

# THE RIGHT TO WORK AND EQUALITY IN THE WORKPLACE FOR PERSONS WITH DISABILITIES IN TANZANIA

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## ABSTRACT

This work analyses the current Tanzanian legal framework on the right to work and equality in the workplace for persons with disabilities (PWDs). The paper examines the extent and effectiveness of the provisions in the Disability Act of 2010 and other laws that govern right to employment to determine the compliance of this Act with international human rights standards. Moreover, the challenges experienced by PWDs are explored in as far as their right to work and equality in the workplace in Tanzania are concerned. Secondary data are employed and reviewed. It has been found that, although Tanzania's Persons with Disabilities Act of 2010 demonstrates a concerted commitment to archive what is best for PWDs, there is still inadequate implementation of laws that address the entitlement of people with disabilities in Tanzania. Hence, this work has made several recommendations to ensure adequate implementation of laws and rights for PWDs.

**Key words:** Right to Work, Equality, Workplace, Persons with Disabilities, Tanzania.

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## 1. INTRODUCTION

For a very long time, treatment of persons with disabilities (PWDs) has prompted what is most foul in human nature. PWDs have been seen as objects of charity, embarrassment and, at best, condescending pity.<sup>2</sup> It is estimated that six hundred million people have a disability, which is about 10% of the globe's population.<sup>3</sup> Persons with disabilities have historically endured exclusion and marginalization and have frequently been excluded from jobs.<sup>4</sup> They are also among the most vulnerable groups on the globe and in Tanzania in particular.<sup>5</sup> They are often very poor, under- or uneducated, discriminated against, untrained, and the most unemployed or underemployed section in society.<sup>6</sup> PWDs are also known as people who have limited knowledge of national legal systems and international human rights instruments, and many are therefore uninformed about their basic rights. Lack of legal knowledge is interpreted not only as a threat for them, but also limits their attempts to advocate and lobby with the government on their own behalf.

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<sup>2</sup> United Nations, “Secretary-General Hails Adoption of Landmark Convention on Rights of People with Disabilities” New York, 2006 available at <<https://www.un.org/press/en/2006/sgsm10797.doc.htm>> accessed on (11 December 2019).

<sup>3</sup> USAID, *the Second Annual Report on the Implementation of the USAID Disability Policy* 2, 2000 available at <[http://pdf.dec.org/pdf\\_docs/PDABT6ro.pdf](http://pdf.dec.org/pdf_docs/PDABT6ro.pdf)> (accessed 12 April 2020).

<sup>4</sup> *Eldridge v British Columbia (Attorney General)* (1977) 151 DRL (4<sup>th</sup>), at p. 577.

<sup>5</sup> United Nations, “Disability and Development Report: Realizing the Sustainable Development Goals by, for and with Persons with Disabilities”, New York, 2019 at p. 38, available at <<https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/07/disability-report-chapter2.pdf>> (accessed 15 April 2020).

<sup>6</sup> Ibid.

In 1993 the United Nations Standard Rules on the Equalization of Opportunities for PWDs<sup>7</sup> urged states to ensure that PWDs are recognized as an integral part of society. PWDs are now acknowledged as rightful participants in society with equal rights and opportunities. Since its adoption and ratification by many countries of the world, the Convention on the Rights of People with Disabilities (CRPD) has played an important role in establishing the rights of PWDs. This Convention has served as a major catalyst in the global shift from viewing persons with disabilities as objects of charity, a medical burden<sup>8</sup>, and people who require social protection, towards viewing them as full members of society with equal human rights.<sup>9</sup>

In adhering to international agreements and demonstrating commitment to the rights and inclusion of people with disabilities in CRPD, Tanzania enacted the Persons with Disabilities Act of 2010 (hereafter the 2010 Act) which reflects the provisions of the CRPD. This is evident in section 4 of the Act, which highlights the principles contained in the Act and includes a comprehensive definition of disability which includes people with disabilities in all political, social and employment opportunities. However, in Tanzania, which is a country of more than 50 million people, it is estimated that 4.2

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<sup>7</sup> United Nations, “United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, Resolution adopted by the General Assembly at its 48th session on 90 December 1993” available at < <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html>> (accessed 12 April 2020).

<sup>8</sup> Grobbelaar-du Plessis, I. & Van Reenen, T., (Ed), *Aspects of Disability Law in Africa*, Pretoria: Pretoria University Law Press, 2011, at p. xxiii.

<sup>9</sup> United Nations, “Department of Economic and Social Affairs Disability: Convention on the Rights of Persons with Disabilities (CRPD)” Available at < <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> (accessed on 20 April 2020).

million people who live with disabilities<sup>10</sup> live in a state of poverty,<sup>11</sup> merely because disability is still associated with prejudice and negative attitudes.<sup>12</sup> Therefore, regardless of the enactment of a laudable disability antidiscrimination law, PWDs' rights remain grounded in discrimination and marginalization.<sup>13</sup>

### 1.1 What is Disability?

There is no universally accepted definition for disability, as groups of PWDs are diverse. However, the World Health Organization (WHO)<sup>14</sup> provides the most commonly cited definition of disability, as it distinguishes between disability, handicap and impairment. According to WHO 'disability' is any restraint or lack that results from an impairment of the capability to execute an action in the way or within the variety considered normal for an individual person,

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<sup>10</sup> CCBRT, *Access for All*, Dar es Salaam, 2017, available at <<http://www.ccbt.or.tz/programmes/disability/disability-in-tanzania/>> accessed on 29 April 2020).

<sup>11</sup> Ministry of Finance and Economic Affairs, "the National Strategy for Growth and Reduction of Poverty of 2010-2015 (MKUKUTA)" Dar es Salaam, 2010, at p. 81, available at <<https://www.mof.go.tz/mofdocs/DPE/MKUKUTA%20II%20English.pdf>> (accessed 12 December 2019).

<sup>12</sup> Uromi, S. & Mazagwa, M., "Challenges Facing People with Disabilities and Possible Solutions in Tanzania", 1(2), *Journal of Educational Policy and Entrepreneurial Research*, 2014, at pp. 158-65.

<sup>13</sup> According to 2008 National Disability Survey, only 3.1% of PWDs were formally employed see SIDA, *Disability Rights in Tanzania*, December 2014 available at <<https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/disability/rights-of-persons-with-disabilities-tanzania.pdf>> (accessed on 29 April 2020).

