Disability in Zimbabwe under the New Constitution: Demands and Gains of People with Disabilities

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Abstract
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Keywords
gains, people, demands, disabilities, constitution:, under, zimbabwe, isability

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People with disabilities looked at the constitution making process as their biggest opportunity to have their dreams realised. They had numerous expectations including increased opportunities in health, education, social protection, habitation, participation and employment. Although they were excluded from the first stages of the process, they were later actively involved. The outcome of their involvement has been several provisions in the constitution addressing disability concerns. The extent to which these provisions are adequate or inadequate has been a subject of contention. This article looks at the provisions in the final version of the constitution that received presidential assent on 22 May 2013 vis-a-vis the expectations and demands of people with disabilities and concludes that the new constitution, unlike the previous one, takes a more inclusive approach which is the one preferred by the people living with disabilities, their organisations as well as other people, organisations and interest groups interested in the cause of people with disabilities.

Key words: constitution making, disability, Zimbabwe, participation, exclusion, inclusion

Introduction

Persons with disabilities are often concerned with their welfare and how they can fairly compete with the so-called able bodied people in society. This is a genuine concern, given that the playing field is not level. It is not level because of limitations placed by impairments, attitudes, practices and beliefs. Because of these limitations, measures are required to level the playing field. One way to achieve the levelling is to make constitutional provisions. In 2008, Zimbabwe created a Government of National Unity (GNU) following disputed elections. Part of the mandate of the GNU was to lead Zimbabweans in crafting a home-grown constitution to replace the 1979 one that was crafted in Lancaster, United Kingdom at the end of colonial rule in Zimbabwe (Government of Zimbabwe, 2008). Indeed this assignment was accomplished with the final draft constitution receiving presidential assent on 22 May 2013. The document has been received with mixed reactions from several groups, including people with disabilities. This article, based on documentary analysis, looks at the provisions relating to the needs of people with disabilities in the new constitution vis-a-vis their expectations and demands with a view to showing that the situation of the people living with disabilities in Zimbabwe is likely to improve judging by the levelling of the playing field as reflected in the new constitution.

Background

The International Convention on the Rights of People with Disabilities (ICRPD) uses a social model of disability, and sees disability as long-term physical, mental, intellectual or sensory impairments which in interaction
with various barriers may hinder the full and effective participation of the affected persons in society on an equal basis with others. The view by ICRPD places emphasis on the role society plays in making impaired individuals disabled. This focus has also influenced the way Zimbabwe conceptualises disability. One of Zimbabwe's pieces of legislation, the Disabled Persons Act Chapter 17:01 of 1992, defines a disabled person as:

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

The views by ICRPD and the Government of Zimbabwe indicate that disabilities appear in various forms. They may be physical, cognitive, mental, neurological, sensory, emotional or developmental; at times a person may have multiple disabilities. There is often a misunderstanding of three words relating to disability, namely disability, impairment and handicap. The confusion surrounding these words is often seen in their use, verbally or in written form. At times they are used interchangeably, to mean the same thing. To clarify what these three words mean, it is crucial to describe the disability process. The process starts with impairment, followed by handicap and then disability.

At impairment level, a person loses a body part. Thus, loss of a physical body part becomes impairment. For example, in an accident, a limb may be lost. This results in an impaired person. Alternatively, a brain cell responsible for memory may be damaged. The loss of that cell becomes impairment. Further in the process, a person whose limb is lost may be unable to work or walk. In the other case, a person whose brain cell responsible for memory is injured may also lose the memory function. Thus, loss of the function of walking, working or memorizing becomes a handicap. If a handicapped person fails to get a wheelchair that can compensate loss of body part and loss of function, then the person becomes disabled. Or if a person with a wheelchair is unable to access a building because it has stairs then that person becomes disabled.

