

CHAPTER 3

THE MANDATE OF ZIMBABWE HUMAN RIGHTS COMMISSION IN PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES

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Summary

Persons with disabilities are vulnerable to systematic discrimination, social exclusion and prejudice within political, social and economic spheres. They are at the highest risk of human rights violations. The United Nations Convention on the Rights of Persons with Disabilities (CRPD), of which the main object is to promote and protect human rights and fundamental freedoms for all persons with disabilities, implicitly nominates National Human Rights Institutions (NHRIs) as key institutions in the advancement of rights of persons with disabilities. Similarly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa impliedly designates NHRIs as institutions responsible for monitoring the implementation of the rights of persons with disabilities. In the same spirit, the Office of the United Nations High Commissioner for Human Rights recognises that NHRIs compliant with the Principles on the Status of National Human Rights Institutions commonly referred to as the Paris Principles are the cornerstone of national human rights protection systems. The Paris Principles enjoin NHRIs to take comprehensive action towards both human rights promotion and protection. The Zimbabwe Human Rights Commission is the NHRI of Zimbabwe and is accredited by the Global Alliance of National Human Rights Institutions as fully compliant with the Paris Principles. The ZHRC's mandate to advance the rights of persons with disabilities is drawn from the CRPD, and most importantly, domestic legislation sanctioning its existence. This paper seeks to explore the mandate of the ZHRC in the promotion and protection of the rights of persons with disabilities in Zimbabwe.

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1 Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) estimates that there are around 84 million Africans with disabilities.¹ The 2022 population and housing census conducted by the Zimbabwe National Statistics Agency (ZIMSTAT) estimated that the country had 206 447 persons with disabilities.² Having such a considerable number of persons with disabilities living on the margins of society and encountering infringement of their fundamental rights and freedoms is a cause for concern. To strengthen the protection of disability rights, Zimbabwe launched the National Disability Policy and is also in the process of repealing the now outdated Disabled Persons Act.³ The Persons with Disabilities Bill (the Bill), which seeks to repeal the Disabled Persons Act, was presented in Parliament in May 2024.⁴ It was referred to the Parliamentary Legal Committee which scrutinises proposed legislation for consistency with the Constitution of Zimbabwe.⁵

It is commendable that Zimbabwe ratified the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Optional Protocol) in September 2013.⁶ The CRPD is the first legally binding international instrument aimed at advancing the rights of persons with disabilities.

Article 33(2) of the CRPD enjoins state parties to establish independent mechanisms for the promotion, protection and enforcement of the rights of persons with disabilities.⁷ The provision highlights the critical role of National Human Rights Institutions (NHRIs) in advancing disability rights as human rights defenders and watchdogs that also play a coordinating role of national efforts through thematic committees.

1 OHCHR 'African states affirm the rights of persons with disabilities in a new landmark Protocol' (2018) <https://www.ohchr.org/en/press-releases/2018/02/african-states-affirm-rights-persons-disabilities-new-landmark-protocol> (accessed 10 February 2024).

2 ZIMSTAT *Zimbabwe 2022 Population and Housing Census Report* (2022).

3 Disabled Persons Act [Chap 17:01].

4 Persons with Disabilities Bill (HB 2, 2023).

5 Sec 152 of the Constitution of Zimbabwe, Amendment 20, Act 2013.

6 UNICEF 'Establishment of a common disability assessment and multisectoral referral mechanism and review of disability inclusiveness of social protection programmes in Zimbabwe' <https://www.unicef.org/zimbabwe/media/4246/file> (accessed 12 October 2024).

7 Art 33(2) of the UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution/ adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007) (CRPD).

The Zimbabwe Human Rights Commission (ZHRC) is the NHRI of Zimbabwe, established in terms of sections 232(b) and 242 of the Constitution of Zimbabwe with a dual mandate to safeguard fundamental rights and freedoms and administrative justice.⁸ The ZHRC is one of the five independent commissions supporting democracy.⁹ Its functions are outlined in section 243 of the Constitution. The Zimbabwe Human Rights Commission Act (ZHRC Act)¹⁰ and Zimbabwe Human Rights Commission (General) Regulations of 2016 (ZHRC General Regulations)¹¹ guide execution of the ZHRC's mandate.

In terms of commitment to advancement of disability rights at the regional level, Zimbabwe ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Rights Protocol) in May 2024 but ratification formalities were still unfinished as at October 2024.¹² The Protocol entered into force on 5 June 2024 following ratification by the 15th member state.¹³

The main purpose of the paper is to interrogate the role of the ZHRC in advancing the rights of persons with disabilities in Zimbabwe in line with its mandate. The paper has six main parts. The first is the introduction. The second part discusses the constitutional, legislative and policy framework for the rights of persons with disabilities. The third part covers the general mandate of the Zimbabwe Human Rights Commission while the fourth part delves into the human rights promotion mandate. The human rights protection mandate is discussed in the fifth part and the final part is the conclusion which sums up the main points highlighted by the paper.

2 Constitutional, legislative and policy framework for rights of persons with disabilities

Zimbabwe enacted the Disabled Persons Act in 1992¹⁴ to protect the rights of persons with disabilities. This legislative intervention motivated disability rights defenders to upscale sensitisation and advocacy to ensure implementation of the law and ultimate enjoyment of the guaranteed

8 Amendment 20 Act 2023.

9 Zimbabwe Electoral Commission (ZEC), the Zimbabwe Gender Commission (ZGC), the Zimbabwe Media Commission (ZMC) and the National Peace and Reconciliation Commission (NPRC) are the other four independent commissions.