<sup>14</sup> WHO, "International Classification of Impairments, Disabilities, and Handicaps" Published in accordance with resolution WHA29.35 of the Twenty-ninth World Health Assembly, 1976, available at <[https://apps.who.int/iris/bitstream/handle/10665/41003/9241541261\\_eng.pdf;jsessionid=1D0A983177B65D670DD9D4CF26E2EA39?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/41003/9241541261_eng.pdf;jsessionid=1D0A983177B65D670DD9D4CF26E2EA39?sequence=1)> (accessed 10 December 2019).

while ‘an impairment’ is defined as any failure or psychological difficulty or functional pathology. ‘A handicap’ is a disadvantage for a particular person, resulting from disability or impairment, which hinders the execution of a responsibility that is considered common for that person.<sup>15</sup>

However, the Disability Activist Movement<sup>16</sup> argues that the WHO definition causes some confusion, specifically between the terms ‘disability’ and ‘impairment’. According to this movement, “disability” refers to socially imposed restrictions; that is, the system of social constraints that are imposed on those with impairments by the discriminatory practices of society, whereas “impairment” refers to physical or cognitive limitations that an individual may have, such as the inability to walk or speak.<sup>17</sup>

The term “disability” thus encompasses a great number of different functional limitations occurring in any population in any country of the world, while the term ‘handicap’ means the loss or limitation of opportunities to take part in the life of the community on an equal level with others, and it describes the encounters between the person with a disability and the environment. This term emphasizes community shortcomings which prevent persons with disabilities from participating equally in numerous organized activities such as information, communication and education.<sup>18</sup> Subsequently,

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<sup>15</sup> The UN definition of disability. Available at <[https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)> (accessed on 02 October 2019).

<sup>16</sup> Jerry Alan Winter Entail the establishment of a consensus that without the protection of the law, persons with disabilities will be subject to an oppressive marginalization; and that the adoption of new public policy and practices are needed to eliminate, or at least reduce, the problem. 2003, Volume 23, No. 1

<sup>17</sup> Above note 15.

<sup>18</sup> Hill Country disable group ‘What is disability’? Available at <<http://hcdg.org>> (accessed on 16 March 2019).

disability is viewed as a social product of a mental or physical impairment.<sup>19</sup>

From a legal perspective, disability is the inability to pursue an occupation because of a physical or mental impairment.<sup>20</sup> It can also mean a person's inability to engage in any significant productive activity because of a medically determinable physical or mental impairment that can be expected to result for indeterminate duration.<sup>21</sup>

In the Tanzanian Persons with Disability Act, 'disability' is defined as "a limitation or loss of opportunities to take part in the normal life of the community on an equal level with others due to physical, mental or social factors".<sup>22</sup> In the context of this definition, people with disabilities are seen as "persons with particular physical, intellectual, sensory or mental impairments and whose functional capacity is limited by encountering attitudinal, environmental and institutional barriers".<sup>23</sup>

## 1.2 Right to Work and Equality at Work

The right to work is addressed in a variety of international human rights law instruments as well as in national instruments, as the

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<sup>19</sup> WHO 'Understanding disability' (2011) available at <[https://www.who.int/disabilities/world\\_report/2011/chapter1.pdf](https://www.who.int/disabilities/world_report/2011/chapter1.pdf)> (accessed on 23 December 2019).

<sup>20</sup> Vornholt K., Villotti P. and Muschalla B., et al 'Disability and Employment – Overview and Highlights', 27(1) *European Journal of Work and Organizational Psychology*, 2018, at pp. 40-55.

<sup>21</sup> *Ibid.*

<sup>22</sup> Tanzania Persons with Disability Act, 2010, Act no. 9/2010 available at <http://parliament.go.tz/polis/uploads/bills/acts/1452071737-ActNo-9-2010.pdf>> (accessed 5 October 2019)

<sup>23</sup> *Id.*, S. 3.

discussion below highlights. For example, the Universal Declaration of Human Rights (UDHR) discusses the right to work in Article 23, addresses such issues as freedom of choice in employment, fair pay, equal work and payment, right to form and join trade unions. International Covenant on Economic, Social and Cultural Rights (ICESCR) requires the right to work to include the opportunity to every person to gain the living through work.<sup>24</sup>

Thus, the right to work means the right to participate in service and production activities in human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living. Work should be enjoyed by every person who is either wage- or self-employed. The central issue is to understand that persons earn their living from the work they do. An important point is that the right to work can be visible only where there is access and distribution of resources for everyone who wants to participate in work.<sup>25</sup> However, participating in an economic activity is one thing, but of importance is “the right of everyone to have the opportunity to gain his/her living by work which he/she freely chooses or accepts”.

Article 6 of the ICESCR establishes the human right to freely choose or accept work. In this regard, the term “to accept work” can refer to waged employment while “chosen work” may be self-employment. Although the right to freely choose or accept work may seem Utopian, this right is reasonable and within the boundaries of human rights.

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<sup>24</sup> Art. 6(1) ICESCR.

<sup>25</sup> ILO, “Inclusion of People with Disabilities in the United Republic of Tanzania”, Decent Work for People with Disabilities available at <[https://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@ifp\\_skills/documents/publication/wcms\\_111461.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_111461.pdf)> (accessed on 26 April 2020).

In Tanzania, the right to work and equality in the workplace are recognized by the Constitution of the United Republic of Tanzania<sup>26</sup> as well as by other pieces of national legislations. Article 11 of the Constitution ensures that all citizens in Tanzania are guaranteed the right to work and to earn a living from this work.<sup>27</sup> The Tanzanian Employment and Labour Relations Act of 2004 (ELRA) also provides a legal framework for effective and fair employment relations and minimum standards regarding conditions of work.<sup>28</sup> It is therefore unconstitutional and against the law to discriminate against any person based on his/her physical appearance and ability to perform work that is caused by some impairment. Unemployment in Tanzania is generally high, but the percentage of PWDs who are unemployed is higher than that of non-disabled people.<sup>29</sup>

As if the above is not enough, in 1982, the World Programme of Action on Disability adopted significant measures to address the global shift towards a social model of equality for PWDs.<sup>30</sup> As one of its objectives, the programme explicitly recognized the goal of securing equal opportunities for PWDs<sup>31</sup> so that societal systems such as the physical and cultural environment, housing and transportation, social and health services, and educational and

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<sup>26</sup> Constitution of United Republic of Tanzania, 1977 (as amended).

<sup>27</sup> *Id.*, art. 11.

<sup>28</sup> S. 3(b) of the ELRA.

<sup>29</sup> *Ibid.*

<sup>30</sup> United Nations, “General Assembly Resolution 37/52”, 8 September 2011 available at <<https://www.unescap.org/resources/ga-resolution-3752-world-programme-action-concerning-disabled-persons>> (accessed 12 December 2019)

<sup>31</sup> *Ibid.*



work opportunities would be made accessible to all.<sup>32</sup> Moreover, the adoption by the General Assembly in 1993 of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>33</sup> also addressed this goal. In respect of the equalization of opportunities, the Standard Rules document reinforces the World Programme of Action and recognizes that impediments that are erected by society and the environment are as much a limitation as a disability itself.

