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A Critical Evaluation into the Zimbabwean Disabled Persons' Act 1992 in Addressing the Plight of the Disabled Persons, Its Strengths and Weaknesses

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Abstract:

The paper gives a critical assessment into the Disabled Persons' Act of Zimbabwe as a measure towards facilitating removal of institutional, attitudinal and environmental barriers. It is an eye opener into how able bodied persons perceive the plight of the disable, providing an assessment of the methods of intervention and their relevance to the disabled persons. Therefore, the paper sorts to outline how the Disabled Persons Act has strived to deal with attitudinal, institutional and environmental barriers, outlining on its strengths and weaknesses. The act also provided insights of possible changes as outlined in the text.

Keywords: Assessment, Disabled Persons, barriers

1. Introduction

The Disabled Persons Act 1992, depicts 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/her 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. However, this definition does not comply with the World health organization's definition. The definition given above internalizes disability, it portrays disability as a factor that is permanent and puts the blame of disability on the person with the disability. The definition complies with the medical model that sees disability as diagnosable problem that need treatment and care of the able bodied. The definition links disability to its cause. Therefore, the act becomes inadequate in addressing disability as a social construct as it is directed towards disability from a medical and recovery mode of understanding.

2. Attitudinal Barriers

Furthermore, the language that was used to address issues of disability is discriminatory. It states the form of disability first before recognizing the person with the disability therefore creating prejudice and indirect discriminatory tendencies as stated by Westbrook (1993). The term disabled persons were denied in the championing of rights in the United Kingdom, activists believe that attitudes arise from the way we interact and formulate communications. According to Finkelstein (1980) the proposition of the people, first language comes with dignity and recognition of persons not disability. There is need for the Disabled Persons Act (1992) to recognize the impact of it adapting the medical language that has been made compulsory with people socialized to accept. This form of discrimination has been internalized and people do not recognize the sublime messages they send through use of medical model generated terminology. The language has a capitalistic foundation and as such champions the interests of those investing in disability rather than the disabled persons themselves.

History stipulates that Zimbabwe attained independence in 1980. Up until today the constitution remains silent about disability issues. There are no disabled persons in parliament and it does not make sense how people can talk about development and disability without the disabled persons present. Hence during the period 1990 to 1995 the president made an effort to appoint a woman with disability in parliament to represent disability issues, however after her tenure nothing of that nature ever existed as stipulated by Kubatana (2013). More so Kubatana (2013) further alludes that in 1994, another Disability Act was passed, later revised in 1996 with the same goal of providing welfare and rehabilitation for persons with disabilities. Like the Disability Persons Act 1992, the Disabled Persons Act 1996 stipulated that there was going to establish an office of persons with disabilities that would be public and a part of the public service. However, eleven years later, or rather right now, such an office is nonexistent in Zimbabwe. This proves that issues of disability are only considered seriously on paper but when it comes to implementation, there is no one motivated to do the job, there is need for the

disabled persons themselves to be allocated a permanent position as directors and facilitate change for their cause. The position can be made on term of office basis but strictly meant for persons with disabilities to take the role of the office.

Culture and disability have not been appropriately addressed in the Disabled Persons Act 1992. That is, the act did not consider the impact of cultural variations and values in dealing with disability issues. There is no section of the act that addressed how cultures should be made to accept persons with disabilities as part of diversity in human physiology and anatomy. The act paid more attention on the built environment, forgetting that culture forms the basis of all mental frameworks that shape attitudes, perception, beliefs, values and even thought processes. That is the Act should have incorporated principals from the World Programme of Action Concerning Disabled Persons (1982) which states that countries or rather nations should ensure that disabled persons will have the opportunity to utilize their creativity, not only for their benefit but rather for the benefit of their respective communities to which they belong. Thus cultures should be made to recognize the implications that emanate from inequalities that are generated on the grounds of disability. This is further supported by the United Nations standard rules (1993), rule 10, which stipulates that nations should ensure that persons with disabilities are integrated into and should participate in cultural activities on an equal basis without exceptions.

