

**DISABILITY DISCRIMINATION IN ZAMBIA:
AN EMPLOYMENT LAW PERSPECTIVE**

BY

CHILAMBWE NATASHA

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AN EMPLOYMENT LAW PERSPECTIVE**

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**A Directed Research Essay submitted to the University of Zambia Law Faculty in Partial
Fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.**

DECLARATION

I, CHILAMBWE NATASHA, do hereby declare that this directed research essay is my authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorisation in writing of the author.


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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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ABSTRACT

This obligatory essay looks at the phenomenon of disabled individuals in the employment sector in Zambia. It acknowledges the current status quo which is that people with disabilities have been amongst the most economically impoverished, politically marginalised and least visible members of society not only in Zambia but globally. The denial of equal employment opportunities to people with disabilities forms one of the root causes of the poverty and exclusion of many members of this group. People with disabilities are more likely than others to experience disadvantages in the labour market. The purpose of this study was therefore to scrutinise the laws of Zambia pertaining to employment and discrimination against individuals with disabilities, and how these laws are being reinforced so as to curb the issue of unemployment among people with disabilities. The overall objective of this study was therefore to construct an account on how the Zambian legislature has endeavoured to strengthen the laws tailored to eradicate discrimination in employment against persons with disabilities.

In attempting to have a holistic view, this paper delved into the critical points of current knowledge as well as the relevant human rights and labour laws. The research findings pertinent to the specific objectives revealed that there is discrimination against individuals with disabilities in the employment sector. The inadequacies of the law and its enforcers in protecting against this situation also came to light. In addition, the finding established that law enforcers and monitoring groups like statutory bodies such as Zambia Agency for Persons with disabilities are under utilised. The findings further revealed the need for disabled individuals to begin taking action against perpetrators of such discrimination as they showed that very few victims actually even report cases of discrimination or even know where to report such cases.

Society's norms and values ought to change and come to the realisation that disabled persons can positively contribute to the nation. It is for this reason that the concluding chapter makes a number of recommendations among them the need for law reform and its implementation to the latter as a means to ameliorate and possibly eradicate disability discrimination.

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DEDICATION

I would like to dedicate this obligatory essay to my parents James and Elizabeth Chilambwe who have been pillars to me. All that I will ever achieve in life is as a result of your unconditional love and support. Thank you for believing in me and teaching me that I can be anything I want to be in life with hard work and perseverance. I Love you.

“All your hopes, dreams, goals and aspirations are amenable to hard work”

- Brian Tracy -

LIST OF TABLES

	<u>Page</u>
Table 1 - The Nature of the Disabilities of Respondents in the Study.....	32
Table 2 - The Nature of Employment given to Individuals with Disabilities.....	33
Table 3 - Forms of discrimination faced by individuals with disabilities with respect to employment.....	34
Table 4 - Legislation, Statutory Bodies and Individuals with Disabilities.....	36
Table 5 - Challenges faced by individuals with disabilities in the place of work.....	38

LIST OF ABBREVIATIONS

FFTU – Federation of Free Trade Union

ILO – International Labour Organisation

MOE – Ministry of Education

UN – United Nations

WHO – World Health Organisation

ZAPD – Zambia Agency for Persons with Disabilities

ZCTU – Zambia Congress of Trade Unions

ZFE – Zambia Federation of Employers

TABLE OF CONTENTS

	<u>Page</u>
<u>Preliminaries</u>	
Research Title.....	i
Declaration.....	ii
Supervisors Approval.....	iii
Abstract.....	iv
Acknowledgements.....	v
Dedication.....	vi
Table of statutes.....	vii
List of Tables.....	viii
List of Abbreviations.....	ix
Table of contents.....	x
<u>Chapter One</u>	
1.0 Introduction.....	1
1.1 Statement of the Problem.....	4
1.2 Purpose of the Research.....	5
1.2.1 Objectives.....	5
1.2.2 Research Question.....	6
1.3 Significance of the study.....	6
1.4 Methodology.....	7
1.5 Operational terms.....	8
1.6 Outline of Chapters.....	10
1.7 Conclusion.....	10

Chapter Two

2.0 Critical Points of Current Knowledge.....	11
2.1 Critical Points of Current Knowledge on Disability Discrimination in Zambia	11
2.2 Human Rights and Disability Discrimination	12
2.3 Employment Discrimination acts and Prevalence in Individuals with Disabilities...	13
2.4 Trends in Disability Legislation.....	15
2.5 International Labour Organisation Recommendations.....	16
2.6 Government Support for people with disabilities in Zambia.....	18
2.7 Conclusion.....	19

Chapter Three

3.0 The Legal Framework on Disability Discrimination with Respect to Employment...	20
3.1 International Instruments and Standards.....	20
3.2 Convention on the Rights of Persons with Disabilities.....	21
3.3 Regional Instruments.....	23
3.4 Domestic Legislation.....	24
3.5 Conclusion.....	30

Chapter Four

4.0 Research Report.....	32
4.1 Presentation and Interpretation of the Findings.....	32
4.2 Conclusion.....	40

Chapter Five

5.0 Conclusion and Recommendations.....	41
5.1 Conclusion.....	41
5.2 Recommendations.....	43

5.3 Final Conclusion..... 47

Bibliography..... 48

CHAPTER ONE

1.0 Introduction

Discrimination against people with disabilities in favour of people who are not is called ableism. This essentially refers to prejudice against or disregard for disabled people's needs and rights.¹ Sociologically, discrimination is a term referring to the treatment taken toward or against a person of a certain group in consideration based solely on class or category. Discrimination is the actual behavior towards another group. It involves excluding or restricting members of one group from opportunities that are available to other groups.² Disability discrimination, which treats non-disabled individuals as the standard of 'normal living', results in public and private places and services, education, and social work that are built to serve 'standard people', thereby excluding those with various disabilities.³

Employment discrimination on the other hand refers to disabling certain people to apply and receive jobs based on their race, age, gender, religion, sexual orientation and disability.⁴ In relation to Sociology, employment discrimination usually relates to what events are happening in society at the time.⁵ One of the worst social stigmas that society has been unable to overcome is the phenomenon of employment discrimination against individuals with disabilities both to the acquisition of employment as well as in the workplace.

The International Labour Organisation (ILO) defines persons with disabilities at work as individuals whose prospects of securing, returning to, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical, sensory,

¹ A.B. Garner, Editor in Chief, Black's Law Dictionary, 8th edition, St. Paul, West Publishing, 2004. Page 5

² A. Giddens, Introduction to sociology, 7th edition, New York, W. W. Norton & Company Inc, 2009. Page 324

³ M. W. Cummings, Disabled Workers Still Face Discrimination in the Workplace, Page 19. unpublished

⁴ http://www.ilo.org/employment_discrimination/global/land.html accessed 11/10/10

⁵ Employment Law Guide, Articles Related to Employment Discrimination Law, Washington DC, 2007. <http://www.hg.org/law-articles-employment-and-labor.asp> accessed 18/11/10

intellectual or mental impairment.⁶ Like all other issues of discrimination, disability discrimination is approached from the perspective of victims of such discrimination, in this case disabled persons, in the field of industrial and labour relations.

