



Faculdade de Direito da Universidade de Coimbra

Ius Gentium Conimbrigae/Human Rights Centre

XXVI Post-graduation in Human Rights

Disability and the Right to Work:

**Understanding the implications of adopting a disability employment quota in
Mozambique**

Author: Timóteo Avelino Bene

Coimbra

2024

Summary

ABSTRACT.....	2
RESUMO.....	3
1. Introduction	4
2. Promoting the employment of persons with disabilities at the international level.....	6
3. Disability and the right to work in national legal framework.....	8
3.1. Barriers to employment of persons with disabilities.....	9
3.2. Legal framework	12
3.2.1. Constitution framework	13
3.2.2. Labor Law	14
3.2.3. Employment Policy.....	16
3.2.4. Disability related Policy.....	17
3.2.5. Disability Law.....	19
4. Implications of adopting an employment quota system in Mozambique	20
5. Conclusion.....	23
6. Bibliography	24

ABSTRACT

This paper analyzes the dilemma of disability and the right to work, in an effort to understand the implications of adopting an employment quota system for persons with disabilities in Mozambique. The research was based on a review of the literature and the national and international legal framework on disability and the right to work. The results show the great potential that the adoption of the employment quota system has to promote the inclusion of persons with disabilities in the labor market. However, they also suggest a need to combine the employment quota system with other positive discrimination measures, with emphasis on education and vocational training, reasonable accommodation and the implementation of inclusive employment initiatives, for the full inclusion and participation of persons with disabilities in the labor market on an equal basis with others.

Keywords: Persons with disability, Right to work, Employment quota systems, Mozambique.

RESUMO

Este estudo analisa o dilema da deficiência e o direito ao trabalho, num esforço de buscar compreender as implicações da adoção de um sistema de quotas de emprego para pessoas com deficiência em Moçambique. A pesquisa foi feita com base na revisão da literatura e do quadro normativo nacional e internacional sobre deficiência e direito ao trabalho. Os resultados da pesquisa mostram o grande potencial que a adoção do sistema de quotas de emprego tem de promover a inclusão de pessoas com deficiência no mercado de trabalho. Contudo, também sugerem a necessidade de combinação do sistema de quotas de emprego com outras medidas de discriminação positiva, com destaque para a educação e formação profissional, a acomodação razoável e implementação de iniciativas de emprego inclusivas, para a plena inclusão e participação de pessoas com deficiência no mercado de trabalho em condições de igualdade com os demais.

Palavra-chave: Pessoa com deficiência, Direito ao trabalho, Sistema de quotas de emprego, Moçambique.

1. Introduction

Employment is a fundamental right for a decent life and represents a unique opportunity for every human being to participate on an equal basis in society. However, the right to work is cyclically denied to some groups, especially persons with disabilities, limiting their capacity to satisfy their basic needs, live independently and contribute to society.

According to the United Nations Convention on the Rights of Persons with Disabilities (2006), persons with disabilities include those who have “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. They represent 16% of the world's population, with 80% living in the Global South (WHO, 2022: 3). Approximately 80% of persons with disabilities around the world are of working age, however, the majority is not economically active (ILO, 2019). In fact, persons with disabilities tend to experience high unemployment, low-paid jobs with limited promotional prospects and workplaces that are not disability-friendly (BAKER et al, 2018; MANGIATERRA et al, 2005). Additionally, women and youth with disabilities are less likely to be employed than women and youth without disability (ILO, 2019).

The literature points to diverse factors contributing to the unemployment of persons with disabilities, such as the employer's perspective towards their integration in the mainstream workforce, characterized by suspicion and hesitation (KERSHNER & MARAKAS, 2024; HEERA & DEVI, 2016); the lack of adequate education and skills, increasing the disability employment gap (BRYAN et al, 2023; ALBINOWSKI, MAGDA & ROZSZCZPALA, 2023; DUNAY, SHARMA & ILLÉS, 2016); stigmatization, leading and influencing the root causes of negative behaviors toward persons with disability (VIRENDRAKUMAR et al, 2021; McLAUGHLIN, BELL & STRINGER, 2004); and inaccessible work environment (JAHAN & HALLOWAY, 2020; ANAND & SEVAK, 2017).

In a global effort to remove barriers to the full participation of persons with disabilities in the labor market, various normative instruments, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP), have been adopted internationally to guide states' action in removing discriminatory practices against persons with disabilities, particularly in terms of access to work.

In Mozambique, persons with disabilities represent 2.7% of the population, and more than 90% are of working age (INE, 2017). Official data shows that the unemployment rate in the country affects around 18% of the population (INE, 2023a), but this is widely criticized by civil society organizations, which claims that it is higher, mainly among youth. In a scenario where people without disabilities, particularly young people, face significant challenges in accessing employment (INE, 2023b), persons with disabilities face even more difficulties.

Over the last years, the Mozambican state has adopted progressive legislation on the rights of persons with disabilities, including the ratification of international and regional human rights treaties, such as the CRPD and the ADP, showing its commitment to taking concrete measures to promote and protect the rights of people with disabilities. In addition, there have been some efforts to reform the labor legal framework to ensure its effective responsiveness to the new developments in the labor market.

This essay aims to discuss the right of persons with disabilities to work in Mozambique, reflecting on the meaning and domestication of the CRPD and other international treaties on disability and employment into the national legal, political and regulatory landscape. Based on other countries' experience, the study also analyzes the implications of adopting an employment quota system for persons with disabilities in Mozambique.

The study is based on literature review on disability and employment, consulting academic papers, reports, international treaties and guidelines as well as national legal framework about disability, employment and quota systems. The essay also reflects the author's perceptions based on conversations with persons with disabilities during the research.