10 Zimbabwe Human Rights Commission Act [Chap 10:30].

11 Zimbabwe Human Rights Commission (General) Regulations, 2016 [SI 77 of 2016].

12 ZHRC Report on Persons with Disability Bill, 2024.

13 Inklusion Leben 'A milestone in disability rights in Africa – Entry into force of the African Disability Protocol' <https://inklusion-leben.org/en/a-milestone-in-disability-rights-in-africa-entry-into-force-of-the-african-disability-protocol-2/> (accessed 25 September 2024).

14 Disabled Persons Act, [Chap 17:01].

rights by the rights holders.¹⁵ The Act ushered in commendable provisions that promoted reasonable accommodation and improved access to public premises, services, amenities and employment by persons with disabilities who encountered exclusion on the grounds of disability.¹⁶ Whilst the Disabled Persons Act was a milestone development, it did not holistically promote and protect disability rights. It was enacted long before the progressive CRPD and is not aligned to the current Constitution of Zimbabwe. As highlighted by Mandipa, the Disabled Persons Act follows an archaic model of disability which perceives persons with disabilities as objects for clinical interventions instead of viewing them as rights holders.¹⁷

The 2005 amendment to the 1980 Constitution of Zimbabwe commonly referred to as the Lancaster House Constitution attempted to protect the rights of persons with disabilities.¹⁸ Section 23 of this Constitution was amended to include physical disability as a ground of discrimination. However, Manatsa argues that the Constitution remained weak in the sense that it only prescribed physical disability and disregarded other forms of disability as grounds for discrimination.¹⁹

Zimbabwe's 2013 Constitution strengthened the guarantee of disability rights. The founding values and principles amplified the need to recognise the inherent dignity and worth of each human being whose protection is viewed as an indicator of good governance.²⁰ The constitutional recognition of sign language as an officially recognised language in Zimbabwe reflects government's commitment towards the realisation of the linguistic rights of persons with disabilities.²¹

One of Zimbabwe's national objectives directs the state and its institutions to recognise the rights of persons with physical and mental disabilities.²² It has been argued that one of the shortfalls of this provision is that it singles out physical and mental disabilities but omits other forms of disabilities such as sensory disabilities.²³ One school of thought argues that this omission was addressed by section 22(3)(b) of the Constitution which requires the state, its institutions and agencies to prioritise specific requirements of persons with all forms of disability in development

15 P Manatsa 'Are disability laws in Zimbabwe compatible with the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)?' (2015) 4 *International Journal of Humanities and Social Science Invention* 25.

16 Sec 8 of the Disabled Persons Act.

17 E Mandipa 'A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe' (2013) 1 *African Disability Rights Yearbook* 73.

18 The 1980 Constitution was a product of the Lancaster House agreement of 1979.

19 Manatsa (n 15).

20 Sec 3(2) of the Constitution of Zimbabwe.

21 Sec 6 of the Constitution of Zimbabwe.

22 Sec 22 of the Constitution of Zimbabwe.

23 Manatsa (n 15).

plans.²⁴ However, Peta and Moyo rightly argue that the obligations in section 22 of the Constitution of Zimbabwe are not justiciable.²⁵ They are mere implementation guidelines for other rights of persons with disabilities specified in the Declaration of Rights. There is therefore still a need to broaden the scope of disabilities for which protection is guaranteed.

Section 83 of the Constitution of Zimbabwe specifically enshrines the rights of persons with disabilities. The provision places an obligation on the state to take measures to ensure realisation of self-reliance as well as full mental and physical potential by persons with disabilities.²⁶ The government is required to take measures that allow persons with disabilities to live with their families and participate in social, creative or recreational activities without being subjected to diverse forms of exploitation and abuse.²⁷ Section 83(d) of the Constitution mirrors article 25 of the CRPD which calls upon governments to take measures to ensure access to healthcare services by persons with disabilities, including access to medical, psychological and functional treatment. With regards to education, section 83 requires the state to take appropriate measures to ensure persons with disabilities are provided with special facilities for their education²⁸ and afforded free education and training where they need it.²⁹

It is however important to emphasise that all obligations imposed on the state through section 83 of the Constitution are subject to the availability of resources.³⁰ The fact that fulfilment of human rights obligations is subject to the availability of resources is controversial in the sense that the government can rely on the provision to plead poverty as a defence for failure to take measures to advance rights of persons with disabilities.³¹ The government must give practical effect to the rights of persons with disabilities by ensuring adequate resources are made available.

Article 29 of the CRPD requires state parties to take measures to ensure persons with disabilities can effectively and fully participate in political and public life, on an equal basis with others. It also provides that state parties must undertake to ensure persons with disabilities enjoy the right to vote and be elected.³² The Constitution made positive strides to ensure persons with disabilities enjoy their political rights on an equal basis with others as provided for in article 29 of the CRPD. The Constitution prescribes that when electing members of the senate, two members must be

24 Sec 22(3)(b) of the Constitution of Zimbabwe.

25 C Peta & A Moyo 'The rights of persons with disabilities in Zimbabwe' in A Moyo (ed) *Selected aspects of the 2023 Zimbabwean Constitution and the Declaration of Rights* (2022) 86.

