

Research article

# THE TENACITY OF TRADITION: DISABILITY AND THE NEW CONSTITUTION FOR ZIMBABWE

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## ABSTRACT

Charity and welfare have always been the convenient ways of handling disability ever since the end of the eugenics error. Persons with disabilities have been viewed as weak, inferior and in need of charity, institutional care and protection. Zimbabwe is no exception to the perception. This paper seeks to give an analysis of the 2013 new constitution for Zimbabwe. It acknowledges that disability is given a better recognition under the new constitution than in the previous one. The paper however contends that the recurrent thrust of charity, even in the new constitution can best be explained by the cultural traditions of Zimbabweans whose perception of disability is charitable. The definitions of disability remain ambiguous in the new constitution. In addition, only disability is empowered subject to the availability of resources. Unlike other social groups such as women, youths and the veterans of the liberation struggle, the political participation of persons with disabilities remains tokenistic. The paper finally cites best practices from Kenya and Uganda.

**Keywords:** disability, social disability,

## INTRODUCTION AND BACKGROUND

The struggle for independence and national sovereignty in Zimbabwe was a collective responsibility. The quest for freedom became the bedrock upon which Zimbabwe's nationhood is founded. The bloody and protracted struggle produced victims that sustained permanent disabilities. The advent of national independence represented a new social economic and political order. An order that is full of liberty and development. The rapid gains realized soon after independence only lasted for two decades after which the country found itself in a serious economic quagmire resulting from fierce political contestation. This political contestation reached its peak in 2008 when Zimbabwe's inflation rose to unprecedented levels. Such a state of affairs had come on the heels of an inconclusive election that resulted in the need to form a government of national unity mediated by the Southern African Development Community. On 13 February 2009, the government of national unity was formed, much to the delight of all Zimbabweans who had survived a decade of poverty, economic decay and political disturbances that claimed many lives over the years. The immediate task of the government of national unity, formed by the three main political parties that had battled it out among themselves in the 2008 elections was to come up with a new constitution. In this light, a national consensus was sought via a nationwide consultative process. This process was meant to collect views from the generality of the populace regarding the nature and content of the constitution. What resulted from that four year process was a draft constitution published on 31 January 2013. The draft constitution was then put to a national referendum on 16 March 2013 where it was widely adopted by the generality of Zimbabweans.

The current new constitution for Zimbabwe therefore represents, to many citizens a moment of achievement and utter sacrifice. A moment where all social groupings look back and see the result of their sweat. In the middle of such social euphoria, persons with disabilities have incidentally been left at the cross-roads. Lingered between the joyous fray of the nation's achievement and the sorrow of being left out and cordoned off from the rest of society. This paper is a product of a compendious analysis of the new constitution that sailed through a referendum on the 16<sup>th</sup> of March 2013. The paper critically examines the new constitution especially those sections dealing with disability and other issues. The paper however contends that the national consensus has it that the Lancaster House constitution fell far below the expectations due to its failure to guarantee basic rights and freedoms.

The paper admits that disability is better off under the new constitution than the Lancaster house constitution that has been used to rule Zimbabwe since 1980. The paper seeks to advance the argument that the Zimbabwean culture and tradition still treats persons with disabilities as good for nothing short of charity. As a result, their role in the governance of the country remains peripheral even in terms of the new constitution. Their rights unlike those of women, youths, and veterans of the war of liberation are only accessible subject to the availability of resources.

## CONCEPTUAL FRAMEWORK

According to Baynton (2001) Disability has functioned historically to justify inequality for disabled people themselves, but it has also done so for women and minority groups. That is, not only has it been considered justifiable to treat disabled people unequally, but the *concept* of disability has been used to justify discrimination against other groups by attributing disability to them. Following Baynton's line of argument, none in Zimbabwean society other than persons with disabilities themselves is in dispute regarding the practice of according persons with disabilities a second class status. Even women, though still rigging out of the cocoon of social marginalization firmly believe that they deserve better treatment on the basis that they are not disabled. A closer look at the feminist movement in the country would reveal that women advance the argument that their continued social exclusion has no justification given the fact that they are able-bodied and can therefore perform most of what has previously been perceived as masculine roles. The national and international media therefore continues to propagate and glorify the astute abilities and accomplishments of women in the political, military, academic and cultural vocations. The whole argument for their quest for social inclusion is that they have no disability.