Kubatana (2013) observes that the period 2000 to 2009 in Zimbabwe there was poverty and many other unwelcoming conditions. Able-bodied persons and disabled persons both suffered in the streets and at their homes. However, for most persons with disabilities suffered starvation more than the able-bodied persons. International Non-Governmental Organizations (NGOs) that provided food aid to Zimbabweans changed goal posts in as far as qualification to receive food allocation was concerned. These changes left many disabled persons failing to access food aid. However, nobody showed concern, and still the Disabled Persons Act had nothing to shelter disabled persons with against political violence as it only stipulates regulations with an assumption that everyday remains civil. Kubatana (2013) further articulates that unfortunately there has never been an attempt, even by civic organizations to document statistics of disabled persons who have been directly affected by the political violence. The reason is not difficult to find, it is because disability issues have never been taken serious, especially in developing world. On the other hand, many innocent people became disabled as a result of political violence but how many were affected remains a major question.

The act was developed without considering the importance of information sharing amongst the disabled persons. In addressing the issues of information sharing, section five on the functions of the board was interested in providing, so far as possible, all institutions, associations and organizations concerned with the welfare and rehabilitation of disabled persons, including institutions, associations and organizations controlled and managed by the State and local authorities, with access to available information and technical assistance. Furthermore, the same section five on subsection (d) highlighted that the board may, on behalf of the State, engage or make other arrangements with any other person to carry out research for, or supply information or make submissions to, the Board on any matter relating to the welfare and rehabilitation of disabled persons. Hence a critical evaluation of the evidence given above acquired from the Disabled Persons Act 1992 indicates that, all information sharing and resource allocation is directed towards persons who are believed to help disabled persons. No section has challenged the needs of the disabled persons to be included in the research, information sharing and learning of new technological equipments to enhance the life skills. Therefore, the Act remains lagging behind and perceiving disabled persons as in need of charity in some way although the manifestation is indirect as evidenced by Barton and Oliver (1997) and further supported by Choruma (2006). They believed that no development could be made for the disabled without the disabled themselves making decisions.

More so another area that the act took for granted is disability and religion. Religion like culture forms the existential or operational ideology that people of a particular generation operate within. Religion provides the guidelines of public and personal contact and as such has a large bearing on human behavior and related consequences according to Miller (2005). Religion maintains and shapes the status quo and as such if not fully intervened and readdressed on the ways in which it influences people on disability issues, it poses a great threat on how communities and their residents will keep perceiving persons with disabilities. Therefore, the Disabled Persons Act 1992 should respect the propositions of the World Programme of Action Concerning Disabled Persons (1982) which asserts that measures of various natures should be taken into consideration to ensure that disabled persons have the opportunity to fully benefit from religious activities despite the belief of the diverse denominations.

The Disabled Persons Act 1992 did not cater for disabled women and children. These people suffer dual marginalization as disabled persons and being women and children. The act mainly concentrated or rather operated addressing issues that target people in general. Although the overall goal of the Act was to eradicate problems faced by every disabled person, there are particular problems pertinent to women and children and need attention on their own and not on a rather global scale for example poverty affects women and children more than it does with man. These specific problems mark the difference in interventional styles that the Disabled Persons Act should have been considerate of.

In appointing the director of the board, the Disabled Persons Act 1992, does not stipulates on what grounds one should be appointed to take this key role in championing the rights of the disabled persons. Therefore, recommendations have been made and they state that not only do disabled persons be the main agenda, they should be at the core of fighting for their independence and as such the Act should add that the most preferable director to take the position should be a person with disability. Section four should also be amended with the twenty members called for allocated key roles that will help in shaping the course of how the board will deal away with problems faced by the disabled persons. Each form of disability should be represented for and not excluding parents of children with disabilities for there are the ones who play a vital role in seeing to the day to day wellbeing of their children. Such an establishment will help the board in getting broader perspectives on disability plights, needs, innovations and restructuring of legislation to assist the accommodation into the universal designing of everything. According to McGuire et al (2005), such a move can enhance and facilitate independent living of the persons with disabilities.