Approximately over 650 million people worldwide have a physical, sensory, intellectual or mental impairment of one form or another. This probably equals to about 10 percent of the world's population. People with disabilities can be found in every country though it is estimated that about over two thirds of persons with various forms of disabilities live in the developing world.⁷

It has also been reported that people with disabilities represent 10 percent of the world's population or more than 650 million people out of which, 470 million are of working age. This includes people with physical, sensory, intellectual and psycho-social disabilities. The number of people with disabilities is likely to grow as the population ages. The majority live in developing countries and disability rates appear higher in rural as opposed to urban areas.⁸

There are no explicit statistics on the magnitude of disability in Zambia because there has never been any special survey to establish the number of persons with disabilities in the country.⁹ However, according to the World Health Organisation (WHO) estimates, some 690,000 to one million women and men in Zambia, or 7 to 10 percent of the population have a disability. A higher percentage of people with disabilities live in rural areas where access to basic services is limited.¹⁰

⁶ http://www.ilo.org/employment_discrimination/global/land.html accessed 11/10/10

⁷ J. Stewart, Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines International Labour Office. Cornell University Industrial and Labour Relations School.

⁸ O. Reilly, The Right to Decent Work of Persons with Disabilities: International Labour Organisation: Geneva 2007

⁹ Zambia Agency for Persons with Disabilities (ZAPD) Strategic Plan 2007-2010. unpublished

¹⁰ International Labour Organisation, Promoting the Employability and Employment of People with Disabilities through Effective Legislation, Zambia Country Profile, Southern Africa, 2006. Page 4

Traditionally, the Zambian society believed that disability resulted from some misfortune in the family or was brought about by offending ancestors and witchcraft. Having a person with a disability in the family was considered a taboo and such people were hidden or cast out from society by family members as they were considered to be an embarrassment. Persons with disabilities were considered to be incapable of doing anything on their own and were denied the opportunity to engage in meaningful activities. Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have interfered with the prevention of disability and led to the isolation of persons with disabilities and delayed their development.¹¹ These social attitudes unfortunately permeate society even today and may therefore be used to explain the current status quo.

At present, people with disabilities have been amongst the most economically impoverished, politically marginalised and least visible members of society not only in Zambia but globally. According to United Nations (UN) statistics, 82 percent of disabled people in developing countries live below the poverty datum line and are among the most vulnerable and marginalised in these countries.¹² Their opportunities to emerge from poverty are limited in many cases by lack of enabling legislation to promote their access to skills development and employment opportunities as well as the weak implementation and enforcement measures, where such legislation take place.¹³

Geneva ILO News reported that discrimination at work is an unfortunate daily reality for hundreds of millions of people around the world, even more so for individuals with disabilities.¹⁴ Throughout the world there is an undeniable link between disability, poverty and exclusion. This denial of equal employment opportunities to people with disabilities forms one of the root causes of the poverty and exclusion of many members of this group. There is ample evidence that people with disabilities are more likely than others (non disabled

¹¹ Zambia Agency for Persons with Disabilities (ZAPD) Strategic Plan 2007-2010. Unpublished

¹² <http://www.un.org/disabled-persons.html> accessed 18/10/10

¹³ World Bank, HIV/AIDS & Disability: Capturing Hidden Voices, The World Bank/Yale University Global Survey on HIV/AIDS and Disability, 2004.

¹⁴ <http://www.ilo.org/about-the-ilo.html> accessed 18/10/10

persons) to experience disadvantages, exclusion and discrimination in the labour market.¹⁵ Discrimination against people in the work place is one of the worst issues that plague the conceptual orientation and behavioural patterns of society at large.

Governments all across the world have passed many laws and statutes that regulate work place practices and other matters that concern persons with disabilities. Some of these statutes are basically put in place to prevent job discrimination against disabled people during the recruitment process, promotion, basis for remuneration and the like. Despite all these efforts, nothing really seems to be working out. The question therefore is how can the legislation in place curb the situation and promote the Rights to Employment for Persons with Disabilities.

1.1 Statement of the Problem

The Zambian policy on education entitled ‘Educating our Future’, a policy document postulating official government policy on education, stipulates that every child has the right to equal opportunity to a good education regardless of the disability.¹⁶ To this effect, the policy documents recognise the need for persons with disabilities to acquire appropriate education that serves as a key entry point to employment opportunities.

However, it has been observed that most of the individuals with disabilities are not in employment given that, facilities for proper education for persons with disabilities is virtually nonexistent to a good number of them. Consequently very few persons with disabilities are in formal employment. As if this is not enough, the picture in the informal sector is not encouraging. Additionally, it is alleged that discrimination is still a common element in the work places. While some of the more blatant forms of discrimination may have faded, many remain and others have taken new and less visible forms like preserving certain jobs for physically able persons. Regrettably, numerous human rights campaigns seem to yield less or no positive results at all for persons with disabilities.

¹⁵ Gladnet Collection., Achieving Equal Opportunities for people with Disabilities through legislation: Guidelines International Labour Office. Cornell University Press Industrial and Labour Relations School.

¹⁶ Ministry of Education (MOE), Educating our Future, Lusaka, Government Printers, 1996.

No specific laws to protect disabled persons against employment discrimination, weak implementation policies or lack of monitoring procedures of the legislature may have led to the alarming levels of employment discrimination of persons with disabilities. To this effect, progress in fighting discrimination concerning employment of the disabled seems to be inconsistent. Ultimately, failure to eradicate various forms of discrimination against people with disabilities in the employment arena is still responsible for high poverty levels of disabled persons in the nation.

1.2 Purpose of the Research

For a long time it was assumed that unemployment and underemployment of people with disabilities was closely related to and in fact the unavoidable consequence of the physical and mental impairments of the persons concerned. It is now recognised that many of the disadvantages they face and the fact that they are often excluded are not due to individual impairments but rather a result of the rejoinder of society to that impairment. The purpose of this study therefore was to scrutinise the laws of Zambia pertaining to discrimination against individuals with disabilities in the labour market, and how these laws were being reinforced so as to curb the issue of unemployment among people with disabilities. Laws and policies may be misconstrued to inadvertently facilitate part of this reaction hence this study.

1.2.1 Objectives

The overall objective of this study was to construct an account on how the Zambian legislation has endeavoured to create an environment that minimises the various forms of discrimination against persons with disabilities at work places. The specific objectives were to investigate whether people with disabilities were being discriminated against employment; to find out whether there were people with disabilities in formal employment in Lusaka Urban; to investigate whether those people in employment experienced any forms of discrimination acts by the people they worked with; to probe into laws in effect that protected people with disabilities against employment discrimination and highlight the role of the law in legitimating this particular social phenomena; to find out whether there were any measures put against individuals who were found guilty of perpetuating discrimination acts against disabled persons already in employment; and finally to investigate whether there were

monitoring procedures by policy makers to assist in adequate implementation of the enhancement of the rights to employment of the disabled individuals.