In terms of structure, the essay is divided into 5 sections. In the first section, we introduce the subject and outline the main objectives of the study. In the second section, we analyze the meaning of international treaties in promoting equal employment opportunities for persons of persons with disabilities. In the third section, we discuss the disability and the right to work in Mozambique, showcasing the main barriers persons with disabilities face to access employment and the legal initiatives adopted to promote employment among persons with disabilities. In the fourth section, we reflect on the implication of an eventual adoption of quota systems as a means of fostering employment among persons with disabilities in Mozambique. Finally, in the fifth section, we summarize the main ideas and present the final considerations of the study.

2. Promoting the employment of persons with disabilities at the international level

The Universal Declaration of Human Rights (UDHR) adopted in 1948 recognizes access to employment as a fundamental right for the realization of human dignity. In its article 23, the UDHR establishes the right and freedom of every human being to employment in conditions of dignity and favorable to personal and professional advancement. This instrument implies not only the need for inclusion, but also for reasonable accommodation necessary and conducive to the full participation and productivity of persons with disabilities in the workplace.

The right to work and employment is also enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted in 1976, which, like the UDHR, urges States parties to take all necessary measures to realize this right, such as technical and vocational guidance and training and the creation of fair and satisfactory working conditions without distinction¹. Although this instrument does not state specific provisions regarding persons with disabilities, the fundamental premise of safeguarding the right to work “without distinction”² binds the State parties to take progressive measures when formulating policies and programmes to ensure the right of persons with disabilities to work and employment on an equal basis with others.

The International Labor Organization was the first agency to draw up concrete recommendations for the inclusion of persons with disabilities in the labor market. Among a large variety of instruments adopted, Recommendation No. 99 of 1955 emerges as one of the most important given its great influence on national legislation linked to technical vocational training and the employability of persons with disabilities. Three years later, the ILO adopted Convention No. 111 and Recommendation No. 111 on Discrimination in Employment and Occupation. These instruments guide State parties to formulate national policies to prevent discrimination in employment and occupation and establish provisions to be observed in this effort, with emphasis on access to training, fair pay, physical accessibility of facilities and health care.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006 brought a paradigm shift towards a human rights approach in relation to persons with

¹ art. 6-7, ICESCR, 1976.

² art 6-7, ICESCR, 1976.

disabilities, including a clear recognition of their right to employment (ZOLYOMI & BIRTHA, 2020). The CRPD introduces the human rights model of disability, recognizing disability as a social construct and “one of many multidimensional layers of identity”³. In fact, this instrument is the most detailed and significant in terms of actions needed to build a society in which persons with disabilities are free from discrimination and are socio-economically active.

Article 27 refers specifically to the right to work and employment of persons with disabilities in all stages of employment, restating a large variety of measures States parties should undertake to safeguard and promote the realization of the right to work from a disability perspective. These measures include the following: prohibition of discrimination on the basis of disability; promotion of just and favorable conditions of work on an equal basis with others; the right to complain and to join labor and trade unions and not be harassed; access to technical and vocational guidance, placement services and training; promotion of employment opportunities and career advancement; promotion of opportunities for self-employment, entrepreneurship and cooperatives; the right to be hired both in the public and in the private sector, including affirmative action programmes; provision of reasonable accommodation in the workplace; promotion of work experience in the open labor market; and promotion of vocational and professional rehabilitation, job retention and return-to-work programmes⁴.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP) represents the contextualization of the CRPD according to the African practices, complements the African Charter and addresses the pressing needs affecting persons with disabilities in Africa. The ADP was adopted in 2018, but has not yet entered into force as it has not yet met the required 15 ratification, according to the ratification procedures of African Union treaties by Member States. The last ratification was made in September 2023 by Cameroon, making a total of 10 ratifications⁵.

Article 19 of the ADP reaffirm the right to work and employment from a disability perspective, including the right to be paid equally with others, the right to reasonable accommodation in the workplace, the prohibition of discrimination on the basis of disability in the workplace, in hiring processes, and ensuring that persons with disabilities are equally protected by labor laws.

³ UN Committee on the Rights of Persons with Disabilities. General comment No. 8 (2022) on the right of persons with disabilities to work and employment. 2022.

⁴ Article 27, UNCRPD, 2006.

⁵ https://au.int/sites/default/files/treaties/36440-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_PERSONS_WITH_DISABILITIES_IN_AFRICA_0.pdf

It refers to the need for persons with disabilities to be included in both the public and private sectors, and ensures the right of persons with disabilities to access vocational training, trade unions and other spaces within the labor market.

Both the CRPD and the ADP call on State parties to achieve the right to work and employment by adopting positive measures to promote the employment of persons with disabilities, aligning national standards and practices for employment with the standards defined in the CRPD and the ADP. In addition, both provisions oblige States parties to promote self-employment opportunities, entrepreneurship, the development of cooperatives and the creation of own businesses.

There are at least two fundamental elements to take into account for the materialization of the right to work and employment as provided for in contemporary human rights standards. By its nature, the realization of the right to work and employment is subject to progressive realization, which means that its realization requires a clear commitment from the state to allocate the maximum available resources, and to make efforts to mobilize additional resources within the framework of international cooperation (MANHIQUE, 2023). The existence of a strong legal framework adjusted to the needs of persons with disabilities is essential for the achievement of the rights of persons with disabilities to work, as we will discuss below.

3. Disability and the right to work in national legal framework

The CRPD requires governments to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities”⁶ and prevent them from participating in the labor market. In the last two decades, Mozambique adopted a progressive legislation on both labor and disability issues. However, before analyzing the national disability and employment legal, political and regulatory landscape, including the implication of the ratification of international and regional regulation on disability and work in Mozambique, it is crucial to discuss the main barriers and challenges these policies are meant to address regarding the employment of persons with disabilities at the national level.

⁶ Art 4 (1) b of the CRPD

3.1. Barriers to employment of persons with disabilities

According to the 2017 Census, the percentage of persons with disabilities in Mozambique is 2.7%, corresponding to 727,620 individuals. Of these, 14% are visually impaired, 17% deaf, 14% have an amputated arm, 13% have an amputated leg, 12% have paralysis and 13% have a mental disability (INE, 2017). Although these figures are relatively high compared to the results of the 2007 Census, according to which 2.3% of the population had some kind of disability, they fall far short of the World Health Organization's projections, according to which 16% of the world's population experience some kind of disability (WHO, 2022). The results of the 2017 Census largely reflect the use of medically-based survey models in population censuses, restricting the reach of a considerable proportion of persons with disabilities (MANHIQUE, 2023: 12).