The criterion used in selection of persons with disabilities liable for assistance has prejudice and stereotypical resting in it. It assumes that some people with disabilities are useless than others according to Finkelstein (1980)'s perspective on disability issues. More so research by Kubatana (2013) on how people with disabilities were qualified for assistance. The results indicated that they were required to produce a doctor's report that he or she was a disabled person unable to work for him or herself. Such evidence clearly showed that some disabled persons are indirectly regarded worthless for life because they will not get employed on the grounds of unsuitability for employment. Therefore, some of the conditions pioneered by the Disabled Persons Act (1992) harness more prejudice that assist in the ways to which they refer to disability issues.

Disabled women should be included in women, gender and developmental issues. According to the UN convention on the rights of people with disabilities, state parties should understand and recognize that women and girls with disabilities are subject to dual discrimination, and so the parties involved should take measures to ensure the full and equal enjoyment by disabled persons of all human rights and fundamental freedoms. Therefore, instead of creating broader unspecified pacts in dealing with gender and disability, Driedger (1998) states that in addressing the specific needs of boys, girls and women can facilitate in enhancing the lives of these respected persons with disabilities. Therefore, social inclusion does not only come with community participation, the involved parties should feel secure and should also understand the various reasons why systems and institutions operate the way they do. Why in swimming pools they are not allowed depending on the degree of their impairment, why they are no swimming pools designed to suit such disability and who assumes responsibility over them in times of their recreation as highlighted in section seven of the Disabled Persons Act (1992). Therefore, establishing such an understanding with full representation of women and children by women and children can help the board to get the clear vision of their mission.

3. Institutional Barriers

Several Acts that have been passed sabotage redesigning of infrastructure through disallowing the Board of directors to pass adjustment recommendations. For example, the Health Professions Act, Educational Act, Manpower Planning and Development Act, Psychology Practices Act cited in the Disabled Persons Act (1992). This fully goes against the United Nations Convention on the right of persons with disabilities which stipulates that all parties or nations should adopt all appropriate measures i.e. legislation to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against persons with disabilities as highlighted by UN-DESA (2007). This form of discrimination and contradiction by the Act poses a picture that it is not important for people to abide with the requirements of the Disabled Persons Act. That is, if the government cannot fully abide with the United Nations Conventions of disabled persons' requirements, creating loop holes to which some form of discrimination can be identified, it becomes a problem to fully enforce legislation against those citizens who will not be in a position to avoid the inevitable forms of discrimination.

More so the act could not fully cater for or rather address effectively the need to fully abide with the demands with a stiffer penalty in relation to Pillay (2010)'s perspective on effective and efficient implementation of disability acts. The indirect stereotypes and negative attitudes make the issue of disability more complex but not fully considered for effective addressing. That is the Act states that persons who do not comply with section seven on disability "stipulating that any individuals who are unable to comply will be guilty of an offence liable to payment of fine which does not exceed level seven fine." More such evidence indicated that the Disabled Persons Act (1992) was failing to abide by the regulations of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). Hence addressing such a critical issue giving room for the probability of paying a fine does not fully and effectively deal with disability. The government should put in place a state law that states that each and every organization should have positions reserved for the disabled and if they are not applicable, there should be valid evidence to support the impossibility of establishing such positions. Hence anyone failing to abide with that must face imprisonment without bail and should be accompanied by hard labor and re-socialization. Such a law can persuade people to change their attitudes, people should not be given room to remain behind when it comes to removing attitudes, and they need strong persuasion.

More so the Disabled Persons Act (1992), specify that it is an offence to prohibit or deny disabled person access to public premises, services and amenities. It is also an offence to discriminate against disabled persons in employment. The penalties give specific details and clarify the roots of the offence. However, it is silent on issues such as education, rehabilitation and provision of devices. There are no stipulated punishments accorded to breaching of demands and instead they are acts that protect adjustment required in section seven. Furthermore, the unemployment rate currently is estimated at 80%, however for persons with disabilities it is sited at 99.9% according to Kubatana (2013). This makes the Disabled Persons Act just a piece of legislation that has not found anything to serve. Kubatana (2013) further articulates that lack of a political will by government was long identified to be at the heart of lack of implementation of the provisions of the Disabled Persons Act (1992). Consequently, many persons with disability in Zimbabwe lost hope on the Disabled Persons Act as it could not bring anything positive to their lives. Currently people have showed no interest in whether the current constitution will bring change in as far as disability is concerned. Thus currently life goes on as usually with or without the Disabled Persons Act (1992). Disabled people both young and old remain being considered as object of charity.