Therefore, states are called upon to remove obstacles that prevent people with disabilities from participating fully in the activities of the society in which they live. PWDs are members of society and have the right to remain within their local communities where they should receive the support they need within the ordinary structures of employment, education, social services and health. PWDs must have equal opportunities for productive and gainful employment.<sup>34</sup> Moreover, there must be active support for the integration of PWDs into open employment through the adoption of measures such as vocational training, incentive-oriented quota schemes, and assistance for enterprises that employ PWDs. Such employers are encouraged to make reasonable accommodation for people with disabilities by adopting measures to design and adapt the

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<sup>32</sup> 1982-1993 The United Nations Decade of Disabled Persons Declaration and 3 December was proclaimed International Day of Disabled Persons by the UN General Assembly, available at <<https://www.un.org/development/desa/disabilities/united-nations-decade-of-disabled-persons-1983-1992.html>> (accessed 12 December 2019)

<sup>33</sup> United Nations, “General Assembly Resolution 48/96”, 20 December 1993, available at <<https://www.un.org/esa/socdev/enable/dissre00.htm>> (accessed 12 December 2019).

<sup>34</sup> United Nations, “Standard Rules on the Equalization of Opportunities for Persons with Disabilities”, Rule 7 available at <<https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html>> (Accessed 20 April 2020)

workplace in such a way that they become accessible to PWDs.<sup>35</sup> Equitable recruitment and promotion opportunities must be engendered by means of policies, employment conditions, and rates of pay.<sup>36</sup> Lastly, co-operation among organisations of people with disabilities should be initiated to generate training and employment opportunities.

States' compliance with the Standard Rules is monitored by a Special Rapporteur of the Commission for Social Development on Disability and a panel of experts.<sup>37</sup> However, it must be borne in mind that compliance on the part of the state is merely voluntary. The Standard Rules measure is a mere resolution of the United Nations and not part of an international treaty. Therefore, in this context, these rules are essentially exhortatory and their efficacy depends on the beneficence of the state.<sup>38</sup>

The Standard Rules are essentially the outcome of a compromise reached by members of the General Assembly after failing to reach consensus on adopting the draft Convention on the Elimination of All Forms of Discrimination against People with Disabilities that had been drawn up by Italy.<sup>39</sup> This rejection of the draft by an international body such as the General Assembly underscores the marginal position that people with disabilities occupy in

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<sup>35</sup> ILO, *Disability in the Workplace : Company Practices*, Working Paper no. 3, ILO Bureau for Employers' Activities and Skills and Employability Department available at <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/publication/wcms\\_150658.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_150658.pdf)> (accessed on 24 April 2020).

<sup>36</sup> Art. 27 of CRPD.

<sup>37</sup> Rioux M. & Carbert A., *Human Rights and Disability: The International Context*, Toronto: Cornell University ILR School, 2003.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

contradistinction to other historically marginalized groups such as women,<sup>40</sup> children<sup>41</sup> or racial groups<sup>42</sup> for whom protective international conventions have been adopted.

Despite their non-binding nature, however, the Standard Rules provide a practical framework for removing the real factors that impede the participation of PWDs in the workplace and in other spheres, given the political willingness on the part of governments to do so. They serve as an important guide for the international community in the formulation of disability-related domestic legislation and codes of good practice. They are also an important adjunct to other international normative frameworks such as the standards set by the International Labour Organisation (ILO).

According to Doyle, the notion of equality of opportunity in employment is also founded upon the idea that all employees, whether with or without disabilities, are of equal value and importance.<sup>43</sup> From the Tanzanian perspective, every employer is responsible for ensuring and promoting equal opportunities for all

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<sup>40</sup> Convention on the Elimination of all Forms of Discrimination Against Women (1979) General Assembly Resolution 34/180, UN Doc A/34/46, available at < [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_34\\_180.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_34_180.pdf)> (accessed 13 December 2019).

<sup>41</sup> United Nations Convention on the Rights of the Child (1989), General Assembly Resolution 44/25, available at < <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> (Accessed 13 December 2019).

<sup>42</sup> international Convention on the Elimination of all Forms of Racial Discrimination (1965), General Assembly Resolution 2106 A (XX), available at < <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>> (accessed 16 December 2019)

<sup>43</sup> Doyle, B.J., *Disability Discrimination and Equal Opportunities: A Comparative Study of the Employment Rights of Disabled Persons*, New York: Mansell, 1995.

employees in the workplace and should strive to eliminate discrimination in any employment policy or practice.<sup>44</sup>

Hence, no employee shall be discriminated on the ground of disability in any employment policy and practice.<sup>45</sup> In adhering to this undertaking, employers are duty bound to register a plan with the Labour Commissioner to promote equal opportunities and to eliminate discrimination in the workplace.

## **2. THE INTERNATIONAL LEGAL FRAMEWORK ON DISABILITIES**

This part analyses several international Conventions and regional treaties that protect the rights of PWDs. It focuses on how these Conventions shift attitudes and approaches to PWDs, how the problem should be tackled and how PWDs should be integrated in development programs.

Convention on the Rights of People with Disabilities (CRPD) aims at safeguarding the rights of PWDs. The main function of the CRPD is to protect, promote and ensure the full and equal enjoyment of all human rights and fundamental freedoms for PWDs and to promote respect for their inherent dignity.<sup>46</sup>

The CRPD aims to fill the gaps that exist in other human rights instruments that do not adequately protect the rights of PWDs. These gaps are evident as these people continue to face barriers in their efforts to participate as equal members of society. The

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<sup>44</sup> S. 7(1) ELRA

<sup>45</sup> S. 7(4) (i) ELRA.

<sup>46</sup> Art. 1 CRPD.

CRPD clearly stipulates the right to work and equality issues under Article 27, stating that PWDs are entitled to work on an equal basis with others. It is also stated that the right to work should be enjoyed in “a labour market and work environment that is open, inclusive and accessible to persons with disabilities”.<sup>47</sup>

Moreover, CRPD prohibits discrimination based on disability regarding all areas and forms of employment and protects the right to just and favourable conditions of work.<sup>48</sup> Thus PWDs are assured of engaging in trade union membership and activities and they have access to general technical and vocational guidance programmes and other placement and training services.<sup>49</sup>

Furthermore, employers are required to promote employment opportunities and career advancement for PWDs and ensure reasonable accommodation in the workplace.<sup>50</sup> The reference to ‘reasonable accommodation’ ensures appropriate modifications and adjustments in the workplace to ensure that persons with disabilities have adequate space and facilities where they can function on an equal basis with other people and where their fundamental freedoms are assured.<sup>51</sup>

The right that every person must work without any form of discrimination is articulated in Article 6 of the International Covenant on Economic, Social and Cultural rights (ICESCR).<sup>52</sup> Governments are called upon to affirm this provision through domesticated laws, policies and practices that safeguard “fundamental political and economic freedoms of the individual”. Thus, the ICESCR

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<sup>47</sup> Art. 27(1).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Art. 2 CRPD.