Studies show that, regardless of gender, age and area of residence, persons with disabilities in Mozambique have fewer opportunities to access employment than persons without disabilities (MANHIQUE, 2023B; SIGHTSAVERS, 2023; KHADIAGALA & MANHIQUE, 2019; RAVIM & HANDICAP INTERNATIONAL MOZAMBIQUE, 2010). Findings from a disability thematic study in Mozambique conducted by Social Development Direct (2021) shows that the private sector is the largest employer of persons with disabilities in Mozambique, with around 8% of employees with disabilities. The public administration or government agencies have around 3% of their workforce made up of persons with disabilities.

It also shows that women with disabilities experience more disadvantages compared to men with disabilities and women without disabilities. Some of the key variables are outlined below:

- Among working-age women with disabilities in urban areas, 30.6% are employed against 33.7% among women without disabilities.
- Within the same disability status, working-age women are less likely to be employed than working-age men – in urban areas, 30.6% of women with disabilities are employed relative to about 43.6% of men with disabilities.
- Self-employment without employees is the major type of activity for both persons with and without disabilities: 60.6% among working-age persons with disabilities compared to 56.2% among their counterparts without disabilities.
- Homework without pay is the second major type of activity for both persons with and without disabilities – 23.8% among those with disabilities and 24.8% for those without disabilities.

- Within each disability status, men are more likely to be employed in the Public Administration/Government Agency and the Private sector relative to women.

There are several obstacles to persons with disabilities fulfill the right to employment and work in Mozambique, with emphasis to the following:

a) Lack of skills and education

Persons with disabilities face significant disadvantages to access formal education or complete it, preventing them from developing the qualifications and skills needed to access decent work. The 2017 Census shows that persons with disabilities are less likely to have completed any level of education (52% with none completed level of education against 40% among persons without disabilities), less likely to have completed a primary level of education (33% vs 40%) and less likely to have completed a secondary level or more of education (11% vs 17%) than peers without disabilities. Persons with disabilities also have limited vocational training which are crucial to develop the skills needed to compete with others in the labor market. Government programmes to promote youth employment through training and funding their initiatives, such as “Meu Kit, Meu Emprego” and “Agora Emprega”, fail to intentionally reach persons with disabilities, largely because their design and later implementation did not establish specific measures to include this group.

b) Limited digital literacy and access to ICT

The challenges persons with disabilities face to access education also extend to digital literacy. Persons with disabilities in Mozambique are less likely to have access to ICT compared with persons without disabilities. In fact, according to the 2017 Census, men with disabilities are less likely to have access to a cell phone than men without disabilities (42% and 57%, respectively), while women with disabilities are less likely to have access to a cell phone than women without disabilities (27% and 38%, respectively). Similarly, men with disabilities are less likely to have access to a computer than men without disabilities (5% and 11%, respectively) and women with disabilities are less likely to have access to a computer than women without disabilities (2% and 5%, respectively). An interesting fact is that, by all means, men with disabilities have more access to ICTs than women with disabilities. As well as persons with disabilities having little knowledge of new technologies, they face ICT accessibility and usability barriers, often because the design of these digital platforms does not take into account the specific needs of each type of disability (BENE, 2024; BENE, PACO &

GUIVALA, 2023; CASTIANO & MACONDZO, 2021). This situation ends up contributing to persons with disabilities not having timely access to job opportunities advertised online and, having information, not being able to apply from online application portals. Not least, once persons with disabilities are in the labor market, these limitations prevent them from effectively performing their work through new technologies.

c) Limited accessibility in the workplace

Accessibility in the workplace is a major factor that limits the employment of persons with disabilities. Physical barriers are structural obstacles in natural or manmade environments that prevent or block mobility or access (JAHAN & HOLLOWAY, 2020: 15). Persons with disabilities point out that a significant number of public and private companies do not have adequate infrastructure for the needs of persons with disabilities, in all their diversity. Aspects such as the inexistence of ramps or other means, lack of accessibility of toilets, and obstacles along corridors contribute to putting persons with disabilities off finding decent jobs or staying in the workplace. Information accessibility barriers also compromise the chances of a person with disability getting and staying in a job. Persons with visual impairments, for example, need assistive devices capable of reading information in different formats. Employers unable to provide these technologies make the workers with disabilities less productive and limits their professional progress.

d) Discriminatory legislation and policies

Structural issues related to labor and disability legislative, political and regulatory landscape plays an important role in facilitating employment for persons with disabilities. Persons with disabilities cyclically refer to the lack of a specific government agenda to support employment of persons with disabilities as a challenge, especially at the district level. The lack of regulation protecting and promoting access to employment for persons with disabilities is commonly identified as a barrier. Discriminatory regulations, such as those prohibiting persons with hearing impairment from obtaining driving licenses automatically limit their chances to apply for certain jobs and positions (SIGHTSAVERS, 2023: 18).

In addition to these barriers, negative attitudes, stigma, abuse and discrimination, misperceptions and lack of awareness of disability issues, the demands, costs and capacities of employers to recruit and retain persons with disabilities, the lack of confidence of persons with disabilities themselves and their families in the abilities of persons with disabilities to work

and, not least, the high unemployment rates, all contribute to the continuous marginalization of persons with disabilities and inaccessibility to employment opportunities.

The adoption of legislation and training and employment programs favorable to persons with disabilities, in all their diversity, is a way forward for the inclusion and realization of their right to work on equal basis with others, also considering all forms of reasonable accommodation necessary for their full participation.