26 Sec 83(a) of the Constitution of Zimbabwe.

27 Sec 83(b) of the Constitution of Zimbabwe.

28 Sec 83(e) of the Constitution of Zimbabwe.

29 Sec 83(f) of the Constitution of Zimbabwe.

30 Sec 83 of the Constitution of Zimbabwe.

31 Manatsa (n 15).

32 Art 29(a) of the CRPD.

representatives of persons with disabilities.³³ The Constitution places an obligation on political parties to ensure women with disabilities are included on their proportional representation party lists for the purpose of electing members of the National Assembly.³⁴ Most importantly, the Constitution of Zimbabwe mandates government to facilitate voting by persons with disabilities.³⁵ In *Mvindi v President of the Republic of Zimbabwe*, the court held that failure by the government of Zimbabwe to facilitate provision of voting in accessible formats to accommodate visually impaired voters was an infringement of their political rights.³⁶

On 9 June 2021, Zimbabwe launched the National Disability Policy of which the main purpose is to guide government ministries, departments and agencies as well as development partners and other institutions in formulating and supporting the implementation of laws, policies and all intervention strategies to advance the rights of persons with disabilities.³⁷ The National Disability Policy is an overarching policy framework that sets inclusion standards for persons with disabilities.³⁸ Its launch was a major stride towards domesticating the provisions of the CRPD. The National Disability Policy adopted general principles of the CRPD. These include: non-discrimination; respect for human dignity; individual autonomy and independence of persons; respect for diverse cultural and religious values; and full and effective participation and inclusion in society and equality of opportunities.³⁹

As highlighted above, the Disabled Persons Act was enacted before the CRPD and is not aligned with the Constitution of Zimbabwe. In a bid to advance the rights of persons with disability in compliance with international and domestic obligations, the government of Zimbabwe published the Persons with Disabilities Bill in February 2014.⁴⁰

The Bill has several progressive provisions that were not part of the Disabled Persons Act. Unlike the Act, the Bill adopts the CRPD's definition of 'person with disabilities' which encompasses any long-term physical, mental, intellectual or sensory impairments that may hinder them from fully and effectively participating in society on an equal basis with others.⁴¹ The Bill provides for establishment of a Commission for Persons with Disabilities. In terms of the Bill, the functions of the Commission for Persons with Disabilities include cooperating with the

33 Sec 120(1)(d) of the Constitution of Zimbabwe.

34 Sec 124(1) of the Constitution of Zimbabwe.

35 Sec 155(2)(b) of the Constitution of Zimbabwe.

36 SC 106/08.

37 National Disability Policy, 2021.

38 UNESCO 'Zimbabwe launches National Disability Policy' (2021) <https://unesco.org/en/articles/zimbabwe-launches-national-disability-policy> (accessed 25 September 2024).

39 National Disability Policy (n 37).

40 Persons with Disabilities Bill (n 4).

41 Clause 2 of the Persons with Disabilities Bill.

Zimbabwe Human Rights Commission in monitoring and evaluating the extent to which the rights of persons with disabilities are promoted and protected and to propose remedies where there are deficits.⁴²

The Persons with Disabilities Bill recognises that parents of children with disabilities should receive support training and capacity building to enable them to fully cater for the rights of the children.⁴³ In terms of access to education, persons with disability will have a right to education in their preferred language.⁴⁴ The Bill also provides for the promotion of employment of persons with disabilities. It stipulates that, two years after enactment of the law, government institutions and parastatals, with at least 50 employees should ensure that two per cent of its total workforce are persons with disabilities.⁴⁵

The Mental Health Act,⁴⁶ Children's Act,⁴⁷ Criminal Law (Codification and Reform) Act,⁴⁸ Social Welfare Assistance Act,⁴⁹ War Victims Compensation Act,⁵⁰ and the State Service (Disability Benefits) Act⁵¹ are some of the domestic laws with a bearing on the rights of persons with disabilities.

3 General mandate of the Zimbabwe Human Rights Commission

The ZHRC is a hybrid institution with both a human rights and an administrative justice mandate. The functions of the ZHRC as laid down in section 243 of the Constitution include: promoting human rights awareness;⁵² promoting and protecting development and attainment of human rights;⁵³ monitoring the human rights situation in the country;⁵⁴ protecting the public from abuse of power and maladministration by government institutions and officials;⁵⁵ receiving and investigating human rights related complaints;⁵⁶ and visiting and inspecting prisons, police cells, refugee camps, children's homes and other related places.⁵⁷ The Commission is also endowed with powers to direct the Zimbabwe

