

ZIMBABWE

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1 Population indicators

1.1 What is the total population of Zimbabwe?

According to the Zimbabwe Population Census Report of 2012 (the 2012 Census Report), the total population of Zimbabwe was 13 061 239.¹

1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Zimbabwe and the criteria used to determine who falls within the class of persons with disabilities in Zimbabwe.

The 2012 Census Report did not seek to identify the type of the disability but focused on the number of persons with disabilities (PWDs) in a family statistical data on the prevalence of disability in Zimbabwe which was obtained from the Zimbabwe Inter-Censal Demographic Survey of 1997 (the Inter-Censal Survey)² and the Zimbabwe Housing and Population Census Report (the Housing and Population Report).³

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1 See the Zimbabwe Population Census 2012: National Report, available at: http://www.zimstat.co.zw/dmdocuments/Census/CensusResults2012/National_Report.pdf (accessed 7 April 2014).

2 Zimbabwe Inter-Censal Demographic Survey Report of 1997, available at: http://www.childinfo.org/files/ZIM_finalest.pdf (accessed 4 June 2014).

3 Zimbabwe Housing and Population Census Report of 2002, available at: <http://www.zimstat.co.zw/dmdocuments/Census/Census.pdf> (accessed 3 June 2014).

1.3 What is the total number and percentage of people with disabilities in Zimbabwe?

Zimbabwe has had four censuses since attaining independence in 1980. However, none of the censuses provided statistics on the prevalence of disability in the country. Recent studies have estimated the disability prevalence to be 1.4 million of the total population.⁴

1.4 What is the total number and percentage of women with disabilities in Zimbabwe?

There are no official statistics on the total number and percentage of women with disabilities (WWDs) in Zimbabwe. According to the Inter-Censal Survey, the proportion of male to females with disabilities was 56 and 44 per cent respectively.⁵ Furthermore, the Housing and Population Report recorded a national disability prevalence of 2,9 per cent of which 45 per cent were men and 55 per cent were women.⁶

1.5 What is the total number and percentage of children with disabilities in Zimbabwe?

There is no recent statistical data on the total number and percentage of children with disabilities (CWDs) in Zimbabwe. The last comprehensive study on the prevalence of disability amongst children in Zimbabwe was the Inter-Censal Survey. The Survey recorded a total of 218 421 PWDs in the country, which was approximately 2 per cent of the country's total population.⁷ Of these, 57 232 were CWDs,⁸ which was about 26 per cent of the total population of PWDs in 1997. Another study which was conducted by the United Nations Children's Emergence Fund (UNICEF) in 1997, estimated CWDs to be 150 000.⁹ Significantly, such disparities on estimates clearly demonstrate the absence of reliable statistics on the prevalence of disability in the country.

1.6 What are the most prevalent forms of disability in Zimbabwe?

As indicated above, there are no reliable statistics on the prevalence of disability in the country. Despite the absence of official statistics, the most prevalent forms of disability are:

- Physical impairments;
- Mental impairments;
- Speech functional disabilities;
- Hearing impairments; and
- Intellectual and sensory impairments.¹⁰

4 See T Choruma *The forgotten tribe: Persons with disabilities in Zimbabwe* (2007), available at: http://www.africacampaign.info/uploads/media/forgottribeprogressiozim_01.pdf (accessed 5 April 2014).

5 As above.

6 As above.

7 As above.

8 As above.

9 UNICEF 'A study of children and adolescents with disabilities in Zimbabwe', available at: http://www.unicef.org/evaldatabase/files/ZIM_01-803.pdf (accessed 17 June 2014).

10 Choruma (n 4 above) 11.

2 Botswana's international obligations

2.1 What is the status of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD) in Zimbabwe? Did Zimbabwe sign and ratify the CRPD? Provide the date(s).

Zimbabwe is a state party to the CRPD. Zimbabwe ratified the CRPD and its Optional Protocol on 23 September 2013, thereby becoming the 135th state party to ratify the Convention and its Optional Protocol.¹¹

2.2 If Zimbabwe has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Zimbabwe submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?

- In terms of article 35, the CRPD mandates state parties to report initially to the Committee on the Rights of Persons with Disabilities within two years of accepting the Convention.¹² Thereafter, state parties are mandated to submit reports at least every four years or upon request by the Committee.¹³
- Zimbabwe's initial report is due on 23 October 2015.¹⁴
- The responsible departments for the submission of the country report are the Ministry of Public Service, Labour and Social Welfare, and the Ministry of Justice and Legal Affairs.¹⁵

2.3 While reporting under various other United Nations' instruments, the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Zimbabwe also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant 'concluding observations' adopted? If relevant, were these observations given effect to? Was mention made of disability rights in your state's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?

11 See the United States International Council on Disabilities' (USICD) data portal, available at: http://www.usicd.org/index.cfm/news_zimbabwe-becomes-135th-state-party-to-ratify-the-crpd (accessed 9 April 2014).

12 See art 35(1) of the CRPD.

13 See art 35(2) of the CRPD.

14 See the country's reporting history and status available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx (accessed 5 April 2014).

15 The Ministry of Public Service, Labour and Social Welfare is the Ministry responsible for disability issues in Zimbabwe whereas the Ministry of Justice and Legal Affairs is the Ministry responsible for the country's report process under the United Nations Universal Periodic Review (UPR).