Disability statistics are a source of contention. The contention often emanates from what constitutes disability. Globally, it is estimated that over one billion people live with some form of disability (WHO, 2011). According to WHO, 15% of any given population has various forms of disability translating to over 1 billion people with disabilities in the world, of whom 2.4% experience significant difficulties in functioning. Over 75% of people with disabilities are in developing countries. In Zimbabwe, the statistics are equally contentious (Choruma, 2007 and Mweta, 2012). On the one hand, WHO estimates show that there are about 1.8 million people with disabilities in Zimbabwe, which is about 15% of the total population (WHO, 2011) while the National Association of Societies for the Care of the Handicapped (NASCOH) argues that disability prevalence in Zimbabwe is over 10% of the population (NASCOH, 2013). Yet on the other hand, the government of Zimbabwe estimates that only about 130 000 or 1% of the people live with disabilities in Zimbabwe (Mweta, 2011).

In 2008 Zimbabwe's unity government started a process of rewriting Zimbabwe's constitution. The process started with the formation of a ministry responsible for constitutional affairs, the Ministry of
Constitutional and Parliamentary Affairs that was headed by then Honourable Advocate Erick Matinenga. A committee of parliament, the Constitutional Parliamentary Select Committee (COPAC), was established to spearhead the constitution making process. According to Manyeruke and Hamauswa (2013), COPAC then called for a first all stakeholders conference where stakeholder consultations started. Further consultations were carried out in many communities and with special interest groups. A draft was produced which was further scrutinised through consultations. It was improved and wider consultations were carried culminating in a second all stakeholders’ conference. It was improved again and a draft was presented to the public in a referendum. The referendum approved the draft which then became law on Wednesday 22 May 2013 after President Mugabe signed it into law. Some of the new constitutional provisions became operational immediately. Such provisions include Chapter 4 on Declaration of Rights, Chapter 7 on Elections, Chapter 8 on jurisdiction and powers of the Constitutional Court and Chapter 9 on principles relating to public administration and leaderships. The rest of the new constitution became law on 22 August 2013 after President Mugabe was declared duly elected, sworn in and assumed office.

Theoretical Framework

Exclusion can be seen as a process by which individuals or entire communities of people are systematically blocked from rights, opportunities and resources available to others. This results in multiple deprivations and inequities, forms of marginalisation which, as conceptualised by interactionists like Erving Goffman (quoted in Burchadt, Grand and Piachaud, 2002), can result from an undesired differntness or an association with a particular characteristic, race, religion or belief. Such undesired differntness may include a disability. Further to this, Burchadt et al (ibid) argued that exclusion only manifests if an individual is not participating in production, social interaction, consumption and political engagement for reasons beyond their control yet they are able and willing to participate. These views are supported by Room (1995) who equates social exclusion with inadequate social participation, lack of social integration, lack of social rights and lack of power.

Various models have been formulated in an effort to put disability issues in a framework. Four significant ones, the charity, social, economic and political models, shall be briefly discussed. The charity model is premised on the paradigm that people with disabilities deserve pity, help and charity (Oliver, 1996). It emanates from the Bible, where people are taught to take care of the disabled. This model has been used by churches, government and non-governmental organisations in assisting people with disabilities. Whilst it addresses immediate problems, it does not provide long term solutions. The social model argues that disability is society’s responsibility. It asserts that disability is a product of society and not a problem of an individual with a disability (Mpetwa, 2011). Therefore, society has a responsibility to prevent, rehabilitate and accommodate its members who are differently abled (Jairos Jiri Association, 2013). The economic model supports mainstreaming people with disabilities into the economy. It argues that lack of participation in the economy makes people with disabilities dependent on the able bodied. The human rights or
political model stresses participation in decision making and respect for human rights. It is premised on the fact that neither charity nor re-

socialisation is adequate to address issues affecting people with disabilities (Mtewa, 2012). It argues for political emancipation, contending that without power people with disabilities will remain an appendage of those in power. As such, people with disabilities should find meaningful participation in decision making organs of society. Thus the political model seeks to empower and involve people with disabilities in the formulation and implementation of social and economic development policies.

Advocacy work by people with disabilities supported by their vanguard organisations during the constitution making exercise can be taken primarily as indicative of the political model of disability that sought to ensure inclusion. The process of constitution making also relates to all the economic and social models of disability since the constitution affects every aspect of life.