42 Clause 5(1)(r) of the Persons with Disabilities Bill.

43 Clause 19(3)(b) of the Persons with Disabilities Bill.

44 Clause 34(1)(a) of the Persons with Disabilities Bill.

45 Clause 37 of the Persons with Disabilities Bill.

46 Mental Health Act [Chap 15:12].

47 Children's Act [Chap 5:06].

48 Criminal Law (Codification and Reform) Act [Chap 9:23].

49 Social Welfare Assistance Act [Chap 17:06].

50 War Victims Compensation Act [Chap 11:16].

51 State Service (Disability Benefits) Act [Chap 16:05].

52 Sec 243(1)(a) of the Constitution of Zimbabwe.

53 Sec 243(1)(b) of the Constitution of Zimbabwe.

54 Sec 243(1)(c) of the Constitution of Zimbabwe.

55 Sec 243(1)(e) of the Constitution of Zimbabwe.

56 Sec 243(1)(d) and (f) of the Constitution of Zimbabwe.

57 Sec 243(1)(k) of the Constitution of Zimbabwe.

Republic Police to investigate cases of suspected criminal violation of human rights or freedoms.⁵⁸ The Constitution mandates the ZHRC to recommend to government, effective measures to promote human rights and freedoms.⁵⁹ Section 243(1)(j) of the Constitution mandates the Commission to conduct research on human rights and social justice related matters. As an administrative justice institution, the ZHRC is responsible for the promotion and protection of the right to administrative justice as provided in section 68 of the Constitution.⁶⁰

4 Mandate to promote human rights

This section elaborates on the meaning of human rights promotion and explains how the ZHRC's Special interest Groups Thematic Working Group enhances the human rights promotion mandate. The section goes on to explore the various ways in which the ZHRC can discharge its human rights promotion mandate, through general awareness raising, human rights education and research.

4.1 The meaning of human rights promotion

The Paris Principles require NHRIs to be vested with competence to promote and protect human rights.⁶¹ Human rights promotion refers to the creation of a national culture of human rights where tolerance, equality and mutual respect thrive.⁶² It involves increasing the public knowledge and awareness of basic human rights and fundamental freedoms.⁶³ The Global Alliance of National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation stated that human rights promotion includes functions that seek to create a society where human rights are broadly understood and respected.⁶⁴ Promotion entails, inter alia, public awareness outreaches, education, advocacy and training.⁶⁵

4.2 Special Interest Groups Thematic Working Group

Section 3(2) of the ZHRC Act, read with paragraph 7 of the First Schedule of the same Act provides for the establishment of Thematic Working

58 Sec 243(1)(h) of the Constitution of Zimbabwe.

59 Sec 243(1)(i) of the Constitution of Zimbabwe.

60 C Munguma 'The role of the Zimbabwe Human Rights Commission in the protection, promotion and enforcement of fundamental human rights and freedoms' in Moyo (n 25) 242.

61 GANHRI SCA General Observations as adopted in Geneva in May 2013.

62 OHCHR *National Human Rights Institutions: History, principles, roles and responsibilities* (2010).

63 Amnesty International *Promoting and protecting the rights of persons with albinism: A manual for National Human Rights Institutions* (2021).

64 GANHRI SCA (n 61).

65 As above.

Groups or committees. The purpose of these groups is to enhance the effective exercise of the ZHRC's functions by drawing on the expertise of relevant stakeholders and promoting inclusiveness, transparency, openness participation and accountability.⁶⁶ The ZHRC established a thematic working group on Special Interest Groups of which the purpose is to strengthen collaboration of state and non-state institutions that are involved in the promotion and protection of rights of vulnerable groups such as persons with disabilities, youths, Indigenous minorities and older groups.⁶⁷ In 2021, the thematic working group recommended upscaling of efforts to promote disability rights through awareness raising and training of ZHRC staff on the National Disability Policy and sensitisation of parliamentarians, traditional leaders and councillors on rights of persons with disabilities and disability inclusion.⁶⁸ It also recommended review of the ZHRC complaints handling mechanism with a view of mainstreaming a human rights based approach to disability issues.⁶⁹

4.3 General awareness raising

Human rights promotion ensures that there is information and knowledge sharing on human rights so that a culture of respect for human rights is entrenched.⁷⁰ The Paris Principles provides that all NHRIs should promote human rights, and they refer directly to the obligation to increase public awareness.⁷¹ That is the reason why the ZHRC has mainstreamed disability rights in its programming and intensified awareness raising on the thematic area. Article 8 of CRPD underscores the need to promote rights of persons with disabilities. It reiterates that governments should take measures to raise awareness on rights of persons with disabilities at all levels⁷² and to put in place measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities.⁷³ Duty bearers and persons without disabilities should similarly understand and embrace rights of persons with disabilities to ensure no one is left behind. The ZHRC conscientises persons with disabilities on their rights and access to redress mechanisms in case of infringement of their rights.⁷⁴

The ZHRC executes its human rights promotion mandate using multifaceted approaches through the Education, Promotion, Research and Advocacy Department.⁷⁵ In compliance with section 243(1)(a) of the Constitution as well as article 8(2)(a) of the CRPD, the said department

66 Zimbabwe Human Rights Commission 'Annual Report' (2017).

67 As above.

68 Zimbabwe Human Rights Commission 'Annual Report' (2021).

69 As above.

70 OHCHR (n 62).

71 As above.

72 Art 8(1)(a) of the CRPD.

73 Art 8(1)(b) of the CRPD.

74 OHCHR (n 62).

75 Zimbabwe Human Rights Commission 'Annual Report' (2022).

conducts human rights awareness raising, advocacy, promotion and development. This is done through outreaches, exhibitions, commemorative events, engagement meetings, training seminars and media campaigns.⁷⁶ The ZHRC also utilises its website and social media platforms such as X (formerly Twitter), Instagram and Facebook to disseminate information and publicise its knowledge products. The ZHRC can also embrace community-based initiatives so that human rights awareness is cascaded to grassroots communities at risk of being victims of rights violations.⁷⁷

4.4 Human rights education and training

Since its operationalisation, the ZHRC has been actively involved in human rights education that includes disability rights. The Commission took part in the curriculum review process that culminated in the adoption of the new curriculum which integrated knowledge on disability rights at primary and secondary levels. It has also been involved in high school quiz competitions that covered disability rights as well. The ZHRC can further support other extracurricular activities such as human rights, interact and public speaking clubs.⁷⁸ The ZHRC can also target learning institutions for children with disabilities such as King George VI Centre, Ruvimbo Special School and Margarethe Hugo (Copota) School for the Blind when supporting extracurricular activities.