3.2. Legal framework

Mozambique has ratified several international instruments on the rights of persons with disabilities, most notably the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2012. In 2021, the Parliament simultaneously ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP) and the Marrakesh Treaty, to facilitate access to published works by persons who are blind, visually impaired or have other difficulties reading printed material, the latter domesticated through the revision of the Law on Copyright and Related Rights⁷. The CRPD and the ADP were recently domesticated through the approval of the Law on the Promotion and Protection of the Rights of Persons with Disabilities, henceforth referred to as the Disability Law. Under these instruments, the Mozambican state is obliged to take all appropriate measures, including through inclusive, i.e. disability-sensitive, legislation and budgeting, to safeguard the rights of persons with disabilities, such as access to decent work, reasonable accommodation of a physical nature and information, in order to enable their full participation in society, on an equal basis with others.

Internally, Mozambique has made progress with various legislative initiatives that are sensitive to the rights of persons with disabilities, from the Constitution itself to more specific legal instruments, such as the labor law and policy, the disability law, among others. In this section we argue that, in general, the idea of equality and non-discrimination present in the national legal framework is not appropriate to account for the lived experience of persons with disabilities, which means that it is not capable of broadly recognizing the inequalities faced by persons with disabilities, as well as the specific support needs to participate in society on equal terms with persons without disabilities.

⁷ Lei n.º 9/2022, Lei dos Direitos do Autor e Direitos Conexos e revoga a Lei n.º 4/2001, de 27 de Fevereiro.

3.2.1. Constitution framework

In the Constitution of the Republic of Mozambique, the right to work is simultaneously considered a 'right and duty of every citizen', and also enshrines the freedom of citizens to choose their profession (art. 84). The Constitution guarantees the right to work, health and safety at work, and equal pay for equal work. It reaffirms the rights enshrined in the Universal Declaration of Human Rights and the African and Cultural Charter, highlighting the right to remuneration and job security (art. 85), freedom of professional and trade union association (art. 86), and the right to strike (art. 87), while other rights are referred to specific legislation.

Although the Constitution does not explicitly establish provisions related to the right to work or employment for persons with disabilities, it includes a set of rights for persons with disabilities that are relevant to the realization of the right to work, particularly in Articles 37 and 125, whose provisions bind the state to take the necessary measures to implement specific policies for the full inclusion of persons with disabilities in society.

Article 37 of the Constitution recognizes equal constitutional rights and duties for persons with disabilities “with the exception of the exercise or fulfillment of those for which, due to the disability, they are incapacitated”. This premise in the Constitution “makes room for the denial of rights based on the condition of disability” (SIGHTSAVERS, 2023: 23), violating the human rights-based approach introduced with the adoption of the CRPD. This view is reinforced when analyzing article 35 (principle of universality and equality), which does not include disability as potential ground for discrimination. On the one hand, this approach is reminiscent of the medical model given that the drafters of the Constitution assume that persons with disabilities are incapable. On the other hand, it reveals an understanding of equality that is not compatible with contemporary standards of human rights (SIGHTSAVERS, 2023). In fact, this model transits to specific legislation - be it in terms of education, health, political participation, employment, and work.

Article 125 reflects the state's commitments to promote the creation of the necessary “conditions for the economic and social integration of persons with disabilities”. Although not very explicit, this article directs the state to adopt a disability policy that guarantees, among other things, “the rehabilitation and integration of persons with disabilities, access to public

places, and recognition of the role of associations of persons with disabilities”⁸ in promoting and defending their own rights.

The Constitution, as it stands, deals with the human rights of persons with disabilities in a way that is not in line with current international human rights standards. In addition to not being exhaustive in describing the rights of persons with disabilities and the mechanisms for implementing them, it presents a medical conception of disability, based on welfare rather than a human rights approach that recognizes the capabilities of persons with disabilities.

3.2.2. Labor Law

Mozambique recently approved a revision of the Labor Law, through Law No. 13/2023 of August 25, in order to align it to international human rights standards ratified by the State, especially the ILO conventions, and make it more responsive to the current dynamics of the labor market. Unsurprisingly, the approach of incapacity to work in relation to persons with disabilities is still present in the new revision of the labor law.

Article 55(2), referring to “workers’ rights”, allows for the adoption of “positive discrimination measures aimed at certain vulnerable groups with a view to correcting or preventing situations of inequality”. Persons with disabilities are recognized in this Law as one of the main vulnerable groups, cyclically marginalized in access to work and employment opportunities and, therefore, the need to undertake positive actions for the effective inclusion and participation of persons with disabilities in the labor market on equal terms with others. The provisions of this article create a wide range of opportunities for public and private employers to develop concrete initiatives for the recruitment, retention and professional progression of persons with disabilities. Some of these measures may include setting reduced working hours or frequent breaks per day for persons with disabilities, especially those who cannot sit or work for long hours. The state, as the highest authority, has a greater responsibility to promote the adoption of positive discrimination measures for persons with disabilities when hiring in the public sector, as a sign of the recognition of the abilities of persons with disabilities and their potential to generate income or improve the productivity of the organization.

Article 30 of the Labor Law deals exclusively with the rights of the “worker with disability”. Article 30(1) establishes the employer's obligation to adopt necessary and appropriate measures so that “the worker with disability enjoys the same rights and duties as other workers with

⁸ Art. 125 (4), Constituição da República de Moçambique

regard to access to employment, vocational training and promotion, as well as working conditions appropriate to perform the activity". This premise is based on two fundamental principles of human rights enshrined in the International Bill of Human Rights and, in particular, in the Convention on the Rights of Persons with Disabilities and the African Disability Protocol: the principle of equality and the principle of non-discrimination. Compliance with this assumption by the employer responds to the various barriers that persons with disabilities face in accessing and remaining in employment, as discussed in the previous section, and involves taking appropriate measures for inclusion such as advertising job opportunities, training and promotion in accessible formats, restructuring the building to ensure physical accessibility, acquiring electronic equipment and assistive technologies for persons with specific communication needs, among others.