**Challenges of people with disabilities**

The National Association of Societies for the Care of the Handicapped (NASCOH, 2011) reported that people with disabilities are still being viewed from a medical and welfare framework which views them as ill, different from their non-disabled peers, and in need of care. This observation is supported by WHO (2011) which states that this often leads to neglect. Another study by NASCOH showed that only two percent of people with disabilities were employed in the public sector, and less than seven percent of people with disabilities in Zimbabwe were in formal employment. The same study showed that eight percent were self-

employed, 29 percent were involved in farming activities for sustenance whilst nine percent were studying in colleges and universities. The study revealed that the high rate of unemployment among people with disabilities in Zimbabwe is mainly due to lack of qualifications and to discrimination from employers. Those who attend school often do not receive informed career guidance, and are not aware of appropriate career opportunities.

Save the Children (2004) reported that in Zimbabwe women with disabilities experience severe discrimination, that sexual abuse of children with disabilities was increasing, and that 87.4 percent of girls with disabilities were sexually abused in their communities, usually by people they knew. Approximately 48 percent of these girls are deaf and mentally challenged, 15.7 percent had hearing impairments and 25.3 percent had visible physical disabilities (Save the Children, 2004). Of those who had been sexually abused, 52.4 percent tested positive for HIV. The report also noted that access to counselling, testing and treatment is severely limited for this group of people while health personnel often shunned them (as they do all people with disabilities) and there is no information on HIV and AIDS in Braille. These findings are corroborated by NCDPZ (2011) and NASCOH (2013) who said disabled girls in the country are more vulnerable to sexual abuse.

In relation to children, a report released by the United Nations Children’s Fund (UNICEF, 2013) paints a grim situation. According to the report, as many as 600,000 children are living with some form of disability in Zimbabwe and many of them fail to realise their full potential as they struggle to access basic rights. The report notes that efforts by Zimbabwe
soon after independence to improve the lives of people with disabilities were eroded by subsequent serious economic challenges. NASCOH (2011) concurred, saying that 52 percent of disabled children in Zimbabwe have no access to education, adding that ablution facilities in rural areas are not accessible to the handicapped.

Zimbabwe’s record of 94 per cent literacy among its school-going children has ranked among the best on the continent, but a sizeable proportion of children with disabilities do not attend school at all. According to the Norwegian SINTEF (2001) in its Disability Living Conditions Survey carried out in 2001, 28 per cent of children with disabilities never attended school, compared with only 10 per cent of non-disabled children. 34 per cent of girls with disability and 22 per cent of boys never attend school compared with only 12 and 8 per cent of the non-disabled respectively. Children with hearing, visual and intellectual impairments are more likely never to attend school compared to children with physical impairments. More recent figures show that 33 per cent of disabled children have no access to any form of primary, secondary or vocational education.

**Demands of people with disabilities in the constitution**

Given the grim picture above, different organisations representing people with disabilities brought to the constitution making process their own positions regarding what the constitution should include to make it disability friendly. Some of these organisations are the NASCOH, NCDPZ, UNICEF, SINTEF, SAFOD, Jairus Jiri Association and Save the Children. A synthesis of these demands has been made and is summarised in Table 1 below.