The UPR process

- In October 2011, the Zimbabwean Government¹⁶ underwent its first Universal Periodic Review process under the auspices of the United Nations Human Rights Council in Geneva.¹⁷
- While reporting on the status of vulnerable groups, the Zimbabwean report was silent on the country's intention to ratify and fully domesticate the CRPD.
- The UN Human Rights Council then recommended that the Zimbabwean Government ratify and fully domesticate the CRPD.
- Based on the recommendations of the UN Human Rights Council, the Zimbabwean Government ratified the CRPD together with its Optional Protocol on 23 September 2013.
- Zimbabwe is due for another review in 2016.¹⁸ However, the Zimbabwean government is expected to file its Mid-Term Progress Report in 2014.¹⁹

2.4 Was there any domestic effect on Zimbabwe's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Zimbabwe's legislature to incorporate it into the legal system before the instrument can have force in Zimbabwe's domestic law? Have Zimbabwe's courts ever considered this question? If so, cite the case(s).

- Zimbabwe follows a dualist approach in the implementation of international treaties. In accordance with this approach, international treaties ratified or acceded to by the Zimbabwean Government will not become self-executing upon ratification or accession. Treaties must first be domesticated through parliamentary approval and be incorporated into the domestic laws through an Act of Parliament before they become binding.²⁰
- Zimbabwe has not domesticated the CRPD. However, section 34 of the 2013 Zimbabwean Constitution²¹ obliges the state to ensure that all international conventions, treaties and agreements to which Zimbabwe is a party be incorporated into domestic law.

2.5 With reference to 2.4 above, has the CRPD or any other ratified international instrument been domesticated? Provide details.

- See 2.4 above.
- Zimbabwe is party to the Convention on the Rights of the Child (CRC). Provisions of this Convention have been incorporated into the Children's Act [Chapter 5:06].²²
- The same position applies to the Labour Act [Chapter 28:01]²³ wherein international labour standards have also been domesticated.

16 At its first reporting cycle under the UPR, held at Geneva in 2011, Zimbabwe was represented by the Ministry of Justice and Legal Affairs.

17 See the 2012 Foreign and Commonwealth Office Report on Human Rights and Democracy, available at: <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/zimbabwe> (accessed 8 April 2014).

18 See the Resident Coordinator's Statement on the follow up workshop to Zimbabwe's Universal Periodic Review (UPR) process, available at: <http://www.zw.one.un.org/newsroom/news/rcs-statement-follow-workshop-zimbabwe%E2%80%99s-universal-periodic-review-upr-process> (accessed 9 April 2014).

19 As above.

20 See sec 327 of the Constitution of Zimbabwe.

21 The Constitution of Zimbabwe, 2013.

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

23 The Labour Act 16 of 1985 [Chapter 28:01].

3 Constitution

3.1 Does the Constitution of Zimbabwe contain provisions that directly address disability? If so, list the provisions and explain how each provision addresses disability.

• Section 22 of the Zimbabwean Constitution of 2013

- Section 22(1) of the Constitution of Zimbabwe²⁴ states that the Zimbabwean government and its agencies must recognise the rights of persons with physical or mental disabilities, in particular their right to be treated with respect and dignity.
- Section 22(2) of the Constitution of Zimbabwe mandates the state and all its institutions to assist persons with physical or mental disabilities to achieve their full potential and to minimise the disadvantages suffered by them.²⁵
- Section 22(3) of the Constitution mandates the state to:
 - (a) Develop programmes for the welfare of persons with physical or mental disabilities.
 - (b) Consider the specific requirements of PWDs in the formulation of developmental plans.
 - (c) Encourage the use and development of forms of communication suitable for persons with physical or mental disabilities.
 - (d) Foster social organisations that are aimed at improving the quality of life for PWDs.
- Section 22(4) of the Constitution further mandates the Zimbabwean government to take the necessary measures to ensure accessibility by PWDs, of all buildings to which other members of the public have access.

• Section 83 of the Constitution²⁶

- Section 83 provides that the state must take appropriate measures, within the limits of the resources available to it, to ensure the full realisation of rights by PWDs. In particular, the section mandates the Zimbabwean government to implement measures that are designed to:
 - (a) ensure that PWDs become self-reliant.
 - (b) enable PWDs to live with their families and participate in social, creative or recreational activities.
 - (c) protect PWDs from exploitation.
 - (d) give PWDs medical, psychological and functional treatment.
 - (e) provide special educational facilities for PWDs.
 - (f) provide state-funded education for PWDs.

24 In April 2013, Zimbabwe adopted a new constitution through a referendum. The Constitution came into force on 22 August 2013.

25 It is however important to note that the state's obligation on this regard is subject to the availability of resources test.

26 This is a dedicated section on the rights of PWDs in Zimbabwe. This section clearly demonstrates that Zimbabwe now subscribes to the human rights approach with regards to disability. This is a paradigm shift from the outdated medical model of disability. The medical model of disability treats PWDs as objects of welfare whereas the human rights model treats PWDs as holders of rights who should enjoy their rights on a par with their non-impaired counterparts.

3.2 Does the Zimbabwean Constitution contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.

The Constitution of Zimbabwe contains some provisions that indirectly address disability. These include the following:

• **Section 3 (1)(e) of the Constitution**

This section recognizes the inherent dignity and worth of each human being as one of the founding principles upon which Zimbabwe is founded. This provision is of utmost importance in so far as it relates to persons with disabilities.

• **Section 3(2)(i)-(ii) of the Constitution**

Pursuant to this provision, the principles of good governance which bind the state and all its agencies of government shall, amongst other things, include the rights of PWDs.

• **Section 6(4) of the Constitution**

This section provides that the state must promote and advance the use of all languages used in Zimbabwe, including Sign language, and must create conditions for the development of those languages.