This brings us to the most critical area of attitudes towards persons with disabilities. It is here contended that disability is an abominable label whose bearer attracts social stigma. This is put in another way by Nario-Redmond (2010) who observes that disability stigma typically comes in two varieties: the more visible abominations of the body' and the 'blemishes of character. Both attitude and stigma constructs invoke an evaluative component suggesting that disability prejudice often involves an affective or emotional response such as fear, anxiety, and pity – all of which can lead to avoidant behaviors (Keck, 1969 quoted in Nario-Redmond 2010). As such, prejudice is typically conceptualized as a reaction to a particular stigmatizing trait like blindness or obesity, which is then used to explain discrimination, aversive reactions, and negative evaluations (Nario-Redmond, 2010). Although it is not the intention of this paper to trace the history of stigma as it applies to persons with disabilities, it is worth noting that Zimbabwean society is not the pioneer regarding treating persons with disabilities as second class citizens. Even from a religious basis, disability has always been viewed as an abominable sin against the almighty (Thomas, 1982). It is therefore no wonder that the miracles of Jesus Christ found expression through the healing of the sick, restoration of sight to the blind, making the lame walk again etc.

On the same point, Stiker (1999) undertakes an analysis which shows that there are two ways of positioning disability in the bible. The Old Testament is coherent with the view at the time that disability was linked to sin and as such was in of itself a measure of being evil and therefore ungodly. Castigating religious institutions, Barnes (1997) came to the conclusion that God himself stands guilty of discrimination after telling Moses: "none of your descendants throughout their generations shall draw near, a blind or lame man, or he that hath a mutilated face or a limb too long, or man that has an injured foot or an injured hand, or a hunchback or dwarf or that hath a blemish in his eye, or be with scurvy, or scabbed" Leviticus 21: 16-20. Following such a divine proclamation, ancient societies viewed disability as a curse, something mystical and not deserving respect. In this regard, Weeber (2004) provides interesting quotations regarding such beliefs: "Disability and disabled people were also seen to cause many social evils such as poverty, sloth, vice and crime" (Bryan, 1996 quoted in Weeber, 2004: 5). "A leading moralist of the late 19<sup>th</sup> century stated, "the deaf-mute is by nature fickle and improvident, subject to idleness and drunkenness and debauchery, easily duped, and readily corrupted" (Longmore, 1993: 5 quoted in Weeber, 2004).

Opponents of political and social equality for women cited their supposed physical, intellectual, and psychological flaws, deficits, and deviations from the male norm. These flaws namely: irrationality, excessive emotionality, physical weakness are in essence mental, emotional, and physical disabilities, although they are rarely discussed or examined as such (Baynton, 2001:33 emphasis by the author). Following the same mind set, Finkelstein (1980) observes that disability is experienced primarily in the sphere of social relationships between people in which disabled people are already dependent and segregated. In a more positive light, charitable organisations such as churches and other religious institutions were viewed as providing services at time when no one else cared or were not able to participate (Edmonds, 2005).

According to Edmonds (2005) the charity model was the principal paradigm up to World War II and is the philanthropic and charitable approach to disability that provided medical treatment, community aid, and safekeeping for those described as being "less fortunate" and "defective." This model portrays disability as a personal tragedy with people with disabilities being objects of pity and referred to as "crippled," "crazy" or "idiot." A common fund-raising strategy for disability projects was to portray people with disabilities as those who needed "help," "care," and "protection" from people without disability. This entrenched society's view of people with disabilities as dependent (Edmonds, 2005: 18). The charity model has been used to keep away persons with disabilities from the political, economic and other crucial social vocations and instead confining them to institutions such as churches and segregated homes. The charity model therefore strips a person with a disability off his right to demand equality. The charity model in turn produced an element of uselessness in the psych of persons with disabilities themselves who came to understand their livelihood as consisting of begging and providing free entertainment through music especially to those that would have come to worship the almighty in return for gifts (Mtetwa, 2010). As Edmonds (2005:18) puts it , for people with disabilities, like other members of society, the need for charitable support should be the exception, not the rule. This model of disability resonates with the fundamental attribution error by attributing to the person what may be more accurately created and constrained by the social situation.