1.2.2 Research Questions

1. Are people with disabilities being discriminated against employment?
2. Are there people with disabilities in formal employment in Lusaka Urban?
3. What forms of discrimination acts do the disabled people in employment experience?
4. What laws are in effect that are tailored to protect people with disabilities against employment discrimination?
5. What measures are in place against the perpetrators of discrimination acts regarding disabled individuals already in employment?
6. What monitoring procedures are in place to ensure human rights protection of disabled persons against employment is enhanced?

1.3 Significance of the study

This study was cardinal and timely as disability issues are now essentially being considered as issues of human rights. The basic idea of human rights law was centered on the concept of human dignity, equality and non discrimination. It was accepted universally that every individual has inherent equal basic rights that qualified them to live a full and decent life. Even though there had been a lot of discussions regarding discrimination of disabled individuals against employment and although discrimination was prohibited in national statutes, the plain truth was that persons with disabilities are still subjected to various discreet forms of discrimination from their able bodied counterparts in places of work.

The significance of this study was to form a sound basis for sensitising the public against such dehumanising acts of discrimination on the basis of disability. It was also hoped that the research would help the public to eliminate or reduce public or private stigma against certain types of disabilities for example epilepsy and albinism.

This study was also an endeavour to bring various stakeholders to a realisation that there was still frequent resistance among employers to stand for their obligations regarding the

employment of people with disabilities and other areas as preference was generally for physically able persons.

Furthermore, the study also aimed at sensitising trade unionists that may not have a perception that their membership was made up of non disabled workers while on the other hand it may provide a valuable insight on trade unions who may already be actively involved in the promotion of employment of people with disabilities to assist them to lobby for effective all policies embracing all employable persons.

The study was also likely to motivate the law makers to put up strong measures that would regulate implementation of labour laws and also to put in place measures that would deal with perpetrators of discriminatory acts.

Other beneficiaries of this research were the disabled individuals who were likely to benefit from new insights in the current policy issues and would therefore be empowered with data to use to foster evolution of policies and a regulatory framework that would uplift the burden of unemployment among people with disabilities and equate them with others.

The Government was also likely to benefit from this study as the full potential of the disabled individuals would be made use of, which was likely to bring about provision of economic and vocational opportunities and subsequently minimize poverty levels among employable disabled citizens in the nation.

The community at large stands to benefit from this study in that whatever law and policies that would emanate from the findings of this study would not only benefit individuals with disabilities but also the people closely related and directly involved with these people. After all it was unlikely that there could be an entire family or clan that did not have an individual who was disabled in one way or another.

1.4 Methodology

This study was based on both primary and secondary information. Interviews with persons with disabilities, employers and other stakeholders were the primary sources of information which was captured with the aid of questionnaires. The study also consisted of desk research from secondary sources such as domestic statutes, international instruments, judicial

decisions, textbooks, articles, reports, dissertations, literature written by eminent scholars, journals and credible internet sources were among the secondary sources used in this paper. This research is qualitative in nature.

1.5 Operational terms

Disability

Disability means any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other trained animals trained for that purpose.¹⁷ Disability is therefore an umbrella term, covering impairments, activity limitations, and participation restrictions. Impairment is a problem in body function or structure; activity limitation on the other hand is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in real life situations.¹⁸ A disability may occur during a person's lifetime or may be present from birth.

Discrimination

The term discrimination refers to treatment or consideration of, or making a distinction in favour of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit; an act or instance of discriminating; the power of making fine distinctions; discriminating judgment; as well as something that serves to differentiate.¹⁹ It may be the effect of a law or established practice that confers privileges to a certain class because of race, age, sex, nationality, religion or handicap.²⁰ The

¹⁷ Section 2 of the Persons with Disabilities Act No.33 of 1996

¹⁸ <http://www.who.int/entity/disability/en/index.html> accessed 19/11/10

¹⁹ Collins English Dictionary, Complete & Unabridged, 10th Edition, William Collins Sons and Co. Ltd, 2009

²⁰ A. B. Garner, Black's Law Dictionary, Page 500

dictionary sense of discrimination is neutral while the current political use of the term is frequently non neutral but demeaning.²¹

Employment

Employment is a contract between two parties, one being the employer and the other being the employee. An employee may be defined as person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.²² In a commercial setting, the employer conceives of a productive activity, generally with the intention of generating a profit, and the employee contributes labour to the enterprise, usually in return for payment of wages. Employment also exists in the public, non-profit and household sectors.²³

Law

Law refers to the regime that orders human activities and relations through systematic application of the force of a politically organised society, or through social pressure, in such a society. It is the aggregate of legislation, judicial precedents, and accepted legal principles.²⁴ It will help to distinguish three senses of the word law: the first is law as a distinctive social institution; the second is law as a collection of sets of propositions; and the third is law as a source of rights, duties, and powers.²⁵

Employment Law

²¹ R. K. Fullinwider, *The Reverse Discrimination Controversy: A Moral and Legal Analysis*, New Jersey, Rowman and Littlefield, 1980. Page 11

²² A. B. Garner, *Black's Law Dictionary*, Page 566

²³ http://www.wikipedia.org/employment_law.html accessed 19/11/10

²⁴ A. B. Garner, *Black's Law Dictionary*, Page 900

²⁵ A. R. Posner, *The Problems of Jurisprudence*, Harvard University Press, 1990. Page 220

This particular field of law therefore refers to the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people (employees) and their organisations (employers). As such, it mediates many aspects of the relationship between trade unions, employers and employees.²⁶

Perspective

A perspective is basically the state of one's ideas, the facts known to one, in having a meaningful interrelationship. It is the faculty of seeing all the relevant data in a meaningful relationship; a mental view or prospect.²⁷ In this Research paper, disability discrimination is undertaken particularly with respect to the relations subsisting between an employer and employee in the event of a disability.

1.6 Outline of Chapters

Chapter one delineates the scope of the entire research and gives a brief introduction and background. It states the problem in a clear explication of the assignment undertaken as well as the theoretical and or practical importance of the study. In addition, it also explains how the research was conducted and defines operational terms; Chapter two essentially looks at critical points of current knowledge with respect to disability discrimination in Zambia; Chapter three then gives an outline on the legal framework regulating the scope of the study; Chapter four of this essay is a report on the field research conducted. It is essentially a presentation and analysis of the research findings; finally chapter five, the concluding chapter, draws a conclusion and lists a number of recommendations.

1.7 Conclusion

Discrimination on various grounds is and has been a pathogen in society for time immemorial often justified by its perpetrators in one way or the other. However there is no justification for it. It is for this reason that this study attempts to assess the effectiveness of the current legal

²⁶ A. B. Garner, Black's Law Dictionary, Page 900

²⁷ <http://dictionary.reference.com/browse/perspective> accessed 11/11/10

regulatory framework with respect to the discrimination of individuals with disabilities in view of employment. The findings from what is really obtaining on the ground will be dealt with systematically in the ensuing chapters.