<table>
<thead>
<tr>
<th>Demand</th>
<th>Description</th>
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<tbody>
<tr>
<td>Assistive devices</td>
<td>Wheelchairs, hearing aids, Braille etc</td>
</tr>
<tr>
<td>Medical rehabilitation</td>
<td>Availability of specialists, medicines and payment of medical bills</td>
</tr>
<tr>
<td>Social Assistance</td>
<td>A monthly allowance to cater for the needs of those without income</td>
</tr>
<tr>
<td>Income and social security</td>
<td>Provision of jobs and safety nets in the event of loss of income</td>
</tr>
<tr>
<td>Basic needs</td>
<td>Health, education, shelter, food etc</td>
</tr>
<tr>
<td>Participation</td>
<td>Involvement in all processes affecting their lives</td>
</tr>
<tr>
<td>Caregiver support</td>
<td>Supporting caregivers who otherwise lose productive time providing care to a disabled person</td>
</tr>
<tr>
<td>Acceptance and recognition</td>
<td>To be treated with respect and dignity, without stigma and discrimination</td>
</tr>
<tr>
<td>Rights</td>
<td>A specific section in the constitution that guarantees rights to people with disabilities</td>
</tr>
<tr>
<td>Emanciating definitions</td>
<td>A definition of disability that covers all forms of disability and not only mental and physical</td>
</tr>
<tr>
<td>Mainstreaming disability</td>
<td>Every government department to respond to needs of people with disabilities</td>
</tr>
<tr>
<td>Ending abuse and discrimination</td>
<td>Addressing the abuse of people with disabilities</td>
</tr>
<tr>
<td>Women with disabilities</td>
<td>Addressing the double burden of being disabled women</td>
</tr>
<tr>
<td>Government funding for disability issues</td>
<td>Availability of financial support to organisations for disabled persons and their programmes</td>
</tr>
<tr>
<td>Accessibility</td>
<td>To buildings and facilities</td>
</tr>
<tr>
<td>Representation in parliament and local authorities</td>
<td>Quota system</td>
</tr>
<tr>
<td>Languages</td>
<td>Sign language and other disability friendly communication to be protected</td>
</tr>
</tbody>
</table>

Table 1 indicates that representatives of people with disabilities had various concerns which they expected to be addressed in the constitution. Most of these concerns stress inclusion, independence and human rights. Such an approach emanates from the fact that the Lancaster House Constitution which was in operation before the new constitution used a welfare approach to disability and people with disabilities felt a
developmental approach was necessary. In summary, although each particular representative had a specific area of focus, all their concerns were centred on addressing barriers that exclude people with disabilities from mainstream society.

Methodology
The research used qualitative research methods for gathering and analysing data. In order to gain an understanding of needs of people with disabilities, a documentary search was done. The search covered submissions made to COPAC by disability groups as well as published and non-published documents like books, journal articles, newspaper articles and reports. Content analysis was then used to analyse all the data collected.

Results and Discussion
The requirement on mainstreaming disability issues was addressed by the new constitution. This specific requirement was well pronounced in most position papers by disability organisations. The demand of including people with disabilities in every aspect of society was met in section 22 which says the state shall consider the specific requirements of persons with all forms of disability as one of the priorities in development plans. Because disability is an evolving, highly contentious, knotty and a cross-cutting concept it cannot be adequately addressed by a single ministry (Mandipa, 2013). The new Constitution thus mandates all governmental ministries and departments to recognise the rights of persons with disabilities and to ensure the implementation of such rights.

Mainstreaming disability also entails covering all forms of disability. The old constitution, even in its amended forms, singled out physical challenges and mental illness, leaving out other forms of disability. Under the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which is the major law that addresses disability at international level, mental, intellectual and sensory disabilities are the other types of disability that are recognised and which the 2005 constitutional amendment apparently excluded. By talking about ‘disability’ in broad terms without singling out a few specific forms, it is assumed that the new constitution acknowledges all forms of disability.

Persons with disabilities demanded support in terms of finance to initiate income generating projects. They argued that such finance was limited and where it was available, they were not prioritised. The new constitution provides in section 22 that the state should 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. However, the new constitution clearly states that these provisions will be available only when the state is able to do so. It says 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 disabilities to achieve their full potential and to minimise the disadvantages suffered by them” (Government of Zimbabwe, 2013). The conditionality of resource availability gives the state an excuse in the event of failure. Further to this, by providing for the development of work programmes for persons with
physical or mental disabilities, it can be submitted that the constitution apparently excludes persons with intellectual and sensory disabilities and disfigurement.

The new constitution says it shall foster social organisations working to improve the quality of life of persons with all forms of disability. This responds to the demand to have support for disability organisations and programmes in Zimbabwe. However, the level of support and the type of disability organisations to be supported has not been specified. The new constitution, in most cases, simply states that governmental institutions and agencies have to render assistance to persons with physical and mental disabilities, without indicating the nature of assistance to be provided.