At a tertiary education level, the ZHRC can support moot court competitions on disability rights that are conducted annually by law schools. The Commission can also participate in guest lectures at colleges and universities since most of them have modules that include human rights.⁷⁹ Other human rights commissions promote human rights research by motivating final year students to research on human rights and then offering prizes for outstanding work.⁸⁰

In so far as training of professionals is concerned, the ZHRC has over the years, been training the Zimbabwe Prisons and Correctional Services and Zimbabwe Republic Police recruit training officers as a way of fostering a culture of human rights-based approaches to law enforcement. In 2022, the ZHRC trained 771 recruit correctional officers and 244 recruit police officers and instructors.⁸¹ To promote the rights of persons with disabilities, the curriculum for the ZHRC training seminars includes rights of persons with disabilities. Volume 2 of the Commission's training

76 As above.

77 OHCHR (n 62).

78 As above.

79 As above.

80 OHCHR (n 62).

81 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

manual on rights of vulnerable groups covers rights of persons with disability.

The ZHRC conducts human rights education and training of stakeholders and duty bearers such as traditional leaders, councillors and other public officials. It is the role of the ZHRC to raise awareness and respect of rights of persons with disabilities in such trainings. Factors to be considered during education and training include literacy rate of the target population, financial resources and the level of awareness among the target population.⁸²

4.5 Publications

Publications such as research papers, annual, investigative, monitoring and special reports are critical resources that can be used in the promotion of rights of persons with disabilities. Such publications should be in accessible formats as both hard and soft copies. The OHCHR emphasises that online publications must be compliant with international standards for persons with visual disabilities.⁸³ Similarly, hard copies should be produced in braille. Where possible, publications should also be available in the form of audiobooks. Zimbabwe has 16 officially recognised languages and efforts must be made towards producing publications in all these languages for easy accessibility.

Preparation of reports on the national situation regarding general or specific human rights issues is one of the responsibilities of NHRIs provided for in the Paris Principles.⁸⁴ The Paris Principles obligate NHRIs to 'submit to the government, parliament and any other competent body, on an advisory basis ... opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights'.⁸⁵ Similarly, section 323 of the Constitution mandates the ZHRC to produce and submit annual and other reports to the parliament.

Annual reports do not only serve as an institutional accountability tool. They are also a platform for the NHRI for public awareness on the work that the NHRI does.⁸⁶ The Commission should utilise annual reports to publicise its work on rights of persons with disabilities and to make appropriate recommendations.

82 OHCHR (n 62).

83 As above.

84 General Assembly, Resolution 48/134: National institutions for the promotion and protection of human rights, 4 March 1994, UN Doc A/RES/48/134 (1994) (Paris Principles).

85 Paris Principles (n 84) para 3(i).

86 OHCHR (n 62).

The United Nations Centre for Human Rights is of the view that NHRIs should have diverse information, education and communication material on human rights that is widely disseminated to reach different constituents including marginalised groups.⁸⁷ The ZHRC can produce specialised human rights material in the form of magazines and newsletters for specific audiences on different human rights thematic areas including disability rights.⁸⁸ The Commission's Education, Promotion, Research and Advocacy Department conducts physical awareness outreaches and these can be conducted to disseminate the material which should be distributed through audio, video and braille for the benefit of persons with visual and hearing disabilities. The website and social media platforms are also used to distribute disability-friendly packaged information materials.⁸⁹

4.6 Human rights research and development

The CRPD obligates state parties to collect information including statistical and research data for the purpose of formulating and implementing policies to give effect to the rights of persons with disabilities.⁹⁰ In the same context, the Constitution of Zimbabwe gives the ZHRC the mandate to conduct research into issues relating to human rights and freedoms and social justice matters.⁹¹ Research can be done through national inquiries which have been identified as effective mechanisms for human rights promotion that enable a comprehensive examination of systematic human rights violations to be conducted.⁹² National inquiry findings lead to the development of recommendations to address the probed situation thereby leading to full realisation of the concerned rights.⁹³

In 2020, the ZHRC conducted a national inquiry on access to documentation in Zimbabwe.⁹⁴ The purpose of the inquiry was to identify challenges faced in accessing national documentation and the effects these challenges had on the enjoyment of fundamental human rights and freedoms.⁹⁵ The inquiry identified persons with disabilities as a group of persons facing specific challenges due to their vulnerability. The ZHRC conducted public hearings and received submissions from 237 persons

87 UN Centre for Human Rights *A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights* (1995).

88 OHCHR (n 62).

89 Zimbabwe Human Rights Commission Five-Year Strategy (2021-2025).

90 Art 31 of the CRPD.

91 Sec 243(1)(j) of the Constitution of Zimbabwe.

92 Asia Pacific Forum 'A Manual on National Human Rights Institutions' (2018).

93 As above.

94 Zimbabwe Human Rights Commission 'Report on National Inquiry on access to documentation in Zimbabwe' (2020).

95 As above.

with disabilities.⁹⁶ Some of the findings were that persons with disabilities were not treated with dignity at the civil registry offices. In some instances, there were no sign language interpreters and there was also lack of user-friendly infrastructure.