4 Legislation

4.1 Does Zimbabwe have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.

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

The Disabled Persons Act (DPA)²⁷ is the primary law that addresses disability in Zimbabwe. This Act provides for the welfare and rehabilitation of PWDs.²⁸ The Act establishes the National Disability Board and sets out the functions of this body.²⁹ The Act creates the Office of Director for Disabled Persons' Affairs whose duties include liaising with ministries and local authorities to ensure the implementation of the policies and measures formulated by the National Disability Board, and co-ordinating the activities of organisations which are involved in working with PWDs.³⁰ Section 9 of the Act endeavours to protect PWDs from non-discrimination in employment.³¹ However, this non-discrimination clause is subject to exceptions based on the nature of the job, the nature of disability the prospective employee has, and whether the employer has special facilities to accommodate the PWD.³² The Act makes it a criminal offence to deny PWDs admission into any premises to which members of the public are ordinarily admitted or to deny provision of any public service amenity.³³

27 The Disabled Persons Act 5 of 1992 [Chapter 17:01].

28 Preamble of the DPA.

29 Sec 5 of the DPA.

30 Sec 3(2) of the DPA.

31 Secs 9(4) and 10(c) make it a criminal offence to discriminate against a PWD in matters to do with employment.

32 Sec 9(2)(a)-(c) of the DPA.

33 Sec 8 of the DPA.

- **The Mental Health Act [Chapter 15:12]**

The Mental Health Act³⁴ provides for the consolidation and amendment of the law relating to the care, detention and after-care of persons with mental disabilities for the purposes of treatment.³⁵ This Act establishes the Mental Hospital Board which has the mandate of rehabilitating, treating and attending to the welfare of 'mental health patients'.³⁶ The Act stipulates the procedure for the committal of persons with mental disabilities to mental health institutions.³⁷ The committal procedure for persons with mental disabilities who face criminal charges is also provided for by the Act.³⁸ Special Boards are established by the Act. The Boards report on the condition of 'mental patients' detained in the various mental health institutions.³⁹ The Mental Health Review Tribunal is also constituted by the Act. This Board hears applications and appeals made by and on behalf of 'mental health patients' detained in mental health institutions regarding their treatment, general welfare and release.⁴⁰

- **State Services (Disability Benefits) Act [Chapter 16:05]**

The State Services (Disability Benefits) Act⁴¹ provides for monetary compensation on the death or disablement of a state official arising out and in the course of duty.⁴² This includes members of the Defence Force, the Police Force and the Prison Services. The Act further provides for compensation on the death or disablement of any person whilst assisting the mentioned forces.⁴³ The Act appears to make reference to physical disabilities only and does not mention other types of disabilities such as mental, intellectual or sensory disabilities.⁴⁴ Disablement is defined in terms of this Act as permanent injury or disfigurement.⁴⁵

4.2 Does Zimbabwe have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.

- **The Social Welfare Assistance Act [Chapter 17:06]**

The Social Welfare Assistance Act⁴⁶ provides for the granting of social welfare assistance to persons in need and their dependants.⁴⁷ PWDs in Zimbabwe have been identified as the worst affected by poverty.⁴⁸ In determining whether a person is eligible to receive social welfare assistance in terms of this Act, considerations laid out in section 6 of the Act are taken into account.⁴⁹ Persons who are 'handicapped mentally or physically' and persons who are 'destitute', 'indigent'

34 The Mental Health Act 15 of 1996 [Chapter 15:12].

35 Preamble of the Mental Health Act.

36 Secs 68(1) and 69-72 of the Mental Health Act.

37 See Part II of the Mental Health Act.

38 Part III of the Mental Health Act.

39 See Part IX of the Mental Health Act.

40 See Part X of the Mental Health Act.

41 The State Services (Disability Benefits) Act 22 of 1971 [Chapter 16:05].

42 Preamble of the State Services (Disability Benefits) Act.

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

44 E Mandipa 'A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe' (2013) 1 *African Disability Rights Yearbook* 88. Also see sec 15 and the First Schedule of the Act which only outlines the degrees of physical disablement that will be considered before compensation is payable.

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

46 The Social Welfare Assistance Act 10 of 1988 [Chapter 17:06].

47 Preamble of the Social Welfare Assistance Act.

48 National Association of Societies for the Care of the Handicapped 'Disability in Zimbabwe' available at: <http://www.nascoh.org.zw/?Pageid=82> (accessed 2 April 2014).

49 Section 6 provides that the Director of Social Welfare may grant social welfare assistance to a destitute or indigent person where he/she is satisfied that such person is over sixty years of age, is handicapped physically or mentally, suffers continuous ill-health, is a dependant of a person who is a destitute or indigent or incapable of looking after himself or herself, or otherwise has need of social welfare assistance.

and 'incapable of looking after themselves' are eligible to receive social welfare assistance.⁵⁰ The Act endeavours to assist PWDs by providing social welfare assistance in the various forms laid out in section 5 of the Act.⁵¹ The Department of Social Welfare in the Ministry of Public Service, Labour and Social Welfare has the mandate to provide this social welfare assistance. However, this government department is poorly resourced and funded. It does not have the requisite resources and capacity to alleviate the poverty of PWDs. This department has been described as 'probably the most demoralized of all government departments'.⁵²

- **The War Victims Compensation Act [Chapter 11:06]**

The War Victims Compensation Act⁵³ provides for the payment of compensation to persons who have been disabled as a result of war. Where a person has been disabled as a result of war, they are entitled to claim compensation in terms of this Act. Compensation is paid after an assessment of the degree of disablement by the Commissioner of War Victims Compensation.⁵⁴ This Act has special provisions for women with disabilities and children with disabilities in the context of disabilities caused by war.⁵⁵ The Act provides for increased monetary compensation for women with disabilities.⁵⁶ It also makes provision for educational allowance for children who acquire disabilities as a result of war.⁵⁷ This allowance is also available to children whose parents have been disabled as a result of war.⁵⁸ However, the Act appears to make reference to physical disability only.⁵⁹ It can be submitted that persons who acquire physical disabilities as a result of war are the only persons who are entitled to receive compensation under the Act.