The social model stands in stark contrast to more individual or medical model explanations that pathologize physical, sensory, and psychological differences, and locate the problems of disability inside the minds and bodies of ‘deviant’ individuals (Oliver, 1996). According to the social model of disability, the persistent problems confronting people who differ from the norm are not found in their biologies but stem directly from environments, institutional policies, and practices that systematically exclude certain people from participating fully in society. As such, society disables people who may incidentally experience physical and mental conditions that are either value neutral or interact with socially constructed barriers (Oliver, 1996). Utilising the social model of disability, the current paper puts forth an argument that the way disability has been dealt with in Zimbabwe’s new charter must be interpreted within the realm of a society that does not value the political and economic contribution such a social group can play in society.

It is further contended that in line with Baynton’s theorizing of the legitimization of exclusion, unlike women and veterans of the war of liberation, persons with disabilities do not wield political power. As a result, the three political parties that crafted the national charter felt no threat in affording such a social group crumbs of rights and pseudo political participation.

## **DEFINING DISABILITY**

“The way we talk about the world and the way we experience it are inextricably linked – the names we give to things shapes our experience of them and our experience of things in the world influences the names we give to them” (Oliver, 1994: 7). According to Edmonds (2005: 7) terminology is an important and often sensitive issue in the field of disability and development. Accordingly, knowing the definition of and using the right terms are very important. The point of departure is that the new constitution failed to come up with a concise definition of disability. Instead, three definitions or simply descriptors are carelessly thrown around. These are persons with disabilities, persons with physical and mental disabilities and all persons with disabilities. Such ambiguities point to the attention given to disability in Zimbabwe’s political framework. In disability studies, the definition given to disability constitute a fundamental parameter around which disability should be measured. This paper contends that the way disability has been conceptualized makes it difficult for the nation to have a yardstick for measuring disability.

In the light of the foregoing, section (22) sub-section (1) of the new constitution stipulates that “the state and all institutions and agencies of government at every level must recognize the rights of persons with physical and mental disabilities, in particular their right to be treated with respect and dignity”. This sounds like a noble piece of law. The problem with such a definition however is it is extremely circumscribed as it leaves out persons with other types of disability such as sensory disability including visual impairment and deafness. After this the state endeavors to consider the specific requirement of persons with all forms of disabilities as one of the priorities in development plans. Implicit in such a proviso is that persons with all forms of disabilities carry a different meaning from persons with physical and mental disabilities. To add to the ambiguity, item (4) of section 22 talks of yet another group of people known as persons with disabilities. This leaves the nation with three definitions of disability. Given such a state of affairs where one section of the supreme law of the land fails to concisely articulate what disability actually means, future problems are bound regarding the interpretation of the same. As Armer (2004) would argue, the first thing you need to do when talking about disability today is to clarify your terms. This paper observes that section 23 of the Lancaster House constitution talks of physical disability. In this light, the current constitution under scrutiny, though being far from the expected is a step forward in the disability rights movement.

In the midst of such a definitional fiasco, it is here contended that the most progressive move could have been to adopt the definition enshrined in the United Nations Convention on the Rights of Persons with Disabilities. Such a definition could as well help eliminate the ambiguities and inconsistencies surrounding the three definitions that form part of the new constitution. The recommended definition goes thus: “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (Convention on the Rights of Persons with Disabilities Article 1 UN 2006). Given the rigor with which the constitution making process was undertaken, it is unthinkable to suppose that such a definition could have escaped the minds of the drafters. Rather, it is probable that since Zimbabwe has not yet ratified the United Nations Convention on the Rights of Persons with

Disabilities, adopting such a definition could have implied the state's concurrence with both the spirit and substance of the convention.