5 Human rights protection mandate

Human rights protection is an integral component in the advancement of the rights of persons with disabilities. This section explains the meaning of human rights protection and discusses how the ZHRC can protect rights of persons with disabilities.

5.1 ZHRC's role in protection of disability rights

Human rights protection functions are aimed at providing redress and ensuring accountability for human rights violations. They involve investigation of human right violation cases and bringing to justice those responsible for human rights violations as well as providing remedy and redress for victims of human rights violations.⁹⁷ Human rights protection includes visiting and inspecting places of detention.⁹⁸ Monitoring can be done to identify violations that have occurred, that are occurring and that are at the risk of occurring.⁹⁹ Identifying violations that have occurred is done for the purpose of providing remedy to the human rights violation victims whilst identifying occurring violations should translate to stopping the violations.¹⁰⁰ Human rights violations at a proximate risk of occurring ought to be prevented through monitoring functions. The ZHRC's human rights protection mandate is inclined towards putting in place systems and mechanisms to ensure rights of citizens are not violated and to guarantee redress in cases where human rights violations occur. For an NHRI to be regarded as compliant with the Paris Principles, it must take comprehensive action towards both promotion and protection of human rights. The human rights protection mandate of ZHRC is mainly discharged through three departments, namely: the Monitoring and Inspection Department; the Complaints Handling and Investigations Department; and the Administrative Justice Department. The Monitoring and Inspection Department discharges the human rights monitoring mandate in terms sections 243(1)(c) and (k) of the Constitution.¹⁰¹ The OHCHR defines monitoring as the activity of observing, cataloguing, collecting and analysing data and reporting on a situation or event.¹⁰² The

96 As above.

97 OHCHR (n 62).

98 Asia Pacific Forum (n 92).

99 As above.

100 As above.

101 Zimbabwe Human Rights Commission 'Annual Report' (2020).

102 OHCHR (n 62).

human rights monitoring mandate culminates into submission of situational and alternative reports relevant bodies such as parliament, treaty bodies and mechanisms.

5.2 Submission of alternative reports

One of the responsibilities of NHRIs is to encourage the ratification of human rights instruments, ensure their implementation and contribute to state party reports to regional and international human rights bodies.¹⁰³ NHRIs must strive to ensure implementation of treaty obligations. Ngwena has observed that treaty obligations should be translated into reality if right holders are to derive tangible benefits.¹⁰⁴ Zimbabwe ratified the CRPD and its Optional Protocol. The Committee on the Rights of Persons with Disabilities is one of the treaty bodies requiring regular reports.¹⁰⁵ Article 33 of the CRPD makes provision for domestic monitoring of the implementation of provisions of the Convention and implicitly nominates NHRIs to discharge the monitoring role.¹⁰⁶ It is therefore the role of the ZHRC as the NHRI of Zimbabwe to assess the government's compliance with the CRPD as well as any other treaty mechanisms promoting and protecting rights of persons with disabilities. NHRIs are better placed to promote and monitor the recommendations of international mechanisms.¹⁰⁷ For instance, the CRPD has 189 member states¹⁰⁸ and it can be difficult for the Committee on the Rights of Persons with Disabilities to monitor implementation in all states as international mechanisms do not have the capacity for close monitoring.

To advance the rights of persons with disabilities and comply with the Paris Principles, the ZHRC should regularly prepare and submit periodic alternative reports to government reports on achievements made in so far as the rights of persons with disabilities are concerned. NHRIs should solicit views and submissions from stakeholders when preparing country reports.¹⁰⁹

Article 34(1) of the African Disability Rights Protocol calls upon state parties to indicate, in their periodic reports submitted to the African Commission on Human and Peoples' Rights,¹¹⁰ measures taken to advance the rights of persons with disabilities. The Protocol also

103 Paris Principles (n 84).

104 C Ngwena 'Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139.

105 OHCHR (n 62)109.

106 Asia Pacific Forum (n 92).

107 As above.

108 As at February 2024.

109 OHCHR (n 62).

110 In accordance with art 62 of OAU, African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), 27 June 1981.

nominates NHRIs as institutions responsible for monitoring the implementation of rights of persons with disabilities. The ZHRC should therefore review the government's reports to ensure that representations contained therein are accurately portrayed.¹¹¹ There is also a need to follow up on the implementation of recommendations contained in its own reports.¹¹²