- **The Criminal Law (Codification and Reform) Act [Chapter 9:23]**

The Criminal Law (Codification and Reform) Act⁶⁰ extends specific protection to PWDs in respect of some offences. It criminalises sexual conduct with a 'mentally incompetent' adult.⁶¹

- **The Criminal Procedure and Evidence Act [Chapter 9:07]**

The Criminal Procedure and Evidence Act⁶² provides for the trial procedures of persons with mental disabilities.⁶³ Where a magistrate or judge in the trial of a person with a mental disability has been presented with evidence to the effect that the accused person had a mental disability at the time of committing the offence, a special verdict to the effect that the person is not guilty by reason of insanity can be entered. The magistrate may order the detention of such person in a mental institution for the purposes of treatment. Where the magistrate is presented with

50 Sec 6 (1)(b) & (d) of the Social Welfare Assistance Act.

51 Sec 5 states that social welfare may be provided in the form of cash, food, clothes, pauper burials, foster care, orthopaedic and orthoptic appliances.

52 King George VI School and Center for Children with Physical Disabilities 'Disability in Zimbabwe', available at: <https://sites.google.com/a/kinggeorge6.org/kgvi/Home/the-centre/disability-in-zimbabwe> (accessed 2 April 2014).

53 The War Victims Compensation Act 22 of 1980 [Chapter 11:16].

54 Sec 12 of the War Victims Compensation Act.

55 Part VI of the War Victims Compensation Act.

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

57 Secs 25 and 26 of the War Victims Compensation Act.

58 Sec 26(1) of the War Victims Compensation Act.

59 See sec 7 and the First Schedule of the War Victims Compensation Act for the assessment of degrees of physical impairments.

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

61 Secs 60-64 of the Act.

62 The Criminal Procedure and Evidence Act 4 of 1927 [Chapter 9:27].

63 Sec 192 of the Criminal Procedure and Evidence Act provides that:
'If at any time after the commencement of any criminal trial it is alleged or appears that the accused is not of sound mind, or if on such a trial the defence is set up that the accused was not criminally responsible on the ground of mental disorder or defect for the act or omission alleged to constitute the offence with which he is charged, he shall be dealt with in the manner provided by the Mental Health Act [Chapter 15:06].'

evidence to the effect that the accused person is no longer mentally disordered, he can be released from prison.⁶⁴

5 Decisions of courts and tribunals

5.1 Have the courts (or tribunals) in Zimbabwe ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.

There is generally a dearth of jurisprudence on disability rights in the Zimbabwean legal system. Nevertheless, the milestone ruling in the case of *Simon Mvindi v The President of the Republic of Zimbabwe*⁶⁵ which addressed the right to vote of PWDs. During the 2008 elections, ballot papers were not available in accessible format to PWDs. Sections 59 and 60 of the Electoral Act⁶⁶ required polling officers on duty to assist voters in need of assistance especially PWDs to cast their ballot. In *Simon Mvindi*, the applicants were all persons with visual impairments who brought a Constitutional Court application challenging the constitutionality of sections 59 and 60 of the Electoral Act. The applicants cited a violation of the right to a secret ballot by the sections in question. The Court held that PWDs have a right to vote in secrecy like any other person. The Court further declared the sections in question null and void as they violated the applicants' right to a secret ballot. The Court also directed the government to provide voting materials in accessible format so that PWDs could fully exercise their right to vote in secrecy.⁶⁷

6 Policies and programmes

6.1 Does Zimbabwe have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.

The government has not formulated meaningful policies that directly address disability. It is important to note that civil society is far more involved in carrying out programmes and implementing policies that address the needs of PWDs. As indicated above, the DPA establishes the National Disability Board, which is tasked with developing measures and policies on the welfare of PWDs. In 2005, the National Disability Board successfully lobbied for the inclusion of disability as a prohibited ground of discrimination in the Constitution. Physical disability was then included as a prohibited ground of discrimination.⁶⁸ The National Disability Board further established the Disability Fund in 2003 and received funding for this

64 Sec 29(2)(c) Mental Health Act. The Mental Health Tribunal will then make recommendations as it sees fit as to the further detention, care, treatment and management of the accused.

65 SC 106/08 (2008).

66 The Electoral Act 25 of 2004 [Chapter 2:13].

67 Mandipa (n 44 above) 95.

68 Mandipa (n 44 above) 91.

Fund from the national reserves.⁶⁹ The Board also lobbied successfully for the inclusion of children with disabilities in the Basic Education Assistance Module (BEAM).⁷⁰

In 2004, the country's first national mental health policy was launched.⁷¹ The aim of this policy was to provide a framework for the design, monitoring and evaluation of mental health programmes. However, delays in implementation and budget constraints made the implementation of this policy difficult.⁷²

The office of the Special Advisor on Disability and Rehabilitation to the President and Cabinet was established in 2007.⁷³ This office acts as a central point within government for matters relating to disability.⁷⁴ It also coordinates the annual National Disability Expo which was launched in 2013. The purpose of this Expo is to provide a platform for government, civil society and any other relevant stakeholders involved with PWDs to interact and share their experiences. The Expo also serves to raise awareness on the rights of PWDs.⁷⁵

6.2 Does Zimbabwe have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

In 2009, the Government launched the Short-Term Emergency Recovery Program (STERP). STERP focused on stabilising the economy. This policy indirectly addressed disability as it provided financial support to revitalise the disability allowance.⁷⁶ The Medium Term Plan (MTP) was Zimbabwe's national economic and development strategy from the period 2011 to 2015.⁷⁷ This policy indirectly addressed disability as it provided for the issuing of grants to PWDs facilities. However, this national policy did not address the economic empowerment of PWDs or income generation initiatives for PWDs.⁷⁸ However, the implementation of the MTP was shortened by the demise of the government of national unity in 2013.