Article 30 also establishes the need for the state to coordinate with trade unions and organizations of persons with disabilities in promoting employment, based on available resources, and in taking actions aimed at providing "professional retraining and integration into jobs suited to the residual capacity of workers with disabilities" (art. 30 (2), Labor Law). An important aspect highlighted in this article and not very present in national legislation is the need for constant engagement and consultation with persons with disabilities, as a way of understanding their main difficulties, needs and priorities, as well as their perception of the type of actions needed to meet their demands. The CRPD and the ADP direct States parties to consult and involve persons with disabilities, through their representative organizations, in the design and implementation of laws and policies, as well as in decision-making processes with potential to affect persons with disabilities' lives. Proceeding so, the state and other stakeholders would be ensuring that their actions are closer and more aligned to the reality and needs of the persons with disabilities they aim to meet.

Finally, the subsection on the "worker with disabilities" recognizes the possibility of establishing, by law or regulation, "special measures for the protection of the worker with disability, namely those relating to promotion and access to employment and the conditions for the provision of the activity appropriate to their aptitudes, unless such measures entail a disproportionate burden on the employer" (art. 30(3), Employment Law). In a context characterized by technological evolution, especially of collaboration tools and telework, the regulation of teleworking can emerge as a special measure for the inclusion and protection of workers with disabilities, as well as a response to the physical accessibility barriers that persons with disabilities face in establishing themselves in the labor market. The issue of employment

quotas for persons with disabilities, demanded by the movement of persons with disabilities in Mozambique but left out of the Labor Law revision, can also be included in this set of special measures, in an effort to guarantee access to employment for persons with disabilities.

In conclusion, the Labor Law makes important provisions for the inclusion of persons with disabilities in the labor market. However, this law needs to introduce, in close consultation with persons with disabilities, more specific positive discrimination measures to promote the right to work of persons with disabilities, from facilitating vocational training to the creation of initiatives or implementation of employment quotas for persons with disabilities.

3.2.3. Employment Policy

Resolution no. 29/2016, of October 31, adopts the Employment Policy in Mozambique with the aim of promoting the creation of more job opportunities, thus contributing to the country's economic and social development and the well-being of its citizens. The Employment Policy is made up of 8 pillars and a set of measures that ensure an increase in opportunities and guarantee job stability. The measures fall under the following pillars: developing human capital; creating new jobs; harmonizing and prioritizing sectoral policies; promoting decent, productive and sustainable work; improving the labor market information system; occupational health, hygiene and safety at work; strengthening international cooperation and; cross-cutting issues.

Disability issues are treated under Pillar 8 on “cross-cutting issues”. Persons with disabilities are a central target to be included in the development agenda, through the promotion of positive measures that facilitate their access to education and vocational training and employment. The Employment Policy defines four main lines of action for the materialization of the right to work of persons with disabilities: (a) expanding efforts to combat exclusion and stigmatization, (b) promoting positive discrimination measures for persons with disabilities in training and employment programmes, (c) adopting favorable and accessible working environments for persons with disabilities, and (d) ensuring the retraining of persons with disabilities resulting from accidents at work and occupational diseases.

The Employment Policy is in line with the recommendations of the CRPD and the ADP, particularly with regard to training and employment programs. Persons with disabilities often struggle with the lack of training, skills and experience when they want to enter the job market. Defining indicators and targets in training and employment programs for persons with

disabilities will make it possible to monitor and measure the level of progress in relation to the objective defined in the policy and ensure that persons with disabilities are not left behind. In this process, the consideration of reasonable accommodation measures, as the Policy advocates, is extremely important for persons with disabilities to realize and exploit their potential. Unfortunately, there is no publicly available data on the degree of implementation of this policy, particularly on disability issues, making it difficult to monitor the efforts made in this area.

3.2.4. Disability related Policy

For the purpose of this study, we will focus on the following legal framework: disability policy, disability strategy in the public sector, national disability plan and the disability law.

Disability Policy

The Disability Policy was approved in 1999 to inform the action of the different stakeholders, including the state, in promoting the rights of people with disabilities. This is the first legal instrument to deal solely with aspects of disability in different thematic areas. With regard to employment, the Disability Policy commits the state, on the one hand, to promoting the development of specific vocational training in appropriate conditions for persons with disabilities, which respect their dignity as human beings and, on the other, to creating conditions for the maintenance and professional reintegration of persons with disabilities into the labor market. Finally, it allows for the progressive introduction of a percentage mechanism to guarantee the admission of persons with disabilities into the public and private sector, by providing appropriate incentives.

More than two decades on, there has been visible progress towards the materialization of some of these assumptions, in particular the existence of teacher training programmes in inclusive education and the existence of vocational training programmes and youth employment initiatives that are tending to be increasingly inclusive. On the other hand, there is no evidence about the establishment of employment quotas for persons with disabilities in the public sector or to give incentives to private employers who recruit persons with disabilities.

National Disability Action Plan

The National Disability Action Plan (PNAD) is the main programmatic instrument for disability in Government. The MGCAS has been drafting for the past two years a new PNAD,

as the previous one expired in 2019. One of the strategic objectives of the new PNAD according to the most recent draft version is to “facilitate access and retaining of persons with disabilities in the Labor Market” Three major actions have been defined linked to this objective, namely: Prioritization of persons with disabilities in accessing the labor market and career progression; Adaptation of facilities and emergency devices for all employees and workers with disabilities; Insertion of young people with disabilities in the incubation process for the development of entrepreneurship. Nonetheless, the evaluation of the implementation of the previous PNAD was not satisfactory due to inadequate budgeting, lack of coordination between the different government departments, non-recognition at the sector level of PNAD as a key planning document, and inadequate data collection, among others. The lack of any innovation with respect to weaknesses identified in the evaluation combined with delays in the approval of the new version of PNAD raises serious concerns in relation to its effective implementation. (SIGHTSAVERS, 2023)