Held in suspense between buying into the definition given by the Convention and adopting a Lancaster House Constitution definition, the state suffered from indecision regarding how to treat disability in the new law. This paper however contends that instead of giving conflicting definitions of disability, the state could have simply resorted to the traditional definition of disability as given under the disabled Persons Act. According to the Disabled Persons Act (chapter 17.01): "a disabled person means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings, or fields of employment that are open to other members of society". This definition, though anchored upon the medical model of disability is precise, unambiguous and all inclusive.

### **THE ENTRENCHMENT OF CHARITY**

This paper contends that the major limitation of charity lies in its lack of sustainability. Viewing disability from lenses of charity, section 22(2) of the new constitution stipulates that "the state and all institutions and agencies of government at every level must, within the limits of the resources available to them, assist persons with physical or mental disability to achieve their full potential and to minimize the disadvantages suffered by them. Pursuant to this charitable viewpoint, the state endeavors to "develop programmes for the welfare of persons with physical or mental disabilities, especially work programmes consistent with their capabilities and acceptable to them or their legal representatives.

With respect to the general limitation provision, Liebenberg (2009) is skeptical about the realization of such rights. She points out that In considering the manner and form of the recognition of socio-economic rights in the Constitution, careful consideration must be given to the consequences of either excluding this group of rights altogether, or entrenching them in the weak form of judicially unenforceable directive principles of state policy. The entrenchment of charity in dealing with disability in the new constitution simply means that such a social group is not expected to benefit from economic empowerment endeavours but from charity. According to Coleridge et al (2010:28), the charitable approach turns persons with disabilities into objects who only receive and who do not participate in the processes which shape their lives. It sees them as individuals, with individual problems. It is here observed that, although the new constitution has had a better coverage of disability issues and concerns than the previous one that came out as a negotiated settlement leading to the country's independence in 1980, disability is still viewed from the lenses of charity rather than right. As a consequence, all rights purported to have been extended to persons with disabilities have been carefully limited to the availability of resources. This simply exonerates the state from its obligation to fulfilling such rights.

### **ECONOMIC EMPOWERMENT**

This paper advances the contention that ownership of assets is a core value of being human and the cornerstone for building economic well-being. Ownership of property and other economic assets enhances the sense of dignity and humanity that each and every citizen deserves. Ownership of property is a clear sign of power. For this reason, the new constitution contains important provisions for the empowerment of Zimbabweans. This paper takes empowerment to mean a state to which people participate effectively in their society. Empowerment in this context refers to what individuals and groups do to pursue their individual and group and collective interests and the institutional context that makes that possible. In this light, the constitution makes a commitment to provide an enabling environment including an elaborate institutional framework within which citizens; especially the marginalized groups are empowered. For persons with disabilities however, empowerment is made subject to the availability of resources.

In terms of section (83) of the new constitution: “the state must take appropriate measures, within the limits of resources available to it, to ensure that persons with disabilities realize their full mental and physical potential, including measures to enable them to become self reliant”. The effect of these general limitation provisions would be that persons who experience socio-economic disadvantage and vulnerability have much weaker mechanisms at their disposal to defend their interests and to hold the State accountable for meeting their basic needs. If this is juxtaposed with the provisions of section 23(2) of the same constitution, glaring intentions of discrimination are evident. According to section 23(2) “the state must take reasonable measures, including legislative measures for the welfare and economic empowerment of veterans of the liberation struggle”. Implicit in such a proviso is that, unlike persons with disabilities, veterans of the war of liberation must be assisted by the state in all respects. This binds the state to look for resources to provide both economic empowerment and welfare to such a social group. Implicitly, the new constitution is specifically designed principally to serve the interests of certain powerful groups in society. This suggests both a failure to acknowledge discrimination against persons with disabilities and a low priority attached to notions of equal opportunity. As Edmonds (2005) observes, the quality of life and participation of people with disabilities improve with proper knowledge and skills on how to live independently. This can be done by increasing their technical skills through education and professional development, and functional independence