This study acknowledges that various activists with similar objectives have written on disability discrimination in a very relevant and for others relentless manner. It is for this reason that the subsequent chapter will mainly focus and attempt to delve into the critical points of current knowledge on the subject matter.

CHAPTER TWO

2.0 Critical Points of Current Knowledge

Discrimination against persons with disabilities still thrives within the Zambian society and discriminatory behaviours take many forms. They however all involve some form of exclusion or rejection. It is important to note that discrimination affects all aspects of life including education, economic status, marriage, family relations, health, health care, employment and human services.

Among persons with disabilities, the following form particularly vulnerable groups that face discrimination based on two or more grounds: women, children, the old, and victims of torture, refugees, and displaced persons, mentally impaired and migrant workers. For instance, women with a disability are discriminated against because of their gender and also because of their disability. Persons with disabilities suffer from discrimination based on societal prejudice and ignorance. In addition, they often do not enjoy the same opportunities as other people due to lack of access to essential services.²⁸

There is quite a substantial amount of literature that has been written on disability discrimination. Therefore the main purpose of this chapter is to look at the critical points of current knowledge on disability discrimination in Zambia particularly in the employment sector.

2.1 Critical Points of Current Knowledge on Disability Discrimination in Zambia

Kafwabulula noted the fact that along with women and children, legal systems have excluded persons with disabilities as non persons and Zambia is no exception. Persons with disabilities were and still are excluded from mainstream society since they are regarded as non productive members of society. These are people who are often locked in large institutions called nursing homes and deprived of all that non-disabled people take for granted such as proper recreational facilities, personal liberties, a creative social and political life, attractive work,

²⁸ United Nations Development of Disability Policy. Advocacy, education and training materials, 2008.

progressive education, and individual privacy to name but a few.²⁹ Disabilities policy has been based on welfare charity concepts and has not allowed disabled persons to escape the object status and become self determinant subjects.

The majority of persons with disabilities in Zambia have not been enabled to realise potential for integration into the mainstream of society. This imbalance has inhibited them from accessing their fundamental social, political, and economic rights. Their exclusion is a result of a range of factors which include social attitudes, socialisation and cultural beliefs which have perpetuated stereotypes of persons with disabilities as dependant and in need of care. This has inculcated a dependency syndrome in persons with disabilities.³⁰

On the other hand, when they are employed the handicapped cease to be a burden to their families and ultimately to the nation. They then become productive citizens who contribute and participate in all aspects of economic and social development of the nation.³¹

2.2 Human Rights and Disability Discrimination

Disability discrimination often has a human rights connotation to it. It has been stated that human rights of the disabled is the last in the civil rights movement the world over.³² This is sometimes attributed to the fact that labour movements, black people, colonised people and poor people have all somewhat been liberated. The basic idea of human rights law reflects the simple and at the same time crucially important notion that everyone is a human being³³ with equal rights inherent in the nature of every human being. The general attitude of human rights

²⁹ C. Kafwambulula, Does the Persons With Disabilities Act No. 33/1996 Protect and Promote Human Rights of the Disabled in Zambia, Obligatory Essay Submitted in Partial fulfillment of the Bachelor of Laws Degree, University of Zambia, 2001. Page 1

³⁰ Zambia Agency for Persons with Disabilities (ZAPD), Strategic Plan 2007-2010, Unpublished

³¹ L. Siyunyi, Handicapped Persons in Zambia: The Need for Legislation to Promote their Welfare. Obligatory Essay submitted in partial fulfillment of the Bachelor of Laws Degree. University of Zambia, Unpublished 1989/90. Page 45

³² C. Kafwambulula, Does the Persons With Disabilities Act, Page 1

³³ J. Stewart, Skills and Employability, International Labour Organisation, New York, 2004.

law, domestic as well as international, is to treat disabled and non-disabled persons on the same footing of legal equality regarding the enjoyment of individual human rights.

Equality should recognise equality of opportunity and of outcomes. This requires that any restrictions or limitations that are caused directly or indirectly by a disability or the intersection of disability with gender, poverty, race, caste, and/or class should be remedied by appropriate modifications, adjustments or assistance.³⁴ Increased awareness of the particular situation of disabled persons has induced slow gravitations at international level towards a recognition of “disabled persons rights”.³⁵ Persons with disabilities have the same rights as other citizens to opportunities for self-actualisation and participation in the economic and social development of any country.³⁶

Corresponding to the rights of individuals, states have the duty to protect, respect and fulfill human rights. The reappraisal of this common understanding has prompted major shifts in international and national laws. It is now widely accepted that the human rights of persons with disabilities must be protected and promoted through general as well as specially designed laws, policies and programmes.³⁷ However, some activists argue that respect for the human rights of the disabled will never come from a document or from institutions as much as it must result from the struggle against repression and individual freedoms through affirmative action.³⁸

2.3 Prevalence of Individuals with Disabilities and Employment Discrimination

The United Nations estimates that there are 650 million persons with disabilities in the world today. It further states that this number is increasing every year due to various factors such as

³⁴ O. A. AlGhaib, Disability Herald, Issue No. 013 Bi Annual June 2010, Zambia Federation of Disability Organisation (ZAFOD). Page 16

³⁵ J. Stewart, Skills and Employability, ILO

³⁶ O. A. AlGhaib, Disability Herald, Page 16

³⁷ J. Stewart, Skills and Employability, ILO

³⁸ C. Kafwabulula, Does the Persons With Disabilities Act, Page 1

war and destruction, unhealthy living conditions or absence of knowledge about disabilities, its causes, prevention and treatment.³⁹

According to the Census of Population and Housing conducted in Zambia in 2000, there were 256,690 persons with disabilities out of the total population of 9.3 million; a proportion of 2.7 percent of the total population. This proportion is an increase over the 1990 census when only 0.9 percent of the total population was for persons with all disabilities. An examination of the proportions of the disabled between the two censuses obviously indicates that there has been an increase in the occurrence of disability between 1990 and 2000. The increase was caused mostly by the increase in the categories and coverage or definition of disabilities.

The report of this census on disability also showed that a large percentage of people with disabilities are self employed workers or in peasant farming and that very few are in formal employment. The same data also revealed that more than 80 percent of persons with disabilities especially visually impaired are employed in agriculture making it by far the most common occupation. As a group, the majority of Zambians with disabilities live in poverty as has been alluded to. Street begging is a prevalent means of survival of most persons with disabilities that dwell in urban centres. Literacy levels are also very low among the population of disabled persons.⁴⁰

Information on persons with disabilities is important for addressing barriers that limit the enjoyment of these human rights and their integration into the mainstream of society. The 2010 census results are however likely to reveal a variation to these statistics.

As earlier stated, employment discrimination occurs when employers adversely single out employees or applicants on the basis of age, race, gender, sex, sexual orientation, national origin, disability, religion or various other reasons.⁴¹ A lot of discussion has been taking place for a long time regarding the phenomena of employment discrimination against persons with

³⁹ United Nations (2000) Special Rapporteur on Disabilities Sweden

⁴⁰ Central Statistical Office, Zambia National Statistics from the Government of the Republic of Zambia, Main Census Report, Volume 10.