Zimbabwe submitted its first state party report to the Committee on the Rights of Persons with Disabilities on 8 June 2022.¹¹³ The tentative date for adoption of the list of issues is March 2026 and the dialogue between the members of the Committee and a delegation of the state party in which they discuss the implementation of the Convention by the state party at the national level will take place in March 2029.¹¹⁴ The ZHRC is called upon to submit an alternative report to the Committee. It should not only submit alternative reports to the Committee on the Rights of Persons with Disabilities proffering recommendations to advance rights of persons with disabilities, but should also conduct monitoring exercises to follow up on the implementation of the provisions of the CRPD as well as implementation of recommendations contained in its own reports. The ZHRC should thereafter publish progress reports on the implementation of recommendations to advance rights of persons with disabilities. These progress reports increase both accountability and transparency in the implementation process and they act as advocacy tools to put pressure on the government to implement the recommendations.¹¹⁵

5.3 Human rights monitoring

The ZHRC has the constitutional mandate to visit and inspect prisons, police cells, refugee camps, children's homes, old people's homes, mental health institutions and any other places where persons with disabilities are institutionalised.¹¹⁶ The purpose of these monitoring visits is to ascertain the conditions under which persons are kept there and thereafter make recommendations to advance the rights of the detained persons.¹¹⁷ Zimbabwe's legislation is silent on whether the ZHRC should give notice or not before embarking on a monitoring mission. Where possible and in the spirit of the OHCHR, the ZHRC should conduct impromptu visits at places where persons with disabilities are institutionalised. Monitoring visits' findings and recommendations are directed to the respective heads

111 OHCHR (n 62).

112 Asia Pacific Forum (n 92) 138.

113 UN Treaty Body Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=29 (accessed 24 September 2024).

114 As above.

115 As above.

116 Sec 243(1)(k) of the Constitution of Zimbabwe.

117 As above.

of institutions and to the Ministers responsible for administering the law related to those places.¹¹⁸

The ZHRC conducted its inaugural monitoring and inspection visit to a mental health institution at Ingutsheni mental hospital in 2015.¹¹⁹ One of its findings was that most of the infrastructure was dilapidated and needed rehabilitation.¹²⁰ Ngomahuru and Mlondolozhi mental hospitals were later visited in 2019.¹²¹ After monitoring visits to the institutions, the ZHRC made recommendations to the Ministry of Health and Child Care to rehabilitate the dilapidated infrastructure. From 22 to 24 October 2019, the ZHRC conducted follow up inspections at the three institutions to monitor implementation of its recommendations.¹²²

When inspecting places where persons with disabilities are institutionalised, the ZHRC should check if the institution meets the standards required for such an institution. The inspection should cover aspects such as the right to barrier free access to the physical environment, transportation and information among other rights.¹²³ The CRPD requires governments to monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services.¹²⁴

Article 18(4) of the Banjul Charter provides that older persons with disabilities have the right to special measures of protection in keeping with their physical and moral needs.¹²⁵ The ZHRC should visit and inspect old people's homes and during those visits, due considerations should be taken in monitoring and assessing the enjoyment of rights of older persons with disability. Article 30 of the African Disability Rights Protocol directs state parties to ensure that older persons with disabilities are fully protected by adopting policy, legislative and other measures including for ensuring access to social protection and protection from neglect and violence.¹²⁶ In 2022, the ZHRC visited Melfort Old People's Home and proffered recommendations to government to ensure that the rights of older persons with disabilities are realised.¹²⁷

5.4 Advisory responsibilities

Provision of advice on human rights matters is one of the roles of an institution like the ZHRC. This can be achieved through submission of

118 As above.

119 Zimbabwe Human Rights Commission 'Annual Report' (2015).

120 As above.

121 Zimbabwe Human Rights Commission 'Annual Report' (2019).

122 As above.

123 African Disability Rights Protocol (n 16) art 15.

124 Art 9(2)(a) of the CRPD.

125 Banjul Charter came into force on 21 October 1986.

126 African Disability Rights Protocol (n 16) art 30(2)(e).

127 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

advisory opinions to relevant duty bearers. An NHRI like the ZHRC may, during the exercise of its functions, identify gaps and problems in the existing legislation from a human rights perspective.¹²⁸ The United Nations Centre for Human Rights explains that in cases where the mandate of a NHRI does not specify the procedure to be followed after making a finding, the NHRI must detect the inadequacies and conduct a study of the human rights implications with reference to both domestic and international standards. It should thereafter identify the relevant government ministry, department or agency responsible for administering the legislation.¹²⁹ The ZHRC mandate does not specify the procedure to be followed if an inadequacy is identified on any piece of legislation. It follows that, as part of its activities, the ZHRC should scrutinise legislation that is relevant to persons with disabilities.

NHRIs should have the ability to make contributions by commenting and playing an advisory role to the government on proposed laws before they are passed into law for it is easier to change a draft law than to amend or repeal an already existing one.¹³⁰ The ZHRC should in this regard make written representations to parliament advising on any bill with a bearing on the rights of persons with disabilities. In 2019, the ZHRC made representations to the Ministry of Public Service, Labour and Social Welfare with regards to the Persons with Disabilities Bill.¹³¹

In its General Comment 10, the Committee on Economic Social and Cultural Rights details that the roles of the NHRIs in promoting and protecting human rights includes scrutinising existing laws, draft bills and administrative acts.¹³² The Parliament of Zimbabwe conducted public consultations on the Persons with Disability Bill in May 2024.¹³³ The ZHRC attended the public hearings and thereafter submitted an advisory report to the Parliament of Zimbabwe.¹³⁴ The report analysed the Bill and assessed its compliance with the Constitution, international and regional instruments on the rights of persons with disabilities. The ZHRC further recommended that there be provisions on persons with disabilities living and working on the streets.¹³⁵