<sup>52</sup> ICESCR.

guarantees the right to work for all without any distinction<sup>53</sup> and it accentuates that each person has a free choice in the decision what gainful work to engage in.<sup>54</sup> According to Article 6 of the ICESCR, equality and non-discrimination apply to all in the field of employment, except those who have not yet attained the employable age.

Therefore, any person with a disability who has attained the employability age should be allowed to work and earn equal living wage.<sup>55</sup> However, PWDs in Tanzania still face practical challenges despite the ratification of the ICESCR and its domestication by means of the 2010 Act.<sup>56</sup> For example, PWDs who have gained working experience and who perform their work effectively are still paid less than non-disabled workers.<sup>57</sup>

In this context, the Committee on Economic and Cultural Rights<sup>58</sup> has endorsed the Standard Rules as of ‘major importance’ and a valuable guide to governments in identifying more precisely their obligations towards people with disabilities.<sup>59</sup> Perhaps even more significantly, the Committee has explicitly said that disability-related discrimination includes “denial of reasonable accommodation”.<sup>60</sup>

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<sup>53</sup> Art. 6 ICESCR, 1966.

<sup>54</sup> *Ibid.*

<sup>55</sup> Art. 7 ICESCR, 1966.

<sup>56</sup> German Cooperation, *Applied Research Concerning Inclusion of Persons with Disabilities in Systems of Social Protection: Social Protection Policy Analysis*, Bonn: Giz GmbH, 2015, at p.5.

<sup>57</sup> *Ibid.*

<sup>58</sup> Office of the High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights, CESCR General Comment no. 5, UN ESCR, 1994, Doc. No. E/1995/22 available at <<https://www.refworld.org/docid/4538838f0.html>> (accessed 14 May 2020).

<sup>59</sup> Id, para. 7(d).

<sup>60</sup> Id, para. 15.

The Committee has called upon governments “to develop policies and laws that promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of employees with disabilities”.<sup>61</sup>

Ever since 1919, the International Labour Organisation (ILO) has brought together governments, employers and workers. The ILO sets out labour standards and development policies and devises programmes that promote respectable work for all men and women. ILO natures policies and ensures employers and workers have equal voice to reflect the labour standards. In this context, Convention Concerning Discrimination in Respect of Employment and Occupation, ILO Convention No. 111 is among the ILO’s eight Fundamental Conventions as it deals with discrimination in the workplace and in education.

Tanzania has ratified this Convention and its provisions have been in force since 26 February 2002. The Discrimination (Employment and Occupation) Convention 1958 No. 111 and Recommendation No. 111 were adopted to ensure the protection of all workers against discrimination based on colour, race, religion, sex, political opinion, social origin, national extraction, and other criteria (to be determined by the states that ratify it after consultation with representative employers’ and workers’ organizations).

Convention on Vocational Rehabilitation and Employment (Disabled Persons) ILO Convention No. 159<sup>62</sup> also urges on formulation of national vocational rehabilitation and employment policies for people with disabilities at the domestic level. It

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<sup>61</sup> Id, para. 22.

<sup>62</sup> Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (Entry into Force: 20 June 1985) Adoption: Geneva, 69<sup>th</sup> ILC session (20 June 1983).

emphasises that the policy should be extended to all categories of people with disabilities in the open labour market and should be consistent with the principle of equality. This Convention has not been ratified by Tanzania.<sup>63</sup>Tanzania should ratify and domesticate this Convention as it contains crucial provisions ensuring equality and right to work to PWDs. For instance, under article 7 of the Convention, the states authorities are required to take necessary measures to provide and evaluate vocational guidance, training, placement, employment and other services which enable PWDs to secure, retain and progress in employment.

Tanzania has also ratified Convention Concerning Vocational Guidance and Vocational Training in Development of Human Resources, ILO convention no. 142<sup>64</sup> on 30 May 1983.<sup>65</sup>ILO Convention No. 142 is basically concerned with the principle of non-discrimination. This principle encourages and promotes the assurance that people with disabilities have access to all training in the development of human resources. Under articles 3 and 4, each member country is required to gradually extend, adapt and harmonise its systems of vocational guidance and training,

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<sup>63</sup> ILO NORMLEX Information System on International Labour Standards, Up-to-date Conventions and Protocols not ratified by United Republic of Tanzania available at <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210\\_COUNTRY\\_ID:103476](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:103476)> (accessed on 28 April 2020).

<sup>64</sup> ILO (1975) Human Resources Development Convention (No 142) International Rehabilitation Review (2002) Double Issue Vol No 51 available at <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C142](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C142)> (accessed 3 March 2019).

<sup>65</sup> ILO NORMLEX Information System on International Labour Standards, Ratifications of C142 – Human Resources Development Convention, 1975 (NO. 142) available at <[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312287](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312287)> (Accessed on 28 April 2020).



including continuing employment information to meet the needs of PWDs. These obligations under the Convention are likewise inadequately realized. This impedes realization of PWDs inalienable right to employment and also their contribution to the socioeconomic development of the country.<sup>66</sup>

### **3. NATIONAL POLICY AND LEGAL FRAMEWORK AND THE RIGHT TO WORK AND EQUALITY FOR PWDs IN TANZANIA**

#### **3.1 The Constitution of the United Republic of Tanzania**

The Constitution of the United Republic of Tanzania<sup>67</sup> is premised on the recognition of the inherent dignity and worth of each human being,<sup>68</sup> and ensures non-discrimination and equality before the law.<sup>69</sup> Furthermore, Article 22 of the Constitution guarantees every person's right to work and the right to live and pursue a livelihood in any part of the United Republic of Tanzania.<sup>70</sup> Although disability is particularly mentioned under Article 11, this Article does not fall within the Bill of Rights of the Constitution of the United Republic of Tanzania (CURT).<sup>71</sup> Article 11 provides that "a state authority shall make appropriate provisions for the realization of a person's right to work, to self-education and to social welfare at times of old age, sickness or disability and in other cases of incapacity".

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<sup>66</sup> Malle, A., "Inclusiveness in the Vocational Education Policy and Legal Frameworks of Kenya and Tanzania", 5(4) *Journal of Education and Learning*, 2016, at p. 53.