⁴¹ Employment Law Guide, Articles Related to Employment Discrimination Law, Washington DC, 2007. <http://www.hg.org/law-articles-employment-and-labor.asp> accessed 18/11/10

disabilities in the work place. Discrimination against disabled people can be noticed even today in the common society. This act is taken to be one of the worst social stigmas that the society has not been able to overcome. Modern society is yet to formulate ways to eradicate discrimination against various disabilities that plague people.⁴²

Kafwabulula further argues that the human tendency in dealing with each other is to identify with a group either the minority or those deemed different and to isolate them from the rest of the group or gathering. In isolating such individuals, usually the isolated or indeed those deemed different are denied certain benefits or advantages which the rest of the group will enjoy or take for granted. This scenario is exactly what persons with disabilities go through world over. They are often deemed different and to a larger extent isolated in society. In any given group or gathering, it is easy to quickly identify a person with a disability and usually these are discriminated against.⁴³

2.4 Trends in Disability Legislation

Siyunyi observed that unemployment in Zambia is high, but for the handicapped the situation is aggravated by lack of legal safeguards. Legislation should be passed if the nation is to benefit from the massive potential of both skilled and unskilled manpower which is latent in most disabled persons. If the legal and regulatory framework in Zambia does not seriously and promptly address itself to the plight of the disabled they will continue to occupy the status of being second class citizens. This is not only repugnant to international morality and generally acceptable principles of equity but also a serious social injustice.⁴⁴

The most appropriate laws have advanced equal opportunities for people with disabilities in the labour market, and policy measures to implement these laws, vary from state to state. Each state has a margin of discretion in assessing which laws and policy measures are most suitable to meet specific circumstances and the needs of people with disabilities. Factors such

⁴² http://www.buzzle.com/articles/employment_discrimination_against_disabled_people_in_the_workplace.html
accessed 18/11/2010

⁴³ C. Kafwabulula, *Shifting the Burden of Proof in Disability Discrimination*, Unpublished.

⁴⁴ L. Siyunyi, *Handicapped Persons in Zambia, 1989/90*. Page 45

as legal and cultural traditions and financial resources have influenced legislation and enforcement in many respects.⁴⁵

International human rights law, ILO international labour standards and national labour law in many countries impose a duty on each state to take whatever steps are necessary, to the maximum of its resources, to ensure that each person with a disability enjoys the right to equal opportunities in the labour market. This requires the adoption of a national strategy to progressively achieve the full aspirations enshrined in this right, a strategy which in itself is, in conformity with international and regional instruments such as treaties, conventions or covenants. This applies at times to economic recession as well as in periods of growth.⁴⁶

As employment legislation for the disabled is very difficult to enforce, its success will depend very largely on inter alia, attitudes, economic conditions, social policy, cultural values and the concerted efforts of the handicapped themselves.⁴⁷ Comprehensive legislation to provide for good employment, attractive working conditions and improved pension schemes is therefore required. Programmes that take a holistic approach after due consideration of the individual's age, personality, intelligence, education, skills and potentials will also be needed.⁴⁸

2.5 International Labour Organisation Recommendations

International and national actors over the past decades have shown a commitment to increasing employment, job retention and return-to-work opportunities for people with disabilities. This is largely due to the recognition of their potentially significant contribution to national economies. National approaches to combat discrimination against persons with disabilities reflect a shift from a "moral" or "medical" model to a rights-based approach,

⁴⁵ P. Thornton and Lunt, N., *Employment Policies for Disabled People in Eighteen Countries: A Review*, Social Policy Research Unit, University of New York, 1997.

⁴⁶ http://www.ilo.org/employment_discrimination/global/land.html accessed 11/10/10

⁴⁷ Mutale, *Legislation and Services for the Blind: A Resource Paper Presented to the First Southern African Regional Seminar of the African Union of the Blind*, Lusaka, 1989. Pages 5-6

⁴⁸ <http://www.ilo.org/skills.htm> accessed 20/08/10

focusing on their social inclusion and the removal of structural inequalities while providing access to the labour market.⁴⁹

In an early 1944 recommendation concerning employment services, including vocational training and vocational guidance, ILO proposed that persons with disabilities should, wherever possible be trained with other persons, under the same conditions and with the same pay, and the training should continue to the point where the disabled person is able to enter employment in the trade or occupation for which he has been trained. The ILO called for equality of employment opportunity for disabled workers and for affirmative action to promote the employment of workers with serious disabilities.⁵⁰

ILO has also adopted Recommendations No. 168 concerning vocational rehabilitation and employment of disabled persons. Convention No. 159 requires ratifying states to introduce a national policy based on the principle of equality of opportunity between disabled workers and workers generally, respecting equality of opportunity and treatment for disabled women and men and providing for special positive measures aimed at effective implementation of these principles. The emphasis on full participation is reflected in the definition of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further the integration or reintegration of such a persons or persons into society.⁵¹

The work of the United Nations (UN) constitutes the most important action taken by an international organisation in the area of disability. Based on the international Bill of Rights, the UN formulated the first specific document regarding disabilities in 1971 known as The Declaration on the rights of Mentally Retarded Persons. Other important documents followed but none of them are legally binding. The 1980s marked the main phase of activity regarding establishing international norms pertaining to persons with disabilities. In 1981, the General Assembly declared the first International Year of Disabled Persons. It was followed by the

⁴⁹ <http://www.ilo.org/skills.htm> accessed 20/08/10

⁵⁰ Employment (Transition from War to Peace) Recommendation No. 71, 1944

⁵¹ International Labour Organisation, Convention No. 159, Article 12

World Program Action concerning Disabled Persons in 1982 and the Decade of Disabled Persons 1982-1992.

Throughout the 1990s all UN conferences dealt with disability rights and addressed the need for protective instruments for instance The World Conference on Human Rights of 1993 and Fourth World Conference on Women of 1995. At present the Ad hoc Committee on Disabilities is in a process to create a convention that protects disabled persons on the international level. A higher level of awareness is also demonstrated by the European Union which declared the year 2003 as the European Year of People with Disabilities. Other important regional observances include the Asian and Pacific Decade of Disabled people (2000-2009), and Arab Decade of Disabled Persons (2003-2012).⁵²

2.6 Government Support for People with Disabilities in Zambia

The government of Zambia has adopted a number of policies pertaining to people with disabilities including their right to productive and decent work and to basic services, workers compensation, social security and entrepreneurship development.⁵³ For instance a statutory body known as the Zambia Agency for Persons with Disabilities was established to promote, coordinate and provide services for disabled persons. The Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA) Act 1998, states that the special needs of people with disabilities will be taken into consideration while the Worker's Compensation Act No. 10 of 1999, revised the law relating to the compensation of workers for disabilities suffered or disease contracted during the course of employment. The National Employment and Labour Market Policy (NELP) 2005, shows the intention of the Government of Zambia is to provide for improved care and support services to vulnerable groups including people with disabilities.