Disability Strategy in the Public Sector

The Disability Strategy in Public Sector (2009-2013), approved in 2009, is the result of the National Disability Policy and Action Plan and aims to guarantee the realization of the rights and duties of persons with disabilities in accessing employment in the civil service. The focus of this Strategy will be on actions that recognize the broader institutional impact in each context in four stages, namely:

1. *Expanding the inclusion of persons with disabilities in public institutions* by promoting access to training and capacity building, as well as modernizing and acquiring adapted equipment for the different categories of persons with disabilities.
2. *Investing in the infrastructure of public institutions* by adopting minimum standards of physical accessibility so that employees with disabilities can use the services available in their workplace autonomously.
3. *Introducing a quota system for people with disabilities in the public sector*, consisting of allocating minimum percentages of vacancies made available by public institutions to persons with disabilities, from a minimum of 1.5% to a maximum of 5%, based on the total number of employees in the institution.
4. *Drawing up a comprehensive career policy* sensitive to the recruitment of persons with disabilities in internship programs, indefinite vacancies and facilitating their professional progression and the effective exercise of their functions.

This plan is quite forceful in the actions to be taken for the inclusion of persons with disabilities in the public sector and is intrinsically aligned with the CRPD and the ADP. However, its implementation has not taken a different course from other disability policies, i.e. there has not been sufficient commitment to advancing this agenda and monitoring its implementation. As a result, there is no clarity on the point of implementation of this instrument and no effort to design a new strategy based on the new context.

3.2.5. Disability Law

The Disability Law, approved by Law No. 10/2024 of June 7, represents the first effort to domesticate the CRPD and the ADP into national legislation. Efforts to pass a specific law on disability began more than two decades ago and gained momentum with the ratification of the CRPD in 2012. It was only in October 2022 that the government submitted a proposal to the Parliament, which was unanimously approved in April 2024 and subsequently signed and promulgated by the President of the Republic in May 2024.

This law has great potential to contribute to the harmonization of the national legal framework on the rights of persons with disabilities, which unfortunately still has contradictory rules. No less important is the fact that this is the first legal instrument approved by Parliament that adopts the internationally recognized terminology “person with a disability”. Unfortunately, the lack of consideration given to establishing coordination and implementation mechanisms in the Law justifies the fear that it will fall by the wayside, as has happened with other instruments in this area (FAMOD, 2023b).

With regard to the right to work and employment, the Disability Law falls far short of the expectations of persons with disabilities and does not reflect the commitments made with the ratification of the Convention. Article 25 of the Disability Law, on the right to work and employment, only addresses this issue in three respects: (i) it recognizes the right of persons with disabilities to work, on an equal basis with others, (ii) it commits the state to guaranteeing access to vocational training programs and rehabilitation services for the inclusion of persons with disabilities in the labor market, and (iii) the creation of favorable working conditions for persons with disabilities to perform their professional activities without barriers.

This law left out several important aspects enshrined in the CRPD and the ADP that are important for inclusion in the labor market, such as the recruitment of persons with disabilities in the public sector, entrepreneurship and self-employment, among others. As part of the public

consultation for the formulation of the law, persons with disabilities presented members of parliament and the government with their expectations regarding the establishment of disability employment quotas and incentives for the private sector to hire persons with disabilities (FAMOD, 2023). However, this proposal was rejected by the law's proponents, further delaying efforts to reduce barriers in the labor market.

Comparing this Law to the Disability Policy and Strategy, we see that the Disability Law represents a step backwards in terms of promoting the right to work, as it completely ignores the quota system in the category of positive discrimination measures. In a context where the Disability Policy and Strategy has this premise, implemented according to the availability of resources, the Law should be sensitive enough to reinforce the need to move forward with specific actions to accelerate the inclusion of persons with disabilities.

4. Implications of adopting an employment quota system in Mozambique

Barriers to the inclusion of persons with disabilities in the labor market are present in all societies and states are called upon to take affirmative action measures to protect the rights of persons with disabilities to work, including through the adoption of a variety of disability-sensitive employment policies. The literature points to two types of employment policies (BAKER et al, 2018; VELCHE & RELANDEAU, 2017; LEE & LEE, 2016; NAZAROV, KANG & VON SCHRADER, 2015; NYOMBI & KIBANDAMA, 2014). The first category refers to anti-discrimination laws that are more concerned with eliminating discriminatory practices in access to employment. The second category refers to those policies that introduce quota systems for persons with disabilities. Quota systems is one of the positive discrimination measures adopted by governments around the world to promote employment of certain disadvantaged groups like persons with disabilities.

Originating in Europe, the employment quota system is a policy that obliges employers to have persons with disabilities on their organization's staff, essentially with the aim of encouraging the inclusion of this social group in the labor market (VELCHE & RELANDEAU, 2017; THORNTON, 1998). The quota system requires employers to establish a percentage of employees considered to have some kind of disability, based on the size of the firm and the number of employees (THORNTON, 1998). Quota systems are divided into two groups:

- *Quota system with sanction*, usually called quota-levy system, sets a quota and requires “that all covered employers who do not meet their obligation pay a fine or levy which usually goes into a fund to support the employment of persons with disabilities” (WADDINGTON, 1996 apud LEE & LEE, 2016).
- *Quota system without sanction*: because it does not sanction employers who do not meet their obligation even though legislative recommendation or legislative obligation are present. (LEE & LEE, 2016)

The effective implementation of a quota system can result in an increase in the number of persons with disabilities entering the labor market, especially in those countries where non-compliance with quotas is subject to sanctions (VELCHE & RELANDEAU, 2017). Negatively, the quota system tends to neglect the causes of the exclusion of persons with disabilities and sometimes is perceived as a hiring constraint without encouraging the company to change its practices and embark on a real change to become inclusive. (VELCHE & RELANDEAU, 2017)

African countries such as Algeria, Kenya, Morocco, South Africa and Uganda have adopted disability employment quotas, but their implementation is still a long way from meeting the objectives for which they were set. Aspects such as the lack of effective monitoring of the quota system, the absence of data on its implementation, the lack of representation of persons with disabilities in decision-making processes, the prevalence of accessibility barriers and poor education, as well as the absence of specific initiatives to promote employment for persons with disabilities hinder the success of these initiatives (International Centre for Evidence in Disability, University of Nairobi, Mastercard Foundation, 2023; GROBBELAAR-DU PLESSIS & NJAU, 2019).