69 R Lang & G Charowa 'DFID scoping study: Disability issues in Zimbabwe' (July 2007) 31, available at: http://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_zimbabwereport (accessed 4 April 2014).

70 Mandipa (n 44 above) 91.

71 'Zimbabwe: Mental health policy launched' *IRIN* (undated), available at: <http://www.irinnews.org/report/52472/zimbabwe-mental-health-policy-launched> (accessed 4 February 2014).

72 Zimbabwe Association of Doctors for Human Rights 'Enjoyment of the right to the highest attainable standard of health by all Zimbabweans', available at: <http://www.zadhr.org/newsletters/77-zadhr-newsletter-volume-7-issue-3-august-2009.html?start=3> (accessed 3 April 2014).

73 Mandipa (n 44 above) 93.

74 As above.

75 'Disability expo set for next month' *The Herald* 26 June 2013, available at: <http://www.herald.co.zw/disability-expo-set-for-next-month/> (accessed 4 March 2014).

76 SA Nilsson 'Disability Rights in Zimbabwe', available at: <http://www.msc.st/docs/HRBA-Disability-Zimbabwe-revised-2011-01-30.doc> (accessed 3 April 2014).

77 As above.

78 As above.

7 Disability bodies

7.1 Other than ordinary courts or tribunals, does Zimbabwe have any official body that specifically addresses violation of the rights of people with disabilities? If so, describe the body, its functions and its powers.

The DPA establishes the National Disability Board (NDB).⁷⁹ The functions of the board are set out in section 5 of the Act. The NDB is mandated with formulating policies that are tailored to achieve equal opportunities for PWDs by ensuring that they obtain education and employment. The NDB is also tasked with ensuring that PWDs participate fully in sporting, recreational and cultural activities and that they are afforded full access to community and social services.

The Board is further empowered in terms of the DPA to issue adjustment orders.⁸⁰ Adjustment orders issued by the NDB seek to ensure that PWDs have access to mainstream public services and premises. Where the NDB considers that any public premise or service is inaccessible to PWDs, it may serve an adjustment order. The adjustment order serves as a direction to the owner of the building or the provider of the service to ensure that there is reasonable access by PWDs. The owner or provider must effect such changes so as to ensure reasonable access by PWDs at his/her own expense.⁸¹ Section 7(8) of the DPA makes it a criminal offence not to comply with an adjustment order.

The NDB is however prohibited from issuing adjustment orders on any public institution without the consent of the Minister responsible for the institution. It can be submitted that requiring ministerial consent renders adjustment of state premises and services dependant on the political willingness of the government.⁸² Though the Act empowers the NDB to issue adjustment orders and criminalises non-compliance, no adjustment orders have ever been issued in terms of this Act.⁸³ Furthermore, there have been no prosecutions in terms of this Act.⁸⁴ The NDB is also hindered in its operations by lack of resources.⁸⁵

7.2 Other than the ordinary courts or tribunals, does Zimbabwe have any official body that though not established to specifically address violation of the rights of people with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.

See 8 below.

79 Sec 4 of the DPA.

80 Sec 7 of the DPA.

81 Sec 7(2)(b) of DPA.

82 Mandipa (n 44 above) 82.

83 As above.

84 As above.

85 As above.

8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

8.1 Does Zimbabwe have a Human Rights Commission, Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of people with disabilities? If the answer is yes, also indicate whether the Human Rights Commission, the Ombudsman or Public Protector of Zimbabwe has ever addressed issues relating to the rights of persons with disabilities.

In Zimbabwe, the Zimbabwe Human Rights Commission is established in terms of section 242 of the Constitution. Its functions include promoting awareness and respect for human rights and freedoms at all levels of society; promoting the protection, development and attainment of human rights and freedoms; monitoring, assessing and ensuring observance of human rights and freedoms; and receiving and considering complaints from the public and taking action with regard to the complaints it receives.⁸⁶

The Commission is also mandated to protect the public against abuse of power and maladministration by the state and public institutions and by officers of public institutions. In addition, the Commission recommends to Parliament effective measures to promote human rights and freedoms. The Commission may also direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of such investigations.⁸⁷

Furthermore, the Commission may also investigate complaints or allegations of human rights violations on its own initiative.⁸⁸ As such, the Commission is empowered to visit and inspect prisons, places of detention, refugee camps and related facilities for the purposes of identifying and redressing cases of human rights violations in such places. With regard to disability rights, the Commission is empowered to visit and inspect places where 'mentally disordered' or 'intellectually handicapped' persons are detained.⁸⁹

Although the constitutional mandate of the Commission appears to be well articulated on paper, serious questions remain with regard to the Commission's ability to take measures against the executive arm of government, especially human rights violations by the police. It appears that the Commission is a weak body that cannot effectively address human rights violations in Zimbabwe. The recommendations or reports by the Commission with regard to human rights violations have no legal force, although the responsible authorities are expected to act on them. Furthermore, from its inception in 2009, the Commission is financially starved and therefore cannot adequately or effectively execute its mandate.⁹⁰

86 Sec 243(a)-(d) of the Constitution.

87 Sec 243(e), (h) & (i) of the Constitution.

88 Sec 243(f) of the Constitution.

89 Sec 243(k)(ii) of the Constitution.

90 'Zimbabwe Human Rights Commission pleads for funding' *SW Radio Africa* 23 May 2013, available at: <http://www.swradioafrica.com/2013/05/23/zimbabwe-human-rights-commission-pleads-for-funding/> (accessed 10 April 2014).