Furthermore, the Fifth National Development Plan (FNDP) 2006-2010, among other objectives aims to attain the full participation, equality and empowerment of persons with disabilities. It seeks to provide enhanced support to disabled persons through increased

⁵² Employment Discrimination Law, Guide to Employment Discrimination Law

⁵³ ILO, Zambia Country Profile, Page 4

government spending on disability: developing inclusive mainstream policies; review of existing pieces of legislation and establishment and/or strengthening of institutions and systems that cater for people with disabilities.

2.7 Conclusion

From the above it would seem that several policies are already in place to support the needs of, and to protect the rights of persons with disabilities from labour market discrimination *prima facie* yet all these do not seem to reflect what is obtaining on the ground concerning the employment practices of individuals with disabilities. Therefore the questions still remain to find out the impact the legislation on employment has on people with disabilities. Hence, in endeavouring to comprehend the status quo, the following chapter will look at pertinent provisions of not only domestic legislation but also relevant international instruments.

CHAPTER THREE

3.0 The Legal Framework on Disability with respect to Employment

The contemporary human rights agenda is a three-tiered system: universal, regional and national. This is therefore the approach that will be adopted in endeavouring to highlight some of the laws pertinent to the subject matter. This chapter is an attempt to look at the international instruments developed within the context of the United Nations (UN) to deal with disability discrimination. The instruments provide minimum universal standards that UN members are expected to institute and uphold within their systems of law. In addition to global universal standards, Zambia is also subject to regional instruments. The status of regional instruments in terms of application within the Zambian legal system is much the same as it is with regard to UN instruments and documents that are relevant in terms of setting regional standards. Finally, this chapter will look at domestic legislation essentially the Constitution and the national Bill of Rights contained therein as well as other significant statutes relating to disability discrimination in the employment sector in Zambia.

3.1 International Instruments and Standards

Human rights instruments date back to the post World War II era. The desire to safeguard human rights was a response to the abominable cruelties and horrors of World War II.⁵⁴ At the end of the war, many governments came together to find ways in which to ensure that what occurred during that world war would never happen again. They sought to create an international system for the maintenance of peace and protection of human rights. This became the UN Charter on Human Rights as we know it today.⁵⁵ The universal or international human rights system comprises human rights norms generated by United Nations organs or agencies and enshrined in various human rights instruments, and a variety of established mechanisms for the implementation of those rights.

⁵⁴ C. Anyangwe, *Introduction to Human Rights and International Humanitarian Law*, Lusaka, UNZA Press, 2004. Page 29

⁵⁵ M. M. Munalula, *Women Gender Discrimination and the Law: Cases and Materials*, Lusaka, UNZA Press, 2005. Page 16

The corpus of global human rights instruments consists of four core documents collectively referred to as 'the International Bill of Rights', and a host of other major human rights documents.⁵⁶ Documents that make up the International Bill of Rights are: pertinent provisions in the Charter of the United Nations; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights together with the two Optional Protocols thereto; and the International Covenant on Economic Social and Cultural Rights. These international instruments protect the rights of persons with disabilities and essentially determine that every person has:

1. The right to non-discrimination.
2. The right to equal opportunity.
3. The right to security.
4. The right to independent living.
5. The right to full integration.
6. The right of equality before the law.

Over the years it became increasingly clear that some groups of people, among them individuals with disabilities, were unable to enjoy their rights because of some systematic discriminatory tendencies, practices and laws within their communities. It became important to adopt international laws aimed at eliminating the discrimination or special violations suffered.⁵⁷

As earlier alluded to, the work of the UN constitute the most important actions taken by an international organisation in the area of disability. Based on the International Bill of Rights, the UN recently formulated an additional specific document regarding disabilities; the Convention on the Rights of Persons with Disabilities.

3.2 Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities is an international human rights instrument of the United Nations intended to protect the rights and dignity of persons with

⁵⁶ C. Anyangwe, Introduction to Human Rights. Page 31

⁵⁷ C. Anyangwe, Introduction to Human Rights. Page 17

disabilities. Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by disabled persons as well as full equality under the law.⁵⁸

The text was adopted by the United Nations General Assembly on 13th December 2006 and opened for signature on 30th March 2007. Following ratification by the 20th party, it came into force on 3rd May 2008.⁵⁹ As of December 2010, it has 147 signatories and 97 parties.⁶⁰ The Convention is monitored by the Committee on the Rights of Persons with Disabilities. The main purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.⁶¹

With respect to work and employment, Article 27 of the convention provides that States Parties to the convention recognise the right of persons with disabilities to work on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:

Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.

They are to ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others; Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; Promote employment opportunities and career

⁵⁸ http://www.wikipedia.org/Convention_on_the_rights_of_Persons_with_disabilities.html accessed 27/12/10

⁵⁹ <http://www.scoop.co.nz/stories.htm>. accessed 27/12/10

⁶⁰ <http://treaties.un.org/Pages/ViewDetails.aspx> accessed 27/12/10

⁶¹ Article 1, United Nations Convention on the Rights of Persons with Disabilities

advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business; Employ persons with disabilities in the public sector; Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.

Furthermore, it places an obligation on State Parties to ensure that reasonable accommodation is provided to persons with disabilities in the workplace; Promote the acquisition by persons with disabilities of work experience in the open labour market; as well as to promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities. They also have a duty to ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

This particular document is quite comprehensive with respect to the rights of individuals with disabilities including issues of employment. Zambia however, has not yet domesticated this instrument though plans to this effect are in the pipeline. It is very important that countries ratify and domesticate international instruments in order to enable their citizens to make use of them and enforce their human rights through the domestic judicial institutions. Enforcement through international structures and institutions is a protracted and complex process that is beyond the means of most people. Like most Commonwealth countries, Zambia has a legal regime under which international instruments are not self executing but require enabling domestic legislation that is directly enforceable by the courts.

3.3 Regional Instruments

Regional human rights systems are critical in contemporary human rights development. They play a key complementary role in reinforcing international human rights standards and machinery. They also provide the means by which human rights concerns can be addressed within the particular social, economic, historical and political context of the region. The regional environment determines the kinds of violations that are likely to be committed, and hence the nature of the work to be done by the regional human rights institutions. Regional systems are heavily dependent upon by the universal human rights system when it comes to human rights implementation.⁶²

⁶² C. Anyangwe, Introduction to Human Rights. Page 33

At the regional level, there are a number of human rights documents that are relevant in terms of setting regional standards with the main one being the African Charter on Human and People's Rights. The Charter contains article 18(4) which states that disabled persons have the right to special measures of protection. In addition article 16(1) also provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. There is currently a draft protocol on the Rights of People with Disabilities in Africa.