Most of the key national legislation for the advancement of rights of persons with disabilities was enacted before the coming into force of the

128 As above.

129 As above.

130 UN Centre For Human Rights (n 87) para 195.

131 Zimbabwe Human Rights Commission (n 121).

132 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 10: The role of national human rights institutions in the protection of economic, social and cultural rights, 10 December 1998, UN Doc E/C.12/1998/25 (1998)

133 Bill Watch Parliamentary Committees Series 10/24 <https://www.veritaszim.net/node/6930>(accessed 24 September 2024).

134 ZHRC Report on Persons with Disability Bill, 2024.

135 As above.

current Constitution of Zimbabwe. This legislation is in many respects inconsistent with the Constitution which is supreme. The ZHRC should lobby for alignment of these laws with the Constitution. Most importantly, the ZHRC must continue lobbying for the alignment of its own enabling Act with the Constitution. The ZHRC Act came into operation in October 2012¹³⁶ whilst the current Constitution was adopted in April 2013 and it came into force in August 2013. This anomaly impedes full execution of the Commission's mandate.

5.5 Complaints handling

Human rights protection is chiefly centred around complaints handling and investigations so that victims of human rights violations are afforded remedies. The investigation of alleged human rights violations is one of the most critical functions of the ZHRC which enables it to secure appropriate remedies for those seeking redress.¹³⁷ Effective execution of this investigative mandate requires adequate powers that are legally conferred.¹³⁸ The ability to receive and investigate complaints against both public and private bodies, the ability to conduct investigations at its own initiative, the power to compel the production of evidence and witnesses and the ability to visit places of detention are some of the powers a NHRI is expected to have.¹³⁹

The conferring of power on the ZHRC to receive and investigate human rights-related complaints through the Constitution of Zimbabwe,¹⁴⁰ reflects a positive commitment by the government of Zimbabwe to human rights protection and its willingness to take international and domestic obligations seriously.¹⁴¹

Section 28 of the 2016 ZHRC General Regulations allows the ZHRC to initiate investigations on human rights violations, maladministration or abuse of power.¹⁴² The ZHRC General Regulations empowers the ZHRC to issue summons for attendance to a hearing or for the production of evidence and such summons must be served by a police officer.¹⁴³

As mentioned earlier, the ZHRC serves as both the institution responsible for advancement of human rights and the public protector. As public protector, the ZHRC receives complaints and investigates allegations of maladministration and abuse of office by the state and state

136 ZHRC Act (n 10).

137 UN Centre for Human Rights (n 87).

138 Asia Pacific Forum (n 92).

139 GANHRI SCA (n 61).

140 Secs 243(1)(d) and (e) of the Constitution.

141 UN Centre For Human Rights (n 87) para 216.

142 ZHRC General Regulations (n 11).

143 ZHRC General Regulations (n 11) sec 18.

institutions.¹⁴⁴ Besides mental health centres, persons with disabilities are often captive populations in places such as prisons, refugee camps, and children's and old people's homes. Most of these places are administered by public officials. To this end, persons with disabilities are exposed to the risk of suffering maladministration and abuse. The ZHRC should therefore regularly conduct monitoring visits at such places.

Over the years, the ZHRC has been conducting Mobile Human Rights Clinics in prisons and in rural communities. The purpose of the MHRCs is to raise awareness on the work of the NHRI and to increase knowledge on reporting and enforcement mechanisms and remedies.¹⁴⁵ During the year 2022, the ZHRC received 624 cases on alleged human rights allegations.¹⁴⁶ However, only two of the cases were on the rights of persons with disabilities.¹⁴⁷ One way of securing an increase in the number of disability-related cases, would be for the ZHRC to regularly conduct Mobile Human Rights Clinics in places where persons with disabilities are kept. In addition, the ZHRC should intensify collaboration and partnerships with Organisations for Persons with Disabilities.

It is worth noting that the powers of the Commission to investigate complaints are not a substitute of law enforcement officials and judicial processes.¹⁴⁸ The United Nations Centre for Human Rights has similarly observed that the ability of a NHRI to receive and act on human rights violation complaints as a complimentary mechanism established to ensure the rights of all persons are fully enjoyed.¹⁴⁹

6 Conclusion

From the discussion, it is evident that the ZHRC has a huge responsibility in as far as advancement of disability rights is concerned. Its broad constitutional and legislative mandate give it a central role of implementing its own initiatives ranging from awareness raising, monitoring observance of human rights, securing appropriate remedies for aggrieved persons and holding state and public institutions and their officials to account as they provide services to persons with disabilities. It also has the obligation to collaborate with other disability rights defenders and advocates so that all rights of persons with disability that are inalienable and indivisible are enjoyed on an equal basis with able-bodied persons. However, the ZHRC needs to upscale its efforts especially in empowerment of the persons with disability with information that enables them to hold the duty bearers and society at large to account and ensure

144 Sec 243(1)(e) of the Constitution of Zimbabwe.

145 Zimbabwe Human Rights Commission 'Annual Report' (n 75).

146 As above.

147 As above.

148 OHCHR (n 62).

149 UN Centre for Human Rights (n 87).

inclusivity that does not leave them behind as required by the CRPD and the Sustainable Development Goals.