<sup>67</sup> The Constitution of the United Republic of Tanzania 1977 (hereafter CURT).

<sup>68</sup> Art. 12 CURT.

<sup>69</sup> Art. 13 CURT.

<sup>70</sup> Art. 17(1) CURT.

<sup>71</sup> The Bill of Rights starts from Article 12-30 in CURT; whereas, disability is expressly mentioned in Art. 11.

However, the Bill of Rights under CURT makes no specific mention of persons with disabilities (PWDs),<sup>72</sup> but in a broad sense words such as ‘all persons’, ‘no person’, ‘all human beings’, ‘every person’, ‘any person’ and ‘every citizen’ in the Constitution can be interpreted to include persons with disabilities. The CURT is premised on the recognition of the inherent dignity and worth of each human being<sup>73</sup> and urges non-discrimination and equality before the law.<sup>74</sup> Article 22 of the CURT guarantees all persons’ right to work, as it is stated that “every person has the right to work and is entitled to equal opportunity and right to equal terms to hold any office or discharge any function under a state authority”. Thus, any person (a PWD included) who works is entitled to just remuneration and no discrimination of any kind.<sup>75</sup> Moreover, remuneration must be equivalent to the work he/she is doing.<sup>76</sup> In other words, PWDs who are working according to their ability shall be remunerated according to the measure and qualification for the work.<sup>77</sup> Article 11 specifically calls upon the state to support PWDs through greater access to public places, fair employment opportunities, and full participation (where possible) in all spheres of Tanzanian society.<sup>78</sup> Hence, it is unconstitutional to deny PWDs right to work.

### **3.2 Employment and Labour Relations Act, 2004**

In Tanzania, Employment and Labour Relations Act (ELRA) of 2004 is the principal legislation for protecting and promoting the

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<sup>72</sup> Part III of CURT (Basic Rights and Duties).

<sup>73</sup> Art. 12(2) CURT.

<sup>74</sup> Art. 13 CURT.

<sup>75</sup> Art. 22(2) CURT.

<sup>76</sup> Art. 22 (1) CURT.

<sup>77</sup> Ibid.

<sup>78</sup> Art. 11 CURT.

constitutional value of employment in Tanzania. Its primary aim is to provide for employment rights while its objectives are to give effect to the provisions of the Constitution, in so far as they apply to employment and labour relations and conditions of work. Moreover, it gives effect to the core conventions of the International Labour Organisation as well as other ratified conventions. It also seeks to promote economic development through economic efficiency, productivity, social justice and providing the legal framework for effective, fair employment relations and minimum standards regarding conditions of work. Under its sections 7 and 8, employers are required to eliminate unfair discrimination in employment and to promote equal opportunities for all to ensure the implementation of employment equity.

However, ELRA also contains no specific provisions for PWDs as it only mentions that no employer is allowed to discriminate against any person which, by implication, includes PWDs. ELRA thus takes cognisance of the status of people with disabilities in an indirect way as it includes them under provisions for special groups.

### **3.3 The Persons with Disabilities Act, 2010**

Tanzania fulfilled its obligation to PWDs with the enactment of the Persons with Disabilities Act.<sup>79</sup> The objectives of this Act, among other provisions, are to promote and protect equal opportunities for PWDs in the workplace. Under section 3 of the Act, PWDs as employees are entitled to a variety of measures that should cater for their comfort and safety. Moreover, the term ‘employee’ also refers to a job applicant.<sup>80</sup> PWDs’ right to work without any form of discrimination is addressed under sections 30, 31, 32 and 34. Thus,

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<sup>79</sup> Persons with Disabilities Act, 2010. Act no. 9, available at < <http://parliament.go.tz/polis/uploads/bills/acts/1452071737-ActNo-9-2010.pdf>> (accessed 05 October 2019).

<sup>80</sup> Id, S. 3.

PWDs are equal before any law that governs employment and labour matters. Moreover, they also have the right to special protection from unemployment and harassment in the workplace.<sup>81</sup> Therefore, not only their right to work, but also their right to equal opportunities for employment in the labour market is protected by this Act.<sup>82</sup>

The Act also addresses health care,<sup>83</sup> accessibility,<sup>84</sup> social support,<sup>85</sup> education, vocational training, rehabilitation, employment, communication, and other related matters. Moreover is a prohibition against discrimination in employment place<sup>86</sup> thus section 34 addresses the need to provide PWDs with an adequate and safe working environment. In this regard, employers need to ensure the safety of employees with disabilities, protect them against harassment, permit them to have equal access to trade unions, enable them to have access to continued training and career advancement.

It also provides a full range of legal and social accountability machinery to translate policy into practice<sup>87</sup> and it addresses the implementation of a workplace quota system.<sup>88</sup> Moreover, section 31 obliges employers to employ 3% of people with disabilities in a total workforce.<sup>89</sup> Additionally, there is a need to hold employers legally accountable to comply with the 2010 Act. Employers could

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<sup>81</sup> Id, S. 33.

<sup>82</sup> Id, S. 31.

<sup>83</sup> Id, S. 43.

<sup>84</sup> Id, S. 39.

<sup>85</sup> Id, S. 54.

<sup>86</sup> Id, S. 33.

<sup>87</sup> 2010 Act, above note, 78, Ss. 8-13.

<sup>88</sup> Id, S. 31.

<sup>89</sup> Ibid.

be held accountable at law through fines imposed by the appropriate Ministry or damages awarded in lawsuits brought by individuals with disabilities, for accommodating, recruiting, and maintaining the employment of people with disabilities. It is a time to find a way to enable people with disabilities who find their rights violated to achieve justice without personal legal action. It is of the view that, the government should consider the use of special appeals tribunals so that people with disabilities do not have to engage in long or costly court battles when they believe that their rights have been violated. However, despite the enactment of this 2010 Act, the CCBRT conducted research and found that, in many public and private sector enterprises, many PWDs are still exposed to discrimination and stigmatisation.<sup>90</sup> Majority of PWDs are self-employed or engage themselves in small enterprises. 2016 survey found that only 0.2 % of PWDs are employed in the formal sector. Out of these, 38.4 % are in the public sector and 61.6% in the private sector.<sup>91</sup> The research also found that there is lack of understanding among employers on how they should address the needs of PWDs.<sup>92</sup>

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<sup>90</sup> CCBRT ‘New policy briefs on the employment of persons with disabilities’ (2013) available at <[http://www.ccbtr.or.tz/news/detail/news/ccbtr-launches-new-policy-briefs-on-the-employment-of-persons-with-disabilities/?tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Baction%5D=detail&cHash=c4092702a05a426a879ecd9dfd76fcf0](http://www.ccbtr.or.tz/news/detail/news/ccbtr-launches-new-policy-briefs-on-the-employment-of-persons-with-disabilities/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=c4092702a05a426a879ecd9dfd76fcf0)> (accessed 23 December 2019).