3.4 Domestic Legislation

The legal and institutional framework regulating labour relations in Zambia is found in a host of statutes mainly the Constitution⁶³, the Industrial and Labour Relations Act,⁶⁴ the Employment Act,⁶⁵ and the Workers Compensation Act⁶⁶. The Department of Labour which falls under the Ministry of Labour and Social Security is responsible for the formulation of labour policy. The Department administers the statutes governing employer/employee relations. The major pieces of legislation relating to the labour market in Zambia include:

The Constitution of the Republic of Zambia⁶⁷

The Constitution of Zambia is the supreme law of the land. It contains provisions that determine the relationship between the state and its people; the most important of which relate to citizenship and constitutional rights or freedoms. In recognising constitutional rights and entitlements, the constitution also indirectly regulates relations between individuals. It contains provisions under the Bill of Rights that has some bearing or impact on labour relations and employment in Zambia.

Article 14 of the Constitution provides protection from slavery and forced labour. The article provides;

- (1) A person shall not be held in slavery or in servitude.
- (2) A person shall not be required to perform forced labour.
- (3) For the purpose of this Article, the expression "forced labour" does not include-

⁶³ Chapter 1 of the Laws of Zambia

⁶⁴ Chapter 269 of the Laws of Zambia

⁶⁵ Chapter 268 of the Laws of Zambia

⁶⁶ Chapter 271 of the laws of Zambia

⁶⁷ Chapter 1 of the Laws of Zambia

- (a) Any labour required in consequence of a sentence or order of a court;
- (b) Labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as, a member of a navy, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) Any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations

Article 21 of the constitution provides for protection of Freedom of Assembly and Association. Article 21(1) states:

“Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the purpose of his interest.”

Article 23 of the Constitution provides for protection from discrimination on the ground of race, tribe, sex, place of origin, marital status, political opinion, colour or creed. This particular provision is problematic as it blatantly excludes the protection against discrimination on the ground of disability. This in reiteration is the supreme law of the land and if it cannot make provision for the protection of this vulnerable group, then all other laws stemming from it will be under no compulsion to do likewise.

In addition Article 112 (c) (e) and (f) respectively provide

The state shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;

The state shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;

The state shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable.

These directive principles of state policy covered in Part IX are however, not justifiable and are not thereby, by themselves, despite being referred to as rights in certain instances, legally enforceable in any court, tribunal or administrative institution or entity.⁶⁸ This may be explained by the fact that they are social, economic and cultural rights whose importance is preceded by civil and political rights such as those contained in the Bill of Rights, Part III of the Constitution. Recent arguments have however shown that these solidarity rights are also important for the realisation of civil and political rights and that all rights require the application of state resources, albeit to varying degrees. The present position is that the directives are nonetheless toothless as they cannot be enforced. There is great need for the constitution to be reviewed so that problematic areas such as the ones highlighted can be addressed.

The Employment Act⁶⁹

Is an Act to provide legislation relating to the employment of persons; to make provision for the engagement of persons on contracts of service and to provide for the form of and enforcement of contracts of service; to make provision for the appointment of officers of the Labour Department and for the conferring of powers on such officers and upon medical officers; to make provision for the protection of wages of employees; to provide for the control of employment agencies; and to provide for matters incidental to and consequential upon the foregoing.

The Act is the basic employment law and provides for the basic employment contractual terms such as: minimum contractual age, establishment of employment contracts, settlement of disputes arising from such contracts of employment, the appointment of labour officers and other staff for the administration of the Act, certain conditions of employment such as ordinary leave, sick leave, maternity, redundancy and welfare of employees. It is however silent on issues of discrimination in the employment sector.

The Industrial and Labour Relations Act⁷⁰

This is an Act to revise the law relating to Trade Unions, the Zambia Congress of Trade Unions, Employers' Associations, the Zambia Federation of Employers, recognition agreements and collective agreement, settlement of collective disputes, strikes, lockouts,

⁶⁸ Article 111 of the Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia

⁶⁹ Chapter 268 of the Laws of Zambia

⁷⁰ Chapter 269 of the Laws of Zambia

essential services and the Tripartite Labour Consultative Council; the Industrial Relations Court; to repeal and replace the Industrial Relations Act 1990; and to provide for matters connected with or incidental to the foregoing.

The Act therefore provides for: the conduct of Industrial Relations, the establishment of workers or employers organisations, their registration and administration, collective bargaining, settlement of dispute through conciliation and arbitration by the Industrial Relations Court, established under the Act, and the Consultative Machinery.

Section 108 of the Act represents a clear attempt to ensure that discrimination does not occur in places of employment. Subsection (1) overtly provides:

No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee.

Section 108 (2) furthermore states:

Any employee who has reasonable cause to believe that the employees' service have been terminated or that that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the court: provided that the Court may extend the thirty day period for a further three months after the date on which the complainant has exhausted the administrative channels available to him.

Section 108 (3)

The Court shall, if it finds in favour of the complainant- grant to the complainant damages or compensation for loss of employment; make an order for re-employment or reinstatement in accordance with the gravity of the circumstances of each case.

Like the Constitution, this provision though guarding against discrimination does not expressly address various forms of disability. Therefore, the Act is silent with respect to disability discrimination in industrial and labour relations. It is therefore unlikely that the recourse channels for someone who has been discriminated against as provided for in subsection 2 would unambiguously apply. It is therefore submitted that with respect to disability discrimination in employment there is a *lacuna* in the labour laws.

The Zambia Federation of Employers (ZTE)

This is an umbrella organisation for employers which articulate the interest of employers. ZFE is represented at the Tripartite Labour Consultative Council. The Labour Consultative Council is the body that is comprised of representatives from the Ministry of Labour and Social Security and the Trade Unions through the umbrella bodies namely the Zambia Congress of Trade Unions (ZCTU) and The Federation of Free Trade Unions (FFTU) whose main task is harmonization of labour matters and Collective Bargaining.

The Minimum Wages and Conditions of Employment Act⁷¹

This Act enables the Minister to determine the minimum conditions of employment for categories of employees not effectively covered through collective bargaining. Such employees include general workers, drivers and clerks.

The Employment of Young Persons and Children Act⁷²

The Act provides protection for young persons and children in the employment relationship. It is the major law against child labour and abuse which has regulated employable age and other terms and conditions on employment of young persons.

Employment (Special Provisions) Act⁷³

This is an enabling Act and may be activated only when a state of emergency is in place. Under this Act various regulations may be promulgated with regard to labour and employment by appropriate authorities when the major players in the employment market are not able to self regulate.

The Persons with Disabilities Act⁷⁴

The Persons with Disabilities Act was specifically enacted to establish the Zambia Agency for Persons with Disabilities as an umbrella body that superintends over the affairs of persons with varied disabilities to define the functions of the agency and establish Management

⁷¹ Chapter 276 of the Laws of Zambia

⁷² Chapter 274 of the Laws of Zambia

⁷³ Chapter 270 of the Laws of Zambia

⁷⁴ Act No. 33 of 1996

Boards and the National Trust Fund for persons with disabilities as well as matters connected with or incidental to the foregoing.