The continued relegation of disability issues to charity rather than economic empowerment is likely to constrict their economic opportunities further. As a result, such shrinkage in equal opportunity has always been blamed by many disability academics and activists as the chief cause of disability rather than impairment. According to May and Rake, (2000) disability -related impairment is a social construction rather than an immutable, objective reality. Impairment operates as a set of beliefs supported by theories and practices within society so that deviations from normative expectations in physical and biological makeup and function are defined as limiting and excluding. Following such a mind set, the constitution makes further commitments to empower other social groups that Zimbabwean society deems more vulnerable. In this regard, section 14 sub-section (2) points out that “at all times, the state and all institutions and agencies of government at every level must ensure that appropriate and adequate measures are undertaken to create employment for all Zimbabweans, especially women and youths”. Implicit in such a proviso, is that unlike women and youths, the empowerment of persons with disabilities is conditional upon the availability of resources. It is here argued that the plight of youths and women is far much better than that of persons with disabilities. As has been alluded to under the conceptual framework, persons with disabilities are neither men nor women. They constitute their own separate and distinct social class. A class characterized by social discrimination, political segregation as well as economic deprivation. The fact that women and youths, in their better social classes have been chosen for affirmative action with respect to empowerment is a clear indicator of their numbers and perceived political influence. Disability is still viewed as a subject of charity and not empowerment. Contrary to conventional wisdom, this paper observes that Persons with disabilities have not benefited from charity, because charity is not part of the development process. It is not part of national Socio-economic development. Disabled people want to be treated as normal citizens, with rights. They want to be treated equally and participate as equal Citizens in their own communities. This paper contends that welfare and citizenship are different concepts wielding different meanings. Relegating persons with disabilities to charity and welfare instead of economic and political empowerment therefore amounts to according them a second class status in society.

*The relationships between poverty or deprivation (economic disability), weakness= or vulnerability (social disability) and medicalised disability results in simultaneous deprivation (Lang, 2001: 302). This paper observes that such societal beliefs and attitudes only function to keep persons with disability in poverty. Thomas (2005) observes that disabled people are typically among the very poorest, they experience poverty more intensely and have fewer opportunities to escape poverty than non-disabled people.*

In the final analysis, it is here contended that the vulnerability of persons with disabilities requires that they depend less on the state. This is so given the failure of the state to provide for such a social group due to the collapse of social services as a result of economic challenges. Institutional frameworks, protected by a constitution must be extended to such a social group.

## POLITICAL PARTICIPATION

Rarely have oppressed groups denied that disability is an adequate justification for social and political inequality (Baynton, 2001). In terms of the data gathered during the outreach programmes upon which the new constitution is based, persons with disabilities unequivocally asserted their right to political representation at both legislative and executive level. The National Statistical Report (version 2 of 2012:168) makes it clear that during the outreach process, persons with disabilities demanded representation at all government institutions and protection by the state from all forms of abuse. “the respondents further expressed that there should be freedom of speech, choice, equal treatment, access to information, accessible amenities, self-representation in parliament, economic empowerment, ministerial representation and rehabilitation” (The National Statistical Report version 2 of 2012:168).

Contrary to the views gathered during the outreach programme, the founding values and principles contained under section (3) of the new constitution remain silent when it comes to the need to uphold the dignity and worth of persons with disability. Instead, gender equality has remained a salient principle upon which the constitution is founded. According to section 3 disabilities is not part of the diverse identities of the Zimbabwean society. Gender, race and religion however have been accorded this status. In line with the national values and principles as espoused by the new constitution are matters related to political participation and empowerment.

Pursuant to this, section 83 of the new constitution stipulates that: ” the state must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realize their full mental and physical potential, including measures:

- (a) To enable them to become self reliant:
- (b) To enable them to live with their families and participate in social, creative or recreational activities:
- (c) To protect them from all forms of exploitation and abuse:
- (d) To give them access to medical, psychological and functional treatment:
- (e) To provide special facilities for their education:
- (f) To provide state funded education and training where they need it.