<sup>91</sup> Institute of Development Studies, *Disability Inclusive Development Tanzania Situational Analysis June 2020 Update* available at [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15509/ID%20Tanzania%20SITAN%20\\_%20June%202020.pdf?sequence=1&isAllo wed=y](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15509/ID%20Tanzania%20SITAN%20_%20June%202020.pdf?sequence=1&isAllo wed=y) (accessed 12 November 2020).

<sup>92</sup> Ibid.

### **3.4 National policy on disability (Tanzania National Policy on Disability, 2004)**

Although Tanzania demonstrates a commitment to the rights and inclusion of people with disabilities in a number of ways, including by signing and ratifying CRPD as discussed above, many policies have also been in place to support what it appears to be an achievement of today.

There is no doubt that prior to 1981 service provision to people with disabilities has no clear policy. Although, the Arusha Declaration provided the direction for services to disabled persons. The proclamation of 1981 as the international Year of Disabled Persons (IYDP) also sparked the government to introduced Cabinet paper No. 19 of 1981 which emphasized the objective of services provision as the protection of the PWDs dignity. 1982 Disabled Persons Employment Act No.2 was enacted as well as a result of Cabinet Paper No. 19 of 1981. The main objective of the provision of the Act was to enable PWDs to secure employment through quarter scheme and reservation of posts. National Advisory Council which dealt with advising the minister responsible on matters relating to services for PWDs was also established. Disabled persons Care and Maintenance<sup>93</sup> also result from Cabinet Paper No.19 of 1981. From 1981 the state has introduced policies which among issues which policy tried to raise are education, employment and skill. Education as a key to the development for PWDs emphasized the availability of basic education to all children and that children with disability will be given a priority.

In 2004 Tanzania committed and decided to take new path and so established National Policy on Disability to address skills training

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<sup>93</sup> Act No. 3 of 1982

and employment for PWDs. As far as the skill training is concern, was to enable people with disability to work and lead an independent life by offering vocational training for people with disabilities. On employment matters work is crucial for an individual's development and dignity the majority of people with disabilities in the country live in poverty because they cannot access work due to their disability and competition in the labour market.

### **3.5 Non-state actors**

In Tanzania the disability movement is well established. The Tanzania Federation of Disabled People's Organizations (SHIVYAWATA) regularly takes part in discussions with the government. Official recognition of the federation has increased over the past years and recently led to the involvement of the organisation within the Coordination and steering of the Non-State Actors support programme. It supports development of a constructive dialogue between government, partners and civil society organisations (CSOs). The Federation brings together ten members based national disabled persons organisations. Other non-state actors are Tanzania Albino Society (TAS), Tanzania League of the Blind (TLB) Tanzania Association of the Physically Handicap (CHAWATA) Tanzania Association of the Deaf (CHAVITA) Tanzania Association of the Deaf – Blind (TASODEB) Tanzania Association for the Mentally Handicap (TAMH) Kilimanjaro Association of Spinal cord Injuries (KASI), all these complement and support dialogue between members and government in all matters that affect affairs of PWDs.

#### **4. CHALLENGES IMPACTING THE RIGHT TO WORK AND EQUALITY IN TANZANIA**

Despite the clear jurisdictional intent to eliminate the barriers that previously operated to limit the employment prospects of PWDs, the degree of implementation and the applied imperatives to achieve functional equality for PWDs are disputed. This is because, although persons with disabilities are protected by different provisions in international and most recent national instruments, they still suffer physical and mental discrimination at various places of work.

##### **4.1 Physical Barriers in Places of Work**

It is indisputable that many public and private buildings are not physically accessible for people with different kinds of disabilities. This is a major obstacle as far as environmental access for PWDs is concerned.<sup>94</sup>

Article 9 of the CRPD imposes obligations upon states to ensure that PWDs have access to roads, buildings, transportation and other indoor and outdoor facilities. Reasonable accommodation includes employers' adoption of constructive procedures in order to meet the needs of job applicants and employees.<sup>95</sup> This may eliminate unfair discrimination and ensure the inclusivity of all employees who, by reason of a disability or some other characteristic, are unable to function as people who do not have

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<sup>94</sup> Matonya, M., "Accessibility and Participation in Tanzania Higher Education from the Perspectives of Women with Disabilities", Pekka Olsbo: University Library of Jyväskylä, 2016, at p. 17.

<sup>95</sup> Hudson, D., 'Invisible Barriers: Accommodating Mental Illness in the Workplace', Queen's University IRC, 2016 available at <<https://irc.queensu.ca/articles/invisible-barriers-accommodating-mental-illness-workplace>> (Accessed 24 March 2020).



these disabilities do. Thus reasonable accommodation is not merely about refraining from creating barriers against PWDs but, more importantly, it is about adopting effective measures to alter, adapt or adjust workplace policies, practices, structures and environments in order to facilitate PDWs' entry into and advancement in employment opportunities.<sup>96</sup>

In Tanzania, many government institutions and department buildings are not equipped for the employment of PWDs.<sup>97</sup> Clearly, neither the government nor other employers have embraced their legal obligations under Tanzanian disability legislation and policies.<sup>98</sup> Many employers consider the costs of employing PWDs too high as they will have to make physical adjustments to buildings and equipment in order to accommodate such employees.<sup>99</sup> However, it is important to note that the government is obliged under the law to ensure that the rights of PWDs to access any environment is prioritised, as provided under section 35 of the 2010 Act and Article 2 of the UDHR. Article 6 of CRPD states that every individual has the right to a good standard of living without any limitation or qualifications. Thus, Article 23(1) of the UDHR and Article 27 of the CRDP guarantee every person's right to work, equality, free choice of employment, just and favorable conditions of work. Yet, despite the many international and national efforts that strictly prohibit all forms of discrimination against PWDs in the

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<sup>96</sup> *Possi, A. & Possi, A.*, "the Identity Question Versus Appropriateness of Legal Anti-Discrimination Measures: Endorsing the Disability rights Approach to Albinism", *5(118) Afr. Disability Rts. Y. B.*, 2017, at pp. 118-140.

<sup>97</sup> Aldersey, H., 'Disability and Work: The United Republic of Tanzania's Workplace Policies in the Persons with Disabilities Act of 2010', *23(3) Disability Studies Quarterly*, 2012, at p. 48, available at <<https://dsq-sds.org/article/view/3279/3111>> (accessed 11 November 2019).

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

workplace, no committed mechanisms have been put in place to ensure the effective implementation of the 2010 Act.