The constitution is the supreme law of any country. Zigomo-Nyatsanza (2000) cited by Kubatata (2013) asserts that no other law or provisions of a law which are contrary to or inconsistent with the constitution shall be of any force or effect. A closer look at the constitution of Zimbabwe which to date has been amended, a record nineteen times since independence reveals that there is no specific reference anywhere of people with disabilities. The constitution refers to people with disabilities by implication for example on the right to life for which everyone including those without disabilities have, a right to equal protection under the law. The incapability to draft specific rights that should be respected in line with the needs of the disabled therefore calls for attention to the

board itself to see to it that not only do disabled persons need general rights like the right to education, food, security, life and so on. These people need something more than that, they need rights that facilitate the enjoyments of their rights and freedom for example, the right to have free access to education, so that they can enjoy the education. This fact lies in the sense that most disabled persons are poor, they do not afford some essentials, education is a luxury to them according to Heinicke-Motsch and Sygall (2004), therefore the Disabled Persons Act 1992 should make education a necessity, and accessory free to attain for the persons with disabilities. This enables the chances of enjoying of their general basic rights.

The Disabled Persons Act (1992) asserted that there was going to be complimentary acts that would assist in resolving the plight of the disabled persons. However, research evidence by Kubatana (2013) has appraised that there is no Employment Equity Act, Social Assistance Act, Skills Development Levy Act and even the Skills Development Act for people with disabilities to assist them enjoy their rights to the maximum of their potentials. Therefore, most residents of Zimbabwe do not consider or implement the demands of the Act as the Government itself has proved incompetent to make proper follow up on its creation. The government pledged to give assistive devices to persons with disabilities through the Department of Social Welfare and the Ministry of Health and Child Welfare. However, evidence especially in rural areas has pointed to the failures of the government with some disabled persons discharged from hospitals back into their communities using wheelbarrows and not wheelchairs. Furthermore, in the inflation haunted period, the Department of Social Welfare gave grants to disabled persons that were as follows, Adults – Z\$60 000,00 which was equivalent to (US\$6,60) per month for upkeep, Children – Z\$30 000,00 which was equivalent to (US\$3.30) per month for upkeep, Rentals – Z\$80 000,00 (US\$8.80) per month (Kubatana 2013).

With such evidence, it is impossible for a disabled person to survive after the first week of receiving the allowances, transports cost for two days can rip off all of the allocated allowances therefore there is need to reconsider what the government offers. Make meaningful offers that seek to upgrade lives not to pretend. People with disabilities are therefore urged to look for the cheapest accommodation. However, there are considerations made that the cheaper the accommodation the poor the sanitation that comes with that location. More so research done by Kubatana (2013) confirmed that during the interviews with the Disabled Persons, evidence gathered revealed that most of wheelchair users, if not all, do not enjoy the use of toilets and bathrooms in their houses, as wheelchairs do not fit. They do their bathing and toileting on beds. As such epidemic of cholera are prone in these areas, usually accompanied by lack of drainage, sewer systems and unavailability of water. With an added disadvantage of inability to use these resources effectively, disabled persons become victims of what Finkelstein (1980) termed misfortune of Adjustment, inability to be compatible with the environmental needs.

More so critical evaluation of the Disabled Persons Act (1992) indicated that there are no sections that address people who are involve in embezzlement of donations and funds meant to assist organisations who deal with disabilities. The Disabled Persons Act main focus was on adjustment and punishments for failure to abide. Thus to Witermeyer et al (2006), most donors could not and cannot give in to the plight of the persons with disabilities because there is no security granted in the act on the punishment applicable to offenders and fraudsters. The act was generated with a local scale consideration focusing on penalties to individuals who fail to comply with an adjustment order served in terms of section seven; or willfully deny a disabled person, on the ground of his/her disability alone, deny admission to any premises to which members of the public are ordinarily admitted; or the provision of any service or amenity ordinarily provided to members of the public and other related localized problems. This indirectly proves that the government in itself did not even consider the possibility of potential mass funding from the global world that would require adequate security over resources offered.