These seemingly well intentioned rights of persons with disabilities are curtailed by the proviso “within the limits of resources available to it”. Juxtaposing this with the rights of the veterans of the liberation struggle, (section 84), the issue of political and social milage becomes manifest. The political activities of the war veterans, especially from the year 2000 when the political climate became heated with the advent of the strongest opposition Movement for Democratic Change (MDC) party have become common cause. Their unwavering support and due allegiance to the Zimbabwe African National Union Patriotic Front (ZANU-PF) has earned them a niche within the nation’s body politique. This political relevance rather than their perceived vulnerability has earned them a permanent seat within the new constitution.

As a reward for their political activities, the veterans of the liberation war are “entitled” to due recognition for their contribution to the liberation of Zimbabwe, and to suitable welfare such as pensions and access to basic health care. Further to that, an act of parliament must confer on veterans of the liberation struggle the entitlements due to them under sub section (1). Such a state of affairs is in consonance with Baynton (2001) observation that while persons

with disabilities can be considered one of the minority groups historically assigned inferior status and subjected to discrimination disability has functioned for all such groups as a sign of and justification for inferiority (Baynton2001). On a positive note, sign language has been recognized as one of the national languages. However, due to a flawed definition of disability, section (6) failed to recognize Braille as a language. Failure to do so is an indication that the results of consultative processes were thrown by the way side.

## **THE RIGHT TO SELF REPRESENTATION**

According to the National Statistical Report Version 2 (2012: 97). The disabled persons must have a right to ministerial representation. As the paper has contended, persons with disabilities are better-off under this new constitution rather than the Lancaster House constitution however, the paper marvels at the extent to which the tenacity of tradition persists. The political participation of persons with disability is operationalised through the allocation of two senatorial seats in terms of section 120 of the draft constitution. It is however not clear as to how the figure two was reached given that the statistics from the World Health Organisation reveal that persons with disabilities constitutes twenty percent of the total population. As compared to women, persons with disabilities are subjected to tokenistic participation in Zimbabwe's political process. Section 124 of the constitution gives women sixty seats in the most powerful house of assembly.

The house of assembly has come to be the most powerful part of the parliament of Zimbabwe. The fact that persons with disabilities have conveniently been deprived of any form of representation within the house of assembly is a clear sign that Zimbabwe's cultural tradition regarding such a social group still reigns supreme among policy makers. It is worth of note that persons with disabilities are neither men nor women. They occupy a separate social class characterized by social discrimination and social deprivation. As a social class, persons with disabilities have found themselves once more ostracized within the new constitution to such an extent that they have only been given two seats in a less powerful senate. To worsen the situation, it is not clear as to how these two senators shall be appointed.

On the other hand, the relegation of the urgent need for self representation on the part of persons with disabilities is evidenced in section (298) that refers to provincial councils. Of prime importance in this section is the paragraph (b) of sub-section (3) which goes thus: in which male and female candidates are listed alternately, every list being headed by a female candidate". Pursuant to the constitutional supremacy of women as well as the ascription of inferior status to persons with disabilities, section (299) of the constitution elevates elected women to positions of members of metropolitan councils of major cities. Implicit in such a state of affairs is that the felt needs of persons with disabilities which usually relate to lack of housing, inaccessible buildings, harassment by municipal police and other challenges related to the urban life are not going to see the light of day. This paper contends that such a state of affairs simply represents the perpetuation of charity and a tokenistic approach to participation. The current paper argues that charity has not really solved the problems of persons with disabilities. Instead, what it has done is that it has entrenched the negative attitudes and has worsened their position.