#### **4.2 Legislation, policies and discriminatory practices against PWDs in employment settings**

Many developed countries have managed to adopt policies that oblige employers to be responsible to legal structures and organizations for the protection of the interests of PWDs. In Tanzania, things are different as lack of awareness of the rights of PWDs in employment settings is still rife in many public and private enterprises. Although employers in both the public and private sectors are increasingly adopting disability laws and policies that outline their responsibilities and the rights of PWDs, many other public and private institutions are not yet complying with the 2010 Act. The implementation of laws and policies has also been cumbersome and riddled with confusion. Section 31 of the Persons with Disabilities Act<sup>100</sup> makes it mandatory for employers to appoint 3% of PWDs in their workforce, yet many disregards this obligation for several reasons.<sup>101</sup> Employers can be held accountable at law through fines imposed by the appropriate Ministry or damages awarded in lawsuits brought by individuals with disabilities, for accommodating, recruiting, and maintaining the employment of people with disabilities.

For example, according to the Tanzania Union of Industrial and Commercial Workers (TUICO) many employers still believe that

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<sup>100</sup> 2010 Act, above note 78.

<sup>101</sup> Tungaraza, F., “Sixty Years of Special Needs Education in Tanzania : Celebrating Audacity, Commitment and Resilience”, *University of Dar es Salaam Journals*, 2018 available at <<https://journals.udsm.ac.tz/index.php/ped/article/view/1463>> (accessed 28 April 2020).

PWDs are not productive in the workplace and are too delicate and thus incapable of working hard. Perpetual workplace support is thus deemed too expensive.<sup>102</sup> Also, many heads of departments reportedly have a negative attitude towards PWDs who attempt to secure employment in the Public Civil Service.<sup>103</sup> The employers are not empathetic, do not know how to approach employees with disabilities, and are unwilling to learn more about their potential contribution to the workforce.<sup>104</sup>

The Persons with Disabilities Act has not yet yielded substantial improvement in the employment of PWDs. This is a clear indication that awareness of the legislation is generally low. Moreover, mechanisms to address violations of the rights of PWDs are ineffective.<sup>105</sup> Although at some point PWDs may wish to challenge the violation of their rights, it is difficult for many as they do not understand how to use those mechanisms and how to feel safe having done so. Thus, it is more difficult for PWDs to find and keep employment than it is for people without disabilities.<sup>106</sup>

#### **4.3 Lack of Accessible Information about Available Employment Opportunities for PWDs**

In many cases, employers seem to be uninformed about the working capabilities and rights of people with disabilities. When people are employed, the process usually starts with a job advertisement and continues through the examination, orientation and recruitment stages. However, the formats of job advertisements are often presented in a manner that is inaccessible to PWDs. For

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<sup>102</sup> Aldersey (above note 96).

<sup>103</sup> Ntamanwa F. L., “Factors Leading to Low Employment Rate of People with Physical Disability in Tanzania: A Case Study of Temeke Municipal Council”, Masters Dissertation, Open University, 2015, at p. 3.

<sup>104</sup> Id, at p. 64.

<sup>105</sup> Aldersey (above note 96)

<sup>106</sup> Ntamanwa (above note 102).

example, an audio/visual advertisement for a job that is advertised on radio/television might be inaccessible to people with a hearing/sight impairment, while a printed advertisement might be inaccessible to a potential candidate with visual impairment.

PWDs in Tanzania are rarely accommodated in these recruitment processes, being it in the newspaper and or on television.<sup>107</sup> Moreover, there is no newspaper or television programme in Tanzania that utilizes a language (such as sign language) that hearing and speech impaired people can understand.<sup>108</sup> This exempts them from the same opportunities that people without disabilities have, although it is provided for under section 55 of the 2010 Act.<sup>109</sup> Thus, there is no fair consideration of PWDs as even those who are qualified may fail to access job opportunities and compete in the employment process with those who have no impairment.<sup>110</sup>

In some cases, even if a qualified PWD has an opportunity to be interviewed, employers will rather favour and thus appoint a non-disabled candidate.<sup>111</sup> If at a later stage PWD may be lucky enough to be recruited, he/she may be paid a lower wage compared with people without a disability.<sup>112</sup>

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<sup>107</sup> Sungusia, H., 'Critical Analysis of the UN Convention on the Rights of Persons with Disabilities' 3(1) *Law Reform Journal*, 2011.

<sup>108</sup> Kweka, J 'Employment of persons with disabilities in Dar es Salaam Tanzania: An assessment of the proportion of persons with disabilities in the workplace' (2010) available at <[http://www.radardevelopment.com/fileadmin/downloads/CCBRT\\_Disability\\_](http://www.radardevelopment.com/fileadmin/downloads/CCBRT_Disability_)> (accessed 23 December 2019).

<sup>109</sup> 2010 Act, above note 78.

<sup>110</sup> Ntamanwa, above note 102.

<sup>111</sup> Kweka, above note 107.

<sup>112</sup> Ibid.

Moreover, the community still has the belief that once a child with a disability has completed his/her education, it will be difficult for him/her to find employment in adulthood. Parents of children with disabilities are afraid that no matter how educated their child is, he/she will not be able to find gainful employment one day.<sup>113</sup> The above are some of the reasons why employment is merely a dream for many PWDs, regardless of their protection under section 31 of the 2010 Act.

The stereotypical attitudes and lack of awareness of the value of PWDs are still alarming.<sup>114</sup> Until 2018, only 0.2% PWDs were employed in the formal sectors.<sup>115</sup> This suggests that measures to implement the 2010 Act are not only inadequate but flawed.

#### **4.4 Lack of Accommodations to Facilitate Communication in Employment Settings for People with Physical Disabilities**

Every person's right to work, to free choice of employment, and to just and favourable conditions of work are guaranteed under article 23(1) of the UDHR and Article 27 of the CRDP. These provisions support the concept of 'reasonable accommodation' to facilitate communication at the workplace. It is important to note that the concept of reasonable accommodation in this context means job requirements that comprise verifiable job-related abilities and skills that address the principle of equality.

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<sup>113</sup> Aldersey, above note 96.

<sup>114</sup> Legal and Human Rights Centre (LHRC) and Zanzibar Legal Services Centre (ZLSC), *Tanzania Human Rights Report 2018*, Dar es Salaam: LHRC & ZLSC, 2019, at p. 213.

<sup>115</sup> Above note 90.

