131</sup> any attempt at giving false information to get registered – hence to falsely put on a disabled status to access benefits – is a criminal offence:

A person is guilty of an offence if he knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any privilege due to persons so registered.

Similarly, the Cameroon Penal Code<sup>132</sup> states:

Any physician, surgeon, dresser or nurse, dentist or midwife who for the advantage or disadvantage of any person falsely certifies or conceals the existence of any diseases or disability, or falsely certifies the performance or result of an inoculation, or gives misleading information on the origin of a disease, on the duration of a disability, or on the cause of any death, shall be punished with imprisonment for from two months to three years and with fine of from five thousand to one hundred thousand francs.

However, some social welfare policies have made extra efforts to avoid these invalidating discourses, such as the South African Strategy for Social Welfare. The White Paper introduces the interesting notion of *developmental social welfare* defined in the preamble as:

a humane, peaceful, just and caring society which will uphold welfare rights, facilitate the meeting of basic human needs, release people's creative energies, help them achieve their aspirations, build human capacity and self-reliance, and participate fully in all spheres of social, economic and political life.<sup>133</sup>

This concept has a number of progressive elements. At a more fundamental level, the concept, contrary to medical and charity notions, promotes social welfare as a human right, without losing sight of the

128 Roth (n 44 above) 83.

129 As above.

130 For example, according to the Penal Code of the Republic of Cameroon 'Whoever having means of support, or being able by work to obtain them, begs in any place for alms by *feigning sores or disablement* shall be punished with imprisonment for six months to two years' (sec 246(c)) (emphasis added). See Republic of Cameroon Penal Code of the Republic of Cameroon: Law No 65-LF-24 of 12th Nov 1965 and Law No 67-LF-1 of 12th of June 1967 (2001). A similar provision is found under section 5, article 243 of the Penal Code of Burkina Faso. See Ministère de la Justice (Burkina Faso) Code Pénal: Décret No96-5-451/PRES du 18 décembre 1996 portant promulgation de la loi no 43/96/ADP du 13/11/1996 (1997).

131 Kenyan Persons with Disabilities Act, sec 47.

132 Penal Code of the Republic of Cameroon of 1967 (n 130 above) sec 259(1).

133 Department of Welfare *White Paper for Social Welfare: Principles, guidelines, recommendations, proposed policies and programmes for developmental social welfare in South Africa* (1997), Preamble.

imperative of meeting basic human needs. It promotes the idea of employing social welfare as an instrument to build human capacity and unlock people's creative energies, as well as ensure full inclusion and self-reliance.

The strategy provides for a range of services such as rehabilitative, preventative, developmental and protective services and facilities, as well as social security, including social relief programmes, social care programmes and the enhancement of social functioning.<sup>134</sup> According to the Strategy, welfare programmes aim to 'contribute to the optimal social development of individuals, families and communities'.<sup>135</sup> It is also an investment in human capital development and in turn contributes to economic development. The approaches to social welfare will, according to the Strategy, be such that they complement and strengthen people's efforts, enhance their self-respect and independence<sup>136</sup> and allow people 'to take charge of their own circumstances in a meaningful way'.<sup>137</sup>

The 2001 amendment to the Social Assistance Act, empowered provinces to replace the role of the Pension Medical Officer – previously responsible for evaluating and adjudicating disability grants recommendations – by assessment panels, whose members did not necessarily have to be medical doctors.<sup>138</sup> This is an example of a move away from medicalised models of social welfare to social models, where 'social' factors are introduced into a purely 'medical' issue.<sup>139</sup> So, as is has been the case in South Africa, legislative provisions should not present welfare grants as an instrument designed to compensate people for their disabilities (in the medical sense); they should rather present them as a means of compensating people with disabilities for the impact of their disability on earning potential (in the social and economic sense).<sup>140</sup>

Similarly, the draft national social protection strategy of Ghana centres on a programme of cash transfers called 'Livelihood Empowerment for Alleviation of Poverty'. This includes a grant – not just for all persons with disabilities – but for those 'without productive capacity'.<sup>141</sup> According to the draft policy, the Disability Grant 'recognises that some persons have disabilities that are so severe that they will not be able to earn a living even if they have the opportunity to participate in livelihood programs and even if education and employment policies are inclusive'.<sup>142</sup>