Besides propositions in section seven that called for registration of disabled persons, organisations and institutions that deal with disabled persons and the place to which the services are to be offered from, The National Association of Societies for the Care of the Handicapped (NASCOH) (2010) cited by Kubatana (2013) indicates that 20 percent of people living with disabilities in Zimbabwe have no identity documents and risk being left out of important national processes such as the referendum and elections. Thus such evidence suggests that some of these disabled persons are not only deprived of their rights to make personal choices but are even further deprived of their national rights to vote, participate in national duty and so on. Lack of these particulars also makes it difficult for them to seek employment. Therefore, the Disabled Persons Act (1992) lacked in addressing the need of compulsory registration of all persons with disability right at the clinic or hospital to which the birth would have taken place. Miller and Chadderdon (1981), propose that such an innovation would decrease the chances of having persons with disabilities that do not have proper documentation of their citizenship.

4. Environmental Barriers

Furthermore, there is need to address on the contradictions that seem to emerge from the designing of the Disabled Persons Act. Section five and seven make clear demands on the need for people to fully participate in the redesigning and reconstruction of the social environment to make it accessible and conducive enough to accommodate diversity and as such any failure calls for punishment. This is further supported by the demands of the United Nation Standard Rules (1993). However, the same Disabled Persons Act (1992) goes on to give exceptions to discrimination that exist in the most critical facilities that can be so important in readdressing disability issues. That is, it gives exceptions to facilities like hospitals, schools, manpower development and even psychological services to make no alteration even when there are needed to accommodate diversity basing on the fact that these facilities' alteration will require approval from the responsible ministers who control the governing Act, for example the manpower planning and development Act, Medical Professions Act and Education Act. Therefore, the need to critically revisit these inconsistencies, address on them and implement better alternative for example the stipulation on equal access to education by the

United Nation Standard Rules (1993), that states that no exception should guarantee discrimination of persons with disability on whatever grounds. Thus adjustments in the concept of universal design should accommodate diversity of whatever nature. Although employment and discrimination of persons with disabilities have been allocated penalties, the very same government buildings and other local buildings remain inaccessible to persons with disabilities as stipulated by Choruma (2006). These buildings remain user unfriendly and as such cannot accommodate employment of persons with disabilities into these institutions. Therefore, even through the Public Service Commission, it is difficult for a person with disability to be enrolled in since the infrastructure itself will not allow free manoeuvring and accessibility to all possible areas within the built environment.

5. Recommendations and Strengths of the DPA 1992

Revolving back to the issue of the composition of the board, there is need for gender balance as stipulated in the Disabled Persons Act (1992) recommendations. This can enhance the equal representation of the demands of each sex without compromising the quality of the outcomes in policy development. Therefore, balancing representation, fairness and justice in policy development, with regard to diversity of needs that exist between women and men with disabilities will play an integral role in future policy developments. The chairperson and vice chairperson positions should also be rotated among the board members themselves at their first meeting as stated by the recommendations on the Disabled Persons Act (1992). This tries to outline that each and every member should be given the platform to air their views, participate equally and recognise the importance of shared responsibility, team work and cohesion in dealing with social matters.

Most of the functions of the board are focused on implementing change of social attitudes and deterrence of social attitudes; they lack voluntary actions of the disabled persons. The Act did not consider the possibility of using strengths of the disabled persons to facilitate change in their plight. One of the most important aspects of being a person with a disability is intrinsic motivation to foster social change and attain equality. The Board made up of able-bodied persons is fueled by the incentives these people receive at the end of the task for doing their jobs the way they are expected. However, for disabled persons, it is internal conflicts and the need for equality that will push them forward to attaining their freedom. They do not need any external drives or motivation to facilitate them in making radical choices and the most important choices to make change inevitable. Nothing can be done for them without them because they know what they want and how they want it like (Garthson, 2008).