It is a requirement that work-related skills must reasonably and objectively cater for the efficient and effective discharge of the work. PWDs thus need to satisfy only those aspects of the job that are objectively regarded as 'essential'. The employer has a duty to explore and implement alternative ways of assisting the PWDs employees in meeting the requirements without incurring a disproportionate burden in terms of costs and disruption or inconvenience in the operation of the business. Thus, reasonable accommodation and communication are not adhered to if the employer issues provisions that do not allow the employee to discharge essential work requirements.<sup>116</sup>

Section 3 of 2010 Act also addresses the needs of employees with disabilities and strives to ensure that work opportunities are accessible to all members of society.<sup>117</sup> It prohibits disability-based discrimination in the work environment and endorses universally adopted principles to promote healthy and safe work experiences for all.

However, regardless of the above legal provisions, challenges are experienced in terms of the effective implementation of these provisions and the reasonable accommodation of employees with disabilities. The establishment of 'integration teams' in management departments to ensure the gradual implementation of disability law throughout all government and non-governmental departments in Tanzania also seems to be fraught with delays.<sup>118</sup>

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<sup>116</sup> Sample Employees Handbook available at <<https://www.hr360.com/WorkArea/DownloadAsset.aspx?id=4027>> (accessed on 20 December 2019).

<sup>117</sup> 2010 Act, above note 78.

<sup>118</sup> Aldersey, above note 96.

Therefore, although the 2010 Act advocates the accommodation of PWDs and mandates their integration into the mainstream world of work, many problems are still experienced.<sup>119</sup> Evidence is provided by the Ministry of Health and Social Welfare in Tanzania that indicates that its headquarters and 19 departments have only 17 employees with disabilities of a total of 738 employees.<sup>120</sup> Likewise, the Tanzania Teachers Union found that, in six selected regions of the country covering 24 555 teachers, a mere 519, or 2%, was disabled in some way. Furthermore, data pertaining to the private sector in five selected regions of the country indicated that, in 72 companies comprising 56 national and 16 multinational organisations of more than 50 employees each with a total of 20 568 individual employees, only 86 (or 0.4%) had a disability.<sup>121</sup>

#### 4.5 Attitudes towards PWDs

Tanzanian society still has the traditional mentality that PWDs are inactive and incapable of working for themselves, their families, society and the nation.<sup>122</sup> This negative attitude leads to discriminatory practices that exacerbate the employment barriers that PWDs experience in Tanzania.<sup>123</sup> Many employers believe that employing people with disabilities is a waste of time and money as they need constant supervision and support at work.<sup>124</sup> It has been reported that, even if a PWD can get a job, it is very rare that the employer will keep him/her. Employers always seem to find loopholes in the law to dismiss PWDs, particularly when

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<sup>119</sup> Id.

<sup>120</sup> Kweka, above note 107.

<sup>121</sup> SHIVYAWATA, “Challenges for People with Disabilities Persist”, available at <<https://shivyawata.or.tz/challenges-for-people-with-disabilities-persist/?lang=en>> (accessed 29 April 2020)

<sup>122</sup> Enemchukwu, E., “the Impacts of Physical Disabilities on Labor Market Outcomes: A Tanzanian Case Study”, 12(1) *the Journal of Pan African Studies*, 2018, at p. 476.

<sup>123</sup> Ntamanwa, above note 102.

<sup>124</sup> Ibid.

accommodating their needs becomes costly.<sup>125</sup> Moreover, the illiteracy of many PWDs seems to prevent them from being employed in the Public Civil Service.<sup>126</sup> It has been found that most PWDs have a low level of education because parents tend to restrain them at home; they are thus prevented from developing their latent talents.<sup>127</sup> 'Hiding' offspring with disabilities is exacerbated by cultural barriers and perceptions to the extent that children with disabilities are not sent to school.

PWDs are an important human resource who may contribute to the profitability of businesses and the national economy. Moreover, as their financial position improves, they will no longer be a financial burden to others. However, a workplace that is free from discrimination is still a problem in Tanzania and equal opportunities for PWDs are still a dream.

In light of the above findings and arguments, this article proposes that the time has come for employers to embrace their obligation to current legal provisions and to appoint employees with disabilities. This means that measures should be devised to inform employers of the provisions in the 2010 Act and to disseminate information to them regarding the stipulations in the law.

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<sup>125</sup> Goodall, J., et al, "Stigma and Functional Disability in Relation to Marriage and Employment in Young People with Epilepsy in Rural Tanzania", British Epilepsy Association, Elsevier Ltd, 2017 available at <<https://reader.elsevier.com/reader/sd/pii/S1059131117301152?token=13DE00B8519B3E7C41C72ABF6FF84DCBD800C462F6C39C70458A5D981CF9125DFC0B3EADFDAD5B4C1AB5C2A5E520709C>> (accessed 24 May 2020).

<sup>126</sup> O'Reilly, A., *the Right to Decent Work of Persons with Disabilities*, Geneva: ILO, 2007, at p. 48.

<sup>127</sup> Ntamanwa, above note 102, at p. 58.



It is noted that the 2010 Act under section 62 establishes penalties should employers fail to implement section 31 of the Act. However, many employers are still reluctant to employ PWDs and, in some cases, they opt to pay the penalty rather than employ people with disabilities. It is a social and economic travesty that employers fail to understand that PWDs are part of society and that their contributions in the workplace could contribute to the development of the country.

## **5. CONCLUSION**

Discrimination in the workplace continues to be a major setback for PWDs in Tanzania, as it unfavorably affects their employment opportunities in this country. This injustice is then echoed in negative behaviours and feelings among PWDs which, in turn, hinder their positive participation in the world of work. This paper suggests that the discrepancy between enacted laws and the practical implementation of these laws in employing PWDs is a barrier to economic and social development in Tanzania. Despite the measures that the Tanzanian government has taken in ensuring that the rights of PWDs are upheld, more concerted commitment to creating change is still needed. There is a dire need to help employers understand that employing people with disabilities is not only legally required, but a necessity, because the contributions that people with disabilities can make to the economy and the development of the country are undeniable.

Thus, active advocacy that puts a premium on the human rights of people with disabilities is required. Government is obligated to respect, promote, protect and fulfill the fundamental employment and labour rights and freedoms of PWDs and to eradicate unfavourable attitudes towards these people in society. In the quest to rectify the deeds of the past, the entire community needs to

change its attitude towards PWDs both at individual and national level. Relevant authorities are urged to issue severe fines and to hold employers accountable through lawsuits if they do not recruit and accommodate PWDs in their organizations.

Moreover, PWDs whose rights are violated must be assisted by the government to find a way to achieve justice. Government should thus consider the use of special tribunals so that PWDs do not have to engage in costly or long court procedures when their rights have been violated.

Finally, the Tanzanian government should provide initiatives for employers such as in the form of tax rebates to encourage them to employ qualified and even unqualified PWDs for appropriate jobs. Incentives may help to remove the often unsupported concerns of employers that employing PWDs will entail extensive ventures such as extra training, more human resource requirements, or adjustments to the infrastructure.