As discussed above, in Mozambique, the Labor Law and the Labor Policy do not contain provisions on the establishment of an employment quota system for vulnerable groups, such as persons with disabilities. However, without specifying it, these instruments make room for the state, through specific regulations, to promote the adoption of positive discrimination measures to encourage the integration of persons with disabilities into the labor market.

In contrast, the Disability Policy and the Disability Strategy in the Public Sector, discussed above, make consistent assumptions about the need for the state to move forward with the introduction of employment quotas for persons with disabilities, in an effort to reduce inequalities in access to opportunities. In much more detail, the Disability Strategy in the Public

Sector proposes a quota system for persons with disabilities of between 1.5% and 5%, depending on the number of employees associated with the institution.

These demands have existed for more than two decades, yet the state has been unable to take concrete steps to materialize these measures, perpetuating the marginalization of persons with disabilities in the job market. The challenge behind the implementation of the quota system in Mozambique lies in the fact that it lacks a foundation at the legislative level, i.e. the adoption of an employment quota system is not provided for in any normative instrument, either in the labor law or in the disability law. Its adoption at a political and strategic level leaves room for public and private employers to choose, without suffering any sanction, not to consider the need to take concrete measures to employ persons with disabilities. In Mozambican, the introduction of quota system would reinforce the small private sector initiatives underway to recruit persons with disabilities, especially since they generally “do not adopt a comprehensive inclusive approach to disability, but only respond to the most obvious accessibility needs”⁹.

It is important to note that the employment quota system for persons with disabilities does not in itself guarantee their full inclusion in the labor market. This effort must be enriched by other complementary initiatives, such as the vocational training of persons with disabilities so that they gain the necessary skills to respond to the demands of the labor market; it is also necessary that the public and private sectors make an effort to adopt the necessary reasonable accommodation measures, from the point of view of physical accessibility and information and communication for the full inclusion and participation of persons with disabilities; not least, the promotion of youth employment initiatives must have an inclusive approach that advocates the intentional inclusion of persons with disabilities in the design, implementation and monitoring and evaluation of these initiatives in order to ensure that they meet the main needs of persons with disabilities in their diversity.

⁹ Sightsavers' 2023 assessment of the labor market in Mozambique highlights some ongoing private sector initiatives for the inclusion of people with disabilities in the labor market.

5. Conclusion

In this paper we analyze the dilemma of disability and the right to work, in an effort to understand the implications of adopting an employment quota system for people with disabilities in Mozambique. Employing a desk research review, we show that the domestication of international legal framework and the adoption of national initiatives play a significant role in promoting the rights of persons with disabilities to work and employment.

Our results strongly highlight limited education and lack of skills, environments not conducive to disability, both physically and in terms of communication, discriminatory legislation and policies, stigma and familial factors as the main barriers for the inclusion of persons with disabilities in the labor market in Mozambique. Undoubtedly, women and youth with disabilities face greater barriers to access job opportunities, calling for laws, policies and employment initiatives sensitive to the needs of these groups.

The approval of the Disability Law opens new windows of opportunities for the realization of the rights of persons with disability in Mozambique. Although this instrument does not comply fully with the CRPD and the ADP, it provides guidance in terms of actions to take to promote employment among persons with disabilities, including through vocational training.

Labor legislation in Mozambique does not provide for the establishment of employment quota systems. However, disability-related policies highlight the importance of considering quota systems to stimulate employment of persons with disabilities. In fact, results of the research show the great potential that the adoption of the employment quota system has to promote the inclusion of people with disabilities in the labor market.

Finally, the results suggest combining the employment quota system with other positive discrimination measures, particularly education and vocational training, reasonable accommodation and the implementation of inclusive employment initiatives, for the full inclusion and participation of people with disabilities in the labor market on an equal basis with others.

6. Bibliography

Academic papers and reports

1. ALBINOWSKI, Maciej; MAGDA, Iga; ROZSZCZYPALA, Agata. *The employment effects of the disability education gap in Europe*. IZA Discussion Papers, No. 15932, Institute of Labor Economics (IZA), Bonn, 2023.
2. ANAND, Priyanka; SEVAK, Purvi. *The role of workplace accommodations in the employment of people with disabilities*. IZA J Labor Policy, Vol. 6 No. 12, 2017.
3. BAKER, Paul et al. "Barriers to employment participation of individuals with disabilities: addressing the impact of employer (mis)perception and policy". *American Behavioral Scientist*, No. 5, 2018, 657–675.
4. BENE, Timóteo. *Excluídos da Sociedade Digital: superando os desafios de acessibilidade das TICs para pessoas com deficiência em Moçambique*. Maputo: FAMOD, 2024.
5. BENE, Timóteo; PACO, Amílcar; GUIVALA, Gertrudes. *Relatório de Avaliação da Acessibilidade Digital para Pessoas com Deficiência em Moçambique: estudo de Caso das Plataformas de e-Commerce e Serviços Financeiros*. Maputo: FAMOD. 2023.
6. BRYAN, Mark et al. *The role of education in the disability employment gap*. Sheffield Economic Research Papers Series. No. 2023010, 2023.
7. CASTIANO, Clodoaldo; MACONDZO, Dércio. *Acessibilidade das Tecnologias de Informação e Comunicação em Moçambique à Luz da Convenção sobre os Direitos das Pessoas com Deficiência e do Protocolo Africano sobre a Deficiência*. Maputo: FAMOD, 2021.
8. DUNAY, Anna; SHARMA, Ambuj; ILLÉS, Csaba. *Disability and employment – an overview on the role of education and educators*. Presented at the Asian Conference on Education 2016, Official Conference Proceedings. 2016.
9. FÓRUM DAS ASSOCIAÇÕES MOÇAMBICANAS DE PESSOAS COM DEFICIÊNCIA. *Disability Bill National Auscultation Report*. Maputo: FAMOD, 2023a.
10. _____. *Publicada no Boletim da República a Lei de Promoção e Protecção dos Direitos das Pessoas com Deficiência*. Maputo: FAMOD, 2023b.
11. GROBBELAAR-DU PLESSIS, Ilze; NJAU, Jehoshaphat. "Payday: Business as usual or a new dawn rising for persons with disabilities in the workplace". *De Jure Law Journal*, 267-294, 2019.
12. HEERA, Sonali; DEVI, Arti. "Employers' perspective towards people with disabilities: a review of the literature," *The South East Asian Journal of Management*: Vol. 10 : No. 1, 2016.
13. INSTITUTO NACIONAL DE ESTATÍSTICA. *IV Recenseamento Geral de População e Habitação de 2017*. Maputo: Instituto Nacional de Estatística, 2017.
14. _____. *Relatório Final do Inquérito sobre Orçamento Familiar – IOF 2022*. Maputo: Instituto Nacional de Estatística, 2023a.
15. _____. *A Situação Socioeconómica da Juventude em Moçambique*. Maputo: Instituto Nacional de Estatística, 2023b.
16. International Centre for Evidence in Disability, University of Nairobi, Mastercard Foundation. *Disability-inclusive education and employment: understanding the context in Kenya*. London, UK: ICED, 2023.