## **THE NEED FOR A DISABILITY COMMISSION**

Despite the fact that the views gathered from the outreach teams contained in the National Statistical Report did recommend a disability commission, the national consensus embodied in the able-bodied majority elected to set aside the recommendation preferring to sacrifice the political, economic and social interest of this socially marginalized group. In terms of section 245 of the draft constitution, there shall be a gender commission specializing in the equalization of opportunities between men and women. This idea comes on the hills of the understanding that ordinarily women were socially disadvantaged in a patriarchal society. Pursuant to the same, the Gender Commission must comprise of an equal number of men and women. Section 246 charges the Gender omission to



investigate possible violations of rights relating to gender. Furthermore, the commission is charged with the responsibility to conduct research into issues relating to gender and social justice and to recommend changes to laws and practices which lead to discrimination based on gender. To recommend affirmative action to bring gender parity.

According to the Drafting Instruments report of (October 2012), the need for a disability commission was unequivocally cited as a prerequisite for the attainment of equality in Zimbabwean society. Leaving such an issue in the actual constitution might in some way suggest that the majoritarian views weighed against the minority interests. Pursuant to this, the constitution deliberately left the right to self representation contrary to such demands as contained in the drafting instruments (see page 22 of the drafting instruments document). This paper observes that like gender and race, disability is a cross cutting social imperator. In this respect, the national commissions must be disability friendly. As Baynton (2001: 33) bluntly put it; “ disability figured prominently not just in arguments *for* the inequality of women and minorities but also in arguments *against* those inequalities”. This paper argues that although gender issues are a central feature of the national and international social and political contestation, women, though a marginalized group are better placed in society than the disabled. Conferring such a status to gender issues while doing nothing about the disabled is an outright perpetuation of the status quo.

## **BEST PRACTICES**

This paper endeavours to bring forth some best practices from other countries, especially African countries that share the same political and social circumstances with Zimbabwe. In the interest of both the space and scope of the current paper, Kenya and Uganda shall be singled out as some of the progressive states in the drive to adopt a human rights approach to disability. First and foremost, Kenya is such a country that went through a political history like that of Zimbabwe. After the 2007 disputed elections that claimed the lives of more than a thousand lives, Kenya formed the government of national unity under the mediation of the former United Nations secretary general Mr. Kofi Anan. On the other hand, Uganda is widely perceived as a country not democratic enough by international standards. Despite all these factors, these countries have to a reasonable degree been able to progressively move from a charitable towards a rights-based approach to disability. The constitution of Kenya, in addition to recognizing sign language also places Braille as a language. In terms of section (7)(3)(b) the state must promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

Furthermore, the constitution of Kenya pays due recognition of the need for persons with disabilities to actively participate in the nation’s political processes. To this end, the principles of the electoral system established under section (81) recognize the inalienable right of persons with disabilities to actively decide the fate of their country. In keeping with this commitment, the constitution of Kenya provides in terms of section (54)(2) that the State should ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

In terms of Section (81) (c) fair representation of persons with disabilities constitutes a fundamental pillar of Kenya’s electoral principles. In the same light, section (82)( c) stipulates that chief among the characteristic features of a free and fair election is its ability to take into account the special needs of:

(i) Persons with disabilities; and

(ii) Other persons or groups with special needs. Such provisions are in most crucial respects signal a departure from a charitable view of disability. In Uganda, President Museveni’s government has assured for disabled people, 5 seats in parliament, one ministerial post and 6,000 local council positions from village to district level. All are elected into their positions by the disabled community. The disabled politicians at all levels have played a significant role in influencing all other public policies, including ensuring that Uganda’s Education for All legislation stipulates

that for the four free places provided by the state for each family, priority must be given to any disabled children (Flood, 2005).

## CONCLUSION

To conclude, this paper has put forth an argument that although tremendous strides have been made towards the inclusion of persons with disabilities in the new constitution, Zimbabwe still looks at disability from lenses of charity. This is likely to make the realization of rights bestowed upon persons with disabilities difficult to realise. The paper feels that if the decision is ultimately made to incorporate socio-economic rights in the form of directive principles of state policy which cannot be directly invoked before the courts, the paper advocates for the inclusion of provisions which enable the directives to be more than simply window-dressing.

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