9 Disabled peoples organisations (DPOs) and other civil society organisations

9.1 Does Zimbabwe have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

- Albino Charity Organisation of Zimbabwe: advocates for the rights and welfare of persons with albinism in Zimbabwe.
- Association of the Deaf (ASSOD): representative organisation for persons with hearing and speech functional disabilities.
- Council for the Blind: plays an active role with regards to the rights of persons with visual impairments, especially policy proposals to advance the rights of persons with visual impairments.
- Danhiko Project: an educational and vocational training institution for persons with disabilities in Zimbabwe.
- Deaf Zimbabwe Trust: advocates for the rights of persons with speech-functional and hearing impairments, including recording of television programmes on the rights of 'deaf' people.
- Disabled Women Support Organisation: advocates for the rights of women with disabilities in Zimbabwe, especially the right to economic empowerment.
- Henry Murray School for the Deaf: is an educational institution for children with speech-functional and hearing impairments and also advocates for the rights of persons with speech-functional and hearing impairments.
- Jairos Jiri Association: a long established organisation that represents persons with disabilities in Zimbabwe.
- Margareta Hugo School and Workshops for the Blind: an educational and vocational training centre for persons with visual impairments in Zimbabwe. It also advocates for the rights of persons with disabilities in general.
- Midlands State University Legal Aid Clinic: specialises in strategic litigation on behalf of persons with disabilities in Zimbabwe.
- National Association for the Care of the Handicapped: is an umbrella organisation for organisations of and for persons with disabilities in Zimbabwe.
- Zimbabwe Association of the Visually Handicapped: advocates for the rights of persons with visual impairments in Zimbabwe.
- Zimbabwe Downs Syndrome Association: a representative organisation for persons with intellectual disabilities in Zimbabwe.
- Zimbabwe National Association for Mental Health: advocates for the rights of persons with mental disabilities in Zimbabwe.
- Zimbabwe National League of the Blind: champions the rights of persons with visual impairments, including litigation for the rights of persons with disabilities.
- Zimbabwe Parents of Handicapped Children Association: a representative organisation for parents of children with disabilities and advocates for the rights of children with disabilities in Zimbabwe.
- Zimcare Trust: an educational and vocational training centre for persons with intellectual disabilities.

- Zimbabwe Women with Disabilities in Development: caters for the needs and concerns of women with disabilities in Zimbabwe with regards to national development initiatives.⁹¹

9.2 In the countries in Zimbabwe's region, are DPOs organised/coordinated at a national and/or regional level?

The National Association for the Care of the Handicapped (NASCOH)⁹² is an umbrella organisation that deals with disability in Zimbabwe. Its members include most if not all the organisations listed in 9.1 above. Other member organisations include Abilities, the Disability Agenda Forum, the Disability Resource Centre, the Disabled Child Network, the Disabled Helping Hand Association, the Disablement Association of Zimbabwe and the Zimbabwe Visually Impaired Teachers Trade Union. The objectives of NASCOH include: initiating, promoting and developing the coordination and participation of and between member organisations in matters concerning the care of people with disabilities; periodically reviewing the facilities available for the rehabilitation of people with disabilities in order to promote further developments; and advising the government on any existing or future organisation concerned with the care of people with disabilities and to disseminate information to any interested body.

9.3 If Zimbabwe has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

Given the fact that Zimbabwe recently ratified the CRPD, it is not yet clear how the involvement of DPOs in the implementation of the CRPD will be achieved.

10 Government departments

10.1 Does Zimbabwe have a government department/departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

- **The Department of Social Welfare**

The Department is responsible for disability issues. It is tasked with the provision of disability grants to PWDs. The Department however is not human-rights oriented in its work but approaches disability as a welfare issue. In addition, the Department 'is probably the most impoverished and demoralized of all government departments'.⁹³ Due to a lack of financial resources, the Department is not in a position to provide meaningful grants. At present, only a few PWDs are receiving the disability grants in the amount of US\$17-00 per month.⁹⁴ It is submitted that the size of the grant is very small and insignificant.

91 The list of DPOs and other civil organisations that deal with disability in Zimbabwe is available at: <http://www.nascoh.org.zw/members> (accessed 24 June 2014).

92 NASCOH is a non-governmental organisation operating in Zimbabwe. It is the umbrella body for voluntary organisations for and of persons with disabilities in Zimbabwe.

93 King George VI School and Centre for Children with Physical Disabilities (n 52 above).

94 'Government to pay disability grants' *The Star* 17 May 2013.

- **The National Disability Board**

As indicated above, the Board is established by the DPA.⁹⁵ Its functions are to adopt policies to ensure access to education and employment by PWDs.⁹⁶ It also ensures that PWDs participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services. It is the Board that issues the above discussed adjustment orders in the event that there are inaccessible public premises and services.⁹⁷

However, the Board is largely invisible due to a lack of resources in that it operates under the financially ailing Department of Social Welfare. The Board has not had an office to operate from since 1992 and there are no meetings by the members due to lack of resources.⁹⁸

11 Main human rights concerns of people with disabilities in Zimbabwe

11.1 Contemporary challenges of persons with disabilities in Zimbabwe (for example, in some parts of Africa ritual killing of certain classes of PWDs, such as people with albinism, occurs).

- **Negative social attitudes**

Disability in Zimbabwe is surrounded by myths resulting in stigmatisation of PWDs.⁹⁹ Pejorative terms like 'idiots', 'imbeciles', 'mentally retarded' or 'mentally handicapped' are still used in Zimbabwe to refer to persons with mental and intellectual disability.¹⁰⁰ Disability is linked to witchcraft and sometimes the birth of a child with a disability may result in divorce of the mother. There is also a common misconception in Zimbabwe that PWDs are passive and economically unproductive, and therefore are a burden upon the country.¹⁰¹ The negative social attitudes thus negatively affect the inclusion and participation of PWDs as equal members of society. Resultantly, PWDs tend to suffer more human rights violations compared to their non-disabled counterparts.¹⁰²

95 Sec 4 of the DPA.

96 Sec 5 of the DPA.

97 As above.

98 Interview with R Mudarikwa, deputy chairperson of the National Disability Board, 7 March 2014.

99 Choruma (n 4 above) 10.

100 See the Criminal Procedure and Evidence Act (n 62 above) and the Criminal Law (Codification and Reform) Act (n 60) in which pejorative terms like the 'mentally challenged' and 'imbecile' are still used.