134 White Paper for Social Welfare (n 133 above) sec 7(a).

135 White Paper for Social Welfare (n 133 above) sec 15.

136 White Paper for Social Welfare (n 133 above) sec 23.

137 White Paper for Social Welfare (n 133 above) sec 27.

138 RSA Social Assistance Act (as amended in 2001) (2001).

139 Natrass (n 127 above) 4-5.

140 Natrass (n 127 above) 3.

141 Government of Ghana *The National Social Protection Strategy (NSPS): Investing in people* (2006).

142 Government of Ghana (n 141 above).

As these examples demonstrate, a shift in both mindset and practice is required away from a medicalised paradigm of social welfare to an *independent living* paradigm. At a more fundamental level, the *independent living* model views environmental barriers and societal attitudes as the factors that stand in the way of independent living and economic self-reliance of persons with disabilities. It unseats the notion of linking impairment with ‘willed dependency’ where persons with disabilities are branded as undisciplined bodies incapable of entering into productive employment.<sup>143</sup> The *independent living paradigm* challenges existing models of social welfare by shifting the focus away from the view of considering expert knowledge as key to understanding disability to ‘the experience of being disabled as the key to understanding disability’.<sup>144</sup> By doing so it challenges the notion of persons with disabilities as patients within an occupation – called social welfare – dominated by experts playing an oversight function over those in need and preoccupied with ‘the management of ‘social dependents’.<sup>145</sup> Instead, it repositions the focus on the obligation of the state to respect and fulfil the rights of persons with disabilities to social welfare services.<sup>146</sup>

## 6 Concluding remarks

The economic discourses of disability that portray persons with disabilities as economically invalid and economically dependent on non-disabled tax payers and on the welfare system or charitable individuals for survival, have to be replaced by the discourse of *independent living*. Both legislative and programmatic responses need to adopt the *Independent Living paradigm* of social welfare, which considers a person with a disability coming in contact with the social welfare system as a rights holder and a citizen instead of as a person in need of care. They regard such a person as a consumer of a service (instead of a client), whose inputs, recommendations and informed consent inform the ultimate decisions concerning his or her welfare.<sup>147</sup>

Through legislative, policy and programmatic measures, a flexible and responsive system has to be promoted that supports disabled people’s participation. Instead of relying on the concept of ‘incapacity for work’ as the underlying basis for entitlement, a more flexible approach has to be adopted in order to enable people to try out work and work-related activity.

143 Snyder & Mitchell (n 108 above) 39.

144 S Moore *Social welfare alive!* (2002) 413.

145 There are some attempts to break away from medicalised and charity discourses littering social welfare systems such as *welfare, grants, allowances* to an *independent living fund* in line with the *independent living paradigm*. See Department of Work and Pensions (UK) *The future of the Independent Living Fund: Public consultation* (2012) 5.

146 Snyder & Mitchell (n 108 above) 56.

147 KK Kirst-Ashman *Introduction to social work and social welfare: Critical thinking perspectives* (2010) 302.

In other words, one needs to adopt a balanced package of work-related conditions, with safeguards, alongside a programme of comprehensive support, for example, by expanding financial support for the extra costs associated with employment, such as alternative transport, assistive technology and personal assistance.<sup>148</sup>

Given the extra costs associated with disability, the creation of employment opportunities has to be accompanied by social assistance schemes.<sup>149</sup> The suggestions made by the UN Rules on the Equalisation of Opportunities<sup>150</sup> are worth noting:

- Social security systems should include incentives to restore the income-earning capacity of persons with disabilities. Such systems should provide or contribute to the organization, development and financing of vocational training. They should also assist with placement services.
- Social security programmes should also provide incentives for persons with disabilities to seek employment in order to establish or re-establish their income-earning capacity.

What is needed is a supportive link between disability benefits and income-generating opportunities.<sup>151</sup> This is perhaps stated most clearly in a report for the South African government (co-authored by the South African Federal Council on Disability):<sup>152</sup>

Social security systems should be seen not merely as safety nets and poverty-alleviating measures, but also as measures to promote self-sufficiency and independence. The disability sector wish to stress that social grants should not be viewed as creating dependency, but rather as enabling development by overcoming many of the barriers faced by persons with disabilities, and thus equalising opportunities. It should be *not* seen as 'social protection' but rather as 'social support', encompassing a wide range of transfers, services, and subsidies.

To conclude, any social assistance effort directed at persons with disabilities should be considered a right instead of a moral charity, and an investment instead of just a safety net.<sup>153</sup> It should also compliment, not diminish, efforts on the education, employment and political representation fronts.

Finally, persons with disabilities have to be listened to, and their views on social assistance, have to inform policies. Policies on social assistance, as on any other area, have to build on the timbre and pitch of the voices of

148 Disability Rights Commission (2006) cited in Marriott & Gooding (n 97 above) 63.

149 Marriott & Gooding (n 97 above) 69.

150 UN 'The Standard Rules on the Equalization of Opportunities for Persons with Disabilities' (1993) Rule 8.

151 Marriott & Gooding (n 97 above) 63.

152 Guthrie et al (n 94 above) 125.

153 Guthrie et al (n 94 above) 27.

people with disabilities themselves. In the final analysis, it is important to promote 'self-help', 'self-advocacy', peer counselling and the removal of environmental obstacles and societal attitudes.<sup>154</sup>

154 I Marini 'The history of treatment toward persons with disabilities' (n 103 above) 19.