However, although the Disabled Persons Act (1992) could not fully address social issues to the core, the Act managed to formulate the basis or rather framework of reference to which disability issues could be resolved and perceived from. If it had attained full implementation, the social model could be in operation right now. They could have been adjustments and renovations to the built, physical and social environment that would have been facilitating change.

Moreover, the Disabled Persons Act (1992) increased the chances of persons with disabilities to forward their needs. It came with the recognition that some of the factors that hinder proper interaction between human and the environment are not necessarily residing within an individual. Thus it came with acknowledgement of the fact that disability should not be put under one umbrella term but rather be addressed with the specific type of disability in mind so as to come up with effective and efficient means and ways of assisting disabled persons were necessary. It also championed recognition of the rights and privileges that we enjoy and take for granted which are rather inaccessible to the disabled persons there by seeking abidance to the demands of the United Nations Standard Rules (1993). That is social facilities and recreation facilities should be there to satisfy the needs of everyone without discrimination. Therefore, no any form of discrimination should be faced by persons with disabilities on the sole basis of their impairment. Thus to make sure the proposition would be functional, the board of disability made sure that there would be charges pressed on individuals who fail to abide and the penalty may include payment of fine accompanied by imprisonment although the punishment should not exceed level seven.

Furthermore, respecting the United Nations Standard Rules (1993), the Disabled Persons Act (1992) pioneered the concept of universal design, in trying to make sure that every place and every facility becomes accessible to persons with disabilities. The concept of universal design was addressed in section seven which stipulates on adjustment of structure of the built environment so as to facilitate free movement of persons with disability of any kind. The board agreed that disability exists in the social environment, the barriers we create ourselves hinder smooth interactions of persons with impairment and the social environment. Thus the board is the one to state where alterations are to be made, any persons required to do adjustment and if they do not, will be charged with an offence and liable for punishment and payment of fine. However, exceptions are only made if the requested organisations cannot afford to do the changes, if the changes required are not achievable in the requested time and only if the court has granted pardon to a company to be excused. Thus beside that, all requested adjustments should be done within the stipulated timeframe and accommodation of persons with disabilities be made inevitable.

The board also made and created a great platform to which disability issues were to be monitored, assessed and evaluated without facing problems. That is through the reports by the board. The board was to submit reports that the minister would have request for in relation to disability issues from time to time as accorded in the Disabled Persons Act (1992). This also included submission of reports that the board perceives as having information that seeks to give advice to the minister to foster change in the disability sector. This also involves submission of reports on anything that involves disability rehabilitation and welfare. Hence the minister would therefore forward the demands applied for by the board to the parliament for further review. The board in itself would access information from communities and other channels, mainstream them into the disability office and from there directed to the parliament to influence passing of laws, formulation of policies and the development of bills.

Furthermore, to enhance the chances of lives of persons with disabilities, the Disabled Persons Act called for prohibition of discrimination against persons with disabilities. That is under subsection two, no employer is to discriminate against any disabled persons in relation to advertisement of employment, recruitment of employment, the creation, classification and abolition of jobs or posts or even determination of allocation of wages, salaries, pensions, accommodation, leave or any other benefit on the grounds of disability. Such an imposition has seen many disabled persons who have the relevant qualifications accessing employment even in the most complex jobs with the aid of gadgets provided to assist them were necessary. Therefore, this proposition has seen many persons with disabilities meeting up with their dreams and developing their livelihood without facing restrictions like earlier time, for example phase two in America that came with industrialisation formed disability as most people with impairment could not be seen as fit to do anything according to Finkelstein (1980).

6. Conclusions

Disabled Persons Act (1992) was a piece of legislation that was drafted in trying to deal away with the problems faced by people with disabilities. The act generated different sections that sort to bring out an effective and well drafted guide to which policies and laws could be deduced from. The Act was made up of various units that are well connected in addressing disability, however the problem lies in the implementation of the demands of the act. Not all parties involved in resolving disability issues showed interest in furthering the quest of the persons with disabilities. Therefore, the Act could not be fully initiated to meet its expectations and thus resulting in it being referred to as a piece of paper containing rules and regulations as asserted by Kubatana (2013).

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