101 Lang & Charowa (n 69 above).

102 As above.

11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:

• Access and accommodation

The legal framework that addresses the right of access to physical, social communication, information and other services is weak. As indicated above, the National Disability Board cannot issue and serve adjustment orders to state hospitals, clinics, nursing homes, schools or educational training centres without the consent of the relevant Minister of the institution concerned.¹⁰³ The requirement for ministerial consent has resulted in many government workplaces and state recreational facilities not being accessible to PWDs¹⁰⁴ because the required ministerial consent is very difficult to secure. There are no accessibility standards and regulations for public premises and services in Zimbabwe. As a result, roads, bus stations, communication services, transport services and recreational services are not accessible to PWDs in Zimbabwe.¹⁰⁵

• Access to education

It has been estimated that one in three children with disabilities is not attending school and that 75 per cent of children with disabilities never complete primary school.¹⁰⁶ These are damning reports for a country striving to achieve the millennium development goal of universal primary education. It has also been indicated that 32 per cent of people with disabilities in Zimbabwe have had no schooling.¹⁰⁷ This is particularly disturbing if one considers the central role that education plays in fostering the enjoyment of other rights and promoting the development of children, communities and nations. To compound the situation of learners with disabilities in Zimbabwe, section 83 of the Constitution reinforces the idea of special schools for PWDs and does not do enough to embrace inclusive education.¹⁰⁸ Without educational opportunities, children with disabilities will not have the chance to develop to their full potential and will face tremendous barriers to full social and economic participation in society. Without the requisite education, a vicious cycle of poverty and disability is therefore created and compounded for children with disabilities in Zimbabwe. The law does not address the right to education for children with disabilities in Zimbabwe.¹⁰⁹

• Access to employment

Given the fact that Zimbabwe is currently facing unprecedented economic challenges, PWDs are excluded from employment.¹¹⁰ The law is inadequate with regards to the right to employment for PWDs. The laws that address disability in Zimbabwe have a lot of shortcomings with regard to the realisation of the right to employment of PWDs. The laws still embrace an outdated welfaristic approach or medical approach to disability.¹¹¹

103 See sec 7(7) of the DPA.

104 AH Eide et al 'Living conditions among people with activity limitations in Zimbabwe: A representative regional survey', available at: <http://www.safod.org/images/lczimbabwe.pdf> (accessed 4 March 2014).

105 Mandipa (n 44 above) 82.

106 'The plight of deaf and dumb children in education' *Manica Post* 20 December 2011.

107 UNICEF *A study of children and adolescents in Zimbabwe* (2012) 74.

108 Mandipa (n 44 above) 80.

109 See for example the Education Act 5 of 1987 [Chapter 25:04] which does not embody any provision addressing the education of learners with disabilities in Zimbabwe.

110 Zimbabwe Human Rights Report 'Discrimination based on race, sex, religion, disability, language, or social status', available at: <http://www.ncbuy.com/reference/country/humanrights.html?code=zi&sec=5> (accessed 7 June 2014).

111 Choruma (n 4 above) 10.

To start with, the Constitution does not confer any right to employment for PWDs nor does it confer any state obligation to safeguard and promote such right.¹¹² The DPA does not help either. Apart from merely prohibiting discrimination against PWDs in employment,¹¹³ the Act does not confer any right of substance in relation to employment of PWDs. The Act is also not a human rights document and embraces the medical approach to disability as opposed to a robust human rights-approach.¹¹⁴ On its part, the Labour Act [Chapter 28:01] does not help either. In a similar fashion to the DPA, the Labour Act merely protects employees against discrimination on the basis of disability but does not give an obligation upon the state to promote, protect and fulfil the right to employment.¹¹⁵ The government has also done little to ensure the effective implementation of the laws. It is not surprising to note that, over and above the high rates of unemployment in Zimbabwe, PWDs are the worst affected.¹¹⁶

- **Access to health**

The Constitution subjects the realisation of the right to health for PWDs to the availability of state resources.¹¹⁷ Given that the right to health is most important to PWDs, the law in Zimbabwe is inadequate in this regard. The Constitution does not underscore the state's obligation to ensure progressive realisation of the right.¹¹⁸ PWDs, especially those in rural areas, are the most affected with regard to inaccessible health care services. As such, there is no legal mechanism to compel government to ensure full and effective access to health care services by PWDs in Zimbabwe.

11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Zimbabwe?

- **Political Participation**

Prior to 2008, PWDs who needed assistance in casting ballots during an election were assisted by police officers, Zimbabwe Electoral Commission members and political party representatives. However, the position was challenged in *Simon Mvindi*.¹¹⁹ After making a finding that a myriad of factors like lack of accessible polling stations, lack of voting materials in accessible formats, lack of accessible campaign literature and inaccessible transportation to and from polling stations renders the right to vote by PWDs hollow, the Supreme Court (sitting as a Constitutional Court) found that PWDs have a right to vote in secret like any other person. Political parties and the government, through the electoral authority, were ordered to consider developing political communications and voting materials in sign language and ballot papers in large print or Braille.

Despite the judgment, political participation by PWDs in Zimbabwe is still weak due to inaccessible polling stations especially in rural areas, limited number of PWD candidates during elections¹²⁰ and lack of accessible voting materials.