Disability activists argued that most buildings are not accessible by people with disabilities. To that end, they demanded that the constitution guarantees that every building in Zimbabwe shall be made disability-friendly. The constitution responded by stating that the state must take appropriate measures to ensure that buildings and amenities to which the public has access are accessible to persons with disabilities. Accessibility is quite important because in its absence, people with disabilities will not be able to work and visit offices located in such buildings.

Government policy on official languages of the country has always excluded a huge portion of the disabled population, those with speech and hearing disabilities. This has now been rectified through the new constitution which includes sign language as one of the official languages of Zimbabwe. In addition, this constitution mandates the development of communication suitable for persons with physical or mental disabilities. By making provisions for the recognition of sign language as an official language, the new constitution will go a long way in addressing the communication barriers persons with speech and hearing disabilities have been facing in Zimbabwe (Mandipa, 2013; NASCOH, 2013).

Discrimination against any person with any form of disability is now unconstitutional; this will go a long way in ensuring that persons with disabilities are fully and effectively included in all the sectors of Zimbabwe, the critical ones being education, health, employment and political participation. The new constitution now provides for founding principles and values upon which Zimbabwe is built. These include fundamental human rights and freedoms, the recognition of the inherent dignity and worth of each human being, recognition of equality of all human beings, gender equality and more importantly, the recognition of the rights of persons with disabilities. Thus, the inclusion of the recognition of the rights of persons with disabilities among the founding values and principles is a highly commendable move.

People with disabilities demanded the recognition of their rights. For example, SAFOD (2013) and UNICEF (2013) demanded respect for the evolving capacities of children with disabilities and their right to develop their skills and to preserve their identities. The new constitution further contains a dedicated section on the rights of persons with disabilities in section 83. Under the section, the state has an obligation to take appropriate measures, within the limit of resources available, to enable persons with disabilities to become self-reliant, to live with their families and participate in social or recreational activities, to protect them
from all forms of exploitation and abuse, to give them access to medical, psychological or functional treatment, to provide special facilities for their education and to provide state-funded education and training.

Mangezvo (2013) argues that women form a marginalised group that deserves attention in constitution making. To this end, women with disabilities form a special sector within the feminist movement. They therefore deserve extra attention to ensure that their needs are catered for. Women with disabilities demanded recognition and equality in the constitution (Southern Africa Federation of the Disabled (SAFOD, 2013).

Section 155 on elections states that the state is now under a constitutional obligation to ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to do so and the state must facilitate voting by persons with disabilities. SAFOD (SAFOD, 2013) noted that unlike in the past elections in which 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 rendered the right to vote by persons with disabilities hollow, now the constitution explicitly provides a right to vote by persons with disabilities.

Other than voting, political representation of persons with disabilities has been clarified and concretised by the constitution which provides that the parliamentary senate shall consist of two representatives for persons with disabilities. The constitution is silent on whether or not the two senate representatives of people with disabilities have to be persons with disabilities or not, which leaves room for non-disabled senators. Representation at local government levels has not been specified.

Conclusion and Recommendations

Authors of this paper conclude that the demands of people with disabilities were, by and large, met in the new constitution. The active participation of people with disabilities in the process of constitution making, through advocacy, submission of position papers and consultations significantly contributed to this success. Shortcomings that remain could have been a result of the negotiation process. A more inclusive approach has now been adopted as opposed to charity models utilised by the previous constitution. If the Government commits itself to implementing and honouring provisions of the new constitution, inclusion can be realised. However, the constitution does not provide guarantees that the government will meet these demands practically. In view of these conclusions, the researchers proffer the following recommendations:

- Monitoring and evaluation mechanism must be put in place by the government to ensure that the constitutional provisions are actually implemented.
- All sections of the constitution dealing with disability must use the all-embracing definition of disability.
- Representatives of persons with disabilities in the senate or councils must be people living with disabilities.
- It must be mandatory for each government department to have a disability policy.
- Funding disability research and innovation by the Research Council of Zimbabwe, universities and other research institutes.
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