17. JAKAN, Nusrat; HOLLOWAY, Catherine. *Barriers to access and retain formal employment for persons with disabilities in Bangladesh and Kenya*. GDI Hub Working Paper Series Issue No. 01, 2020.
18. KERSHNER, Claude; MARAKAS, George. "Employing individuals with disabilities and organizational citizenship behavior: the role of employer openness and employee attitudes". *Engaged Management Review*, vol. 7, No. 2, 2024
19. KHADIAGALA, Gilbert; MANHIQUE, Jorge. *Towards social, economic and inclusive policies for people with disability in Mozambique*. Maputo: WFD, 2019
20. LEE, Sunwoo; LEE, Sookyung. Comparing Employment Quota Systems for Disabled People Between Korea and Japan. *Asian Journal of Human Services*, Vol.10 83-92, 2016.
21. MANGIATERRA, Viviana, et al. *Employment and youth with disabilities: sharing knowledge and practices - report of the E-discussion on youth and disabilities (English)*. Washington, D.C.: World Bank Group, 2005.
22. MANHIQUE, Jorge. Análise da legislação moçambicana e sua conformidade com os padrões contemporâneos de direitos humanos das pessoas com deficiência. Maputo: FAMOD, 2023a.
23. _____, Jorge. Situational Analysis of the rights of persons with disabilities in Mozambique. Maputo: UNICEF, 2023b.
24. McLAUGHLIN, Mary; BELL, Myrtle; STRINGER, Donna. *Stigma and acceptance of persons with disabilities understudied aspects of workforce diversity*. Group & Organization Management, 2004.
25. NAZAROV, Zafar; KANG, Dongug; VON SCHRADER, Sarah. "Employment quota system and labour market outcomes of individuals with disabilities: empirical evidence from South Korea. *Fiscal Studies*, vol. 36, no. 1, pp. 99–126, 2015
26. NYOMBI, Chrispas; KIBANDAMA, Alexander. Access to Employment for Persons with Disabilities in Uganda. *Labor Law Journal*, 248-258, 2014.
27. RAVIM & HANDICAP INTERNATIONAL MOZAMBIQUE. *People with disabilities in the suburban areas of Maputo and Matola*. Maputo: RAVIM, 2010.
28. SIGHTSAVERS. *Labour market assessment in Mozambique*. Maputo: Sightsavers, 2023.
29. SOCIAL DEVELOPMENT DIRECT. *Disability Thematic Study Mozambique*. 2021.
30. SOUZA, Gustavo. Employment and welfare effects of the quota for disabled workers in Brazil. Federal Reserve Bank of Chicago, 2023.
31. THORNTON, Patricia. Employment quotas, levies and national rehabilitation funds for persons with disabilities: pointers for policy and practice. ILO, 1998.
32. United Nations Committee on the Rights of Persons with Disabilities. *General comment No. 8 (2022) on the right of persons with disabilities to work and employment*. 2022.
33. VELCHE, Dominic; RELANDEAU, Audrey. *Employment policies for persons with disabilities comparative study in thirteen countries*. Lyon: Humanity & Inclusion, No. 16, 2017.
34. VIRENDRAKUMAR, Bhavisha et al. *Disability-related stigma and discrimination in sub-Saharan Africa and south Asia: a systematic literature review*. Haywards Heath, UK: Sightsavers, 2021.
35. WHO. *Global report on health equity for persons with disabilities*. Geneva: WHO, 2022.

36. ZOLYOMI, Eszter; BIRTHA, Magdi. *Towards inclusive employment of persons with disabilities: a comparative study of six social economy organizations and companies in Europe*. Vienna: European Centre for Social Welfare Policy and Research, 2020.

Legal framework

1. Constituição da República de Moçambique, 2018.
2. Estratégia da Pessoa Portadora de Deficiência na Função Pública, 2009.
3. ILO. R111 - Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).
4. ILO. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
5. International Covenant on Economic, Social and Cultural Rights (ICESCR).
6. Lei n.º 13/2023, de 25 de Agosto, Lei do Trabalho.
7. Plano Nacional de Acção para a Deficiência.
8. Política da Pessoa Portadora de Deficiência, 1999.
9. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (ADP).
10. Resolução N.º 29/2016, de 31 de Outubro, Política de Emprego.
11. Resolução n.º 20/1999, de 23 de Junho, Política para a Pessoa Portadora de Deficiência.
12. Universal Declaration of Human Rights (UDHR), 1948.
13. United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006.