Basically, the major weakness in Zimbabwe is that laws make the realisation of socio-economic and cultural rights for PWDs contingent upon resources that are

112 Sec 65 of the new Constitution provides for labour rights but does not confer any right to employment on PWDs or even for persons without disabilities.

113 Sec 9.

114 Mandipa (n 44 above) 80.

115 Sec 5 of the Labour Act.

116 Eide et al (n 104 above).

117 Section 83 of the Constitution.

118 Mandipa (n 44 above) 79.

119 n 65 above.

120 As an example, sec 120(1)(d) of the Constitution provides for only two senators to represent PWDs in Parliament.

available to the state and do not underscore the state's duty to ensure progressive realisation of such rights.

11.4 Specific categories experiencing particular issues or vulnerabilities:

- **Women with disabilities**

Although women with disabilities (WWDs) generally face the same spectrum of human rights abuses that the able-bodied women face, their abuses are magnified due to severe dependence and social isolation. They suffer double discrimination.¹²¹ In Zimbabwe, the situation of WWDs is particularly precarious. They are subjected to harassment, sexual abuse and exploitation. In addition, Zimbabwe being a highly patriarchal society, WWDs are less likely to benefit from any developmental initiatives that are available as compared to men with disabilities.

- **Children with disabilities**

On their part, children with disabilities are doubly marginalised, firstly as children and secondly as PWDs. Children with disabilities are particularly vulnerable. There is need to ensure that their rights and welfare are protected in Zimbabwe. A common scenario in Zimbabwe is that children with disabilities are less likely to complete primary school education compared to their non-disabled counterparts. This results in spill over effects in that due to a lack of education and requisite skills, it is difficult if not impossible for children with disabilities to secure any form of employment. At the end, a vicious cycle of poverty and disability is created and compounded.

- **Elderly people with disabilities**

Not only are women and children with disabilities in need of concerted attention but also elderly people with disabilities. Needs of elderly people with disabilities may largely differ from those of women and children with disabilities. This means that the equal treatment of all PWDs without taking into account the specific individual circumstances may also lead to injustice.

12 Future perspective

12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in your country at the moment?

Firstly, Zimbabwe needs to urgently domesticate the CRPD for the treaty to have local applicability. Zimbabwe is a dual legal system and all international treaties ratified have to be domesticated.¹²²

Secondly, there is need to align the disability laws with the Constitution and more importantly the CRPD. This is again an urgent exercise which should be implemented without any hurdles. It is a cause of concern that laws which address disability in Zimbabwe, with the exception of the Constitution, predate the CRPD and are framed along the outdated medical model of disability which treats PWDs

121 SA Djoyou Kanga 'The rights of women with disabilities in Africa: Does the Protocol on the Rights of Women in Africa offer any hope' (2011) Barbara Faye Waxman Fiduccia Papers on Women and Girls with Disabilities, Center for Women Policy Studies 3.

122 Sec 34 of the Constitution of Zimbabwe, 2013.

as sick people in need of medical treatment and charity. As an example, the DPAs is not a human rights document in that it does not confer any rights on PWDs or confer any obligations on the state.

Other laws that are in need of the alignment process include the Children's Act [Chapter 5:06], the Mental Health Act [Chapter 15:12], the Social Welfare Act [Chapter 17:06], the State Service (Disability Benefits) Act [Chapter 16:05], the War Victims Compensation Act [Chapter 11:16] and the Criminal Law (Codification and Reform) Act [Chapter 9:23]. The bulk of these laws still use pejorative terms that disempower rather than empower PWDs. Terms like 'imbecile,' 'mentally disordered,' 'intellectually handicapped' and 'mental patients' demean, degrade, belittle, stigmatise and devalue PWDs.

Thirdly, it is an opportunity for Zimbabwe to adopt a National Policy on Disability. A national policy is very important with regard to implementation of disability laws. Such a policy should also consider groups of PWDs who face double discrimination for example women and children with disabilities, and the elderly with disabilities.

Fourthly, there is need to take affirmative action programmes in favour of PWDs. Section 56(6) of the Constitution provides for affirmative action. Affirmative action simply means targeted steps for the advancement of people disadvantaged by historical practices or injustices. It is common cause that PWDs are a group of people who have suffered historical marginalisation due to discriminatory practices and tendencies.

A genuinely equal society is one that has a positive approach to accommodating human difference. Formal equality entrenches pre-existing patterns of social disadvantage in a number of fundamental ways and fails to 'reasonably accommodate' the difference of disability. Formal equality therefore creates illusory benefits for PWDs. Thus, there should be affirmative action policies in Zimbabwe laying a firm foundation for the increased participation of PWDs in critical sectors like education, employment, health and politics. Zimbabwe therefore has to take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

Fifthly, there is need to increase the number of senators representing PWDs from the current two senators. Such a move will assist in guaranteeing effective parliamentary representation of PWDs in Zimbabwe.

Sixthly, there is need for increased litigious and non-litigious efforts for the development of domestic jurisprudence on disability. Courts of law play a very crucial role with regard to the realisation of the rights of PWDs. More referrals are therefore needed on disability issues to the courts of law so as to provide an impetus for the development of domestic jurisprudence on disability.

In addition to litigation, the Constitution and other laws can also be enforced through non-litigious means such as citizens lobbying and pressuring the government to give effect to their rights. Commissions, for example, the above-mentioned Zimbabwe Human Rights Commission can be approached whenever there is violation of the rights of PWDs.

In conclusion, disability needs to be mainstreamed in Zimbabwe. It is only through disability mainstreaming that PWDs can be accorded their full rights and fundamental freedoms.

12.2 What legal reforms are being raised? Which legal reforms would you like to see in your country? Why?

See 12.1.