With respect to employment, Section 20 of the aforementioned Act provides:

An employer shall not treat a person with a disability different from a person without a disability when advertising for employment; recruiting persons for employment; offering terms or conditions of employment; considering promotion, transferring or training such persons; or providing any other benefits related to employment

Section 24 (1) goes on to state

Any person registered under this Act, who employs at least three persons with a disability, shall be entitled to a tax rebate at a rate to be determined by statutory instrument by the minister responsible for finance.

The Act also addresses the issue of accessibility of buildings which invariably challenges quite a number of persons with disabilities particularly the visually impaired and the physically handicapped. It empowers the Agency to issue an adjustment order to any person it considers that his premises, amenities or services the Act refers to are not accessible to persons with a disability.⁷⁵ The Act was intended to alleviate effects of varied handicaps faced by persons with disabilities in the course of the presence at any place of work. In addition section 26 provides:

On the commencement of this Act, any plans for any premises or amenities approved, after the commencement of this Act, under the Town and Country Planning Act, shall provide facilities that are accessible to persons with disability.

3.5 Conclusion

Having analysed the pertinent provisions of the law with respect to disability discrimination as well as the regulatory framework and the labour laws of Zambia, it can be said that the law in its current form is inadequate with respect to safeguarding, promoting and protecting the rights and interests of individuals with disabilities in the employment sector. The Constitution of the nation as well as section 108 of the Industrial and Labour Relations Act do not provide enough regulation for promotion of a legal framework for persons with disabilities in the

⁷⁵ Section 25 (2) of the Persons with Disabilities Act No. 33 of 1996

work place. Although the Persons with Disabilities Act has attempted to protect and provide for a framework for persons with disabilities, yet, it is in the fact that they are seldom implemented.

Therefore, not only should laws be as comprehensive as the United Nations Convention on the Rights of Persons with Disabilities but they should also be effective mechanisms for implementation. It is not be enough to enact laws since advocacy and education is equally cardinal for those governed to be aware of their existence. It is hoped that the new Constitution of the land will be enriched with explicit and detailed provisions that will cover the rights of persons with disabilities without ambiguity on the lines of the UN Charter and other international protocols.

CHAPTER 4

4.0 Report on the Field Research and Analysis of Data Collected

This chapter presents the findings of a study tailored at investigating discrimination practices against individuals with disabilities in places of work and during the recruitment process. It was directed by research questions that sought to find out whether people with disabilities were victims of discrimination as a result of their disabilities.

The study also probed the form of employment most persons were engaged. Further, this study endeavoured to investigate whether persons with disabilities were aware of any statutory bodies that dealt with discriminatory practices in places of work and if so, whether they were already taking advantage of those services.

The researcher used questionnaires to obtain information and these were distributed in different institutions. A total of 50 questionnaires were distributed of which 45 were answered while 5 did not return to the researcher. The sample size targeted therefore was 50 individuals with disabilities while 45 individuals actually took part in the study.

Purposive sampling procedure was used to select the sample. This means that the researcher distributed the questionnaires to individuals with disabilities that were present at that particular time in the visited institutions as long as they were willing to participate in the study of which the majority was.

The questionnaires given contained both closed and open ended questions. Closed ended questions were used to facilitate easy coding of the responses while open ended questions were used in order to allow self expression of the respondent's insights. The questionnaires were screened, cleaned, checked for similarities and differences, then analysis and interpretation of data was done as stipulated below. Statistical tables present the data so as to facilitate easy and quick analysis and interpretation of the data that was collected.

4.1 Presentation and Interpretation of the Findings

Below is the summary of findings from the research that was conducted in various institutions which were visited:

Table 1**The Nature of the Disabilities of Respondents in the Study.**

Nature of Disability	Number of Responses	Percentage of the Sample
Visually Impaired	10	20%
Hearing Impaired	15	30%
Physically Impaired	20	40%
Mentally Retarded	00	00%
Unreturned Questionnaires	05	10%
Total	50	100%

Table 1 indicates that of all the participants in the study, 20% were visually impaired, 30% hearing impaired, 40% physically impaired, 0% mentally retarded while 10% represents the number of questionnaires that were distributed but were not returned. As such it was not possible to establish the nature of impairment of the individuals who collected them.

The 10% of the visually impaired individuals ranged from low vision to total blindness while the hearing impaired ranged from hard of hearing to deafness. The physically impaired individuals comprised of those with loss of a limb or malformation of some sort rendering their normal functioning limited to a certain degree.

From these findings, it is statistically clear that the physically impaired seem to occupy the largest percentage of employment share as compared to their other counterparts with disabilities. It is also significant that the mentally retarded may not be having any employment opportunities in the formal sector. According to these findings therefore, it may be concluded that of the four sensory impairments the most marginalized individuals when it comes to employment opportunities are the mentally retarded people.

These findings therefore seem to contradict with the ILO conventions and recommendations of early 1944 concerning employment services which stipulate that “persons with disabilities should wherever possible be trained with other persons, under the same conditions and with

the same pay and the training should continue to the point where the disabled person is able to enter employment in the trade or occupation for which he has been trained.”

Table 2 below presents the gender of the participants in this study. From the statistics, it is significant that the males outweighed the females in the study. These findings seem to suggest that there were more male physically disabled in formal employment as opposed to their female counterparts.

These findings therefore seem to agree with literature. Kafwabulula for instance, noted the fact that “along with women and children, legal systems have excluded disabled people as non productive members of society as such they were still being excluded from conventional society.”⁷⁶ They were discriminated against not only because of their gender but disability as well.

Kafwabulula’s statement and the findings of this study seem to support each other as it is statistically significant that females are very few in formal institutions as compared to their male equals. From these findings it may be concluded that despite the cry of equality in employment opportunities the women have continued to be segregated in employment, even worse for disabled women.

Table 2

The Nature of Employment given to Individuals with Disabilities

Sex	Formal Employment		Non Formal Employment		No Response	
Male	30	60%	3	06%	5	10%
Female	10	20%	2	04%	-	-
Total	40	80%	5	10%	5	10%

⁷⁶ C. Kafwabulula, Does the Persons with Disabilities Act, Page 45

In addition, table 2 also reflects the nature of employment given to disabled individuals. It reveals that 60% of the male disabled persons were employed in the formal sector while only 20% of the females were employed in the formal sector. The table also indicates that 6% males were employed in the informal sector while only 4% males were in the informal sector.

According to these findings, it may be taken that the majority of the disabled persons captured in the sample were employed in the formal sector as opposed to the informal. The reason behind this conclusion is basically that the research targetted the formal sector to obtain underlying reasons for segregation in employment trends and practices. Very few persons from the informal sector actually targetted in the study.

Another reason could be that the informal sector has no or little formalism when employing people with disabilities which are found in the government and other well established institutions.

Even though the Technical Education Vocational and Entrepreneurship Training (TEVET) Act 1998 states that the persons with disabilities will be taken into consideration, the findings of this study seem to contradict with the provision. It may therefore be concluded that segregation start at recruitment level and affect progression provisions like training level.

It would appear that individuals with disabilities are not enrolled into vocation skills institutions or that they are not being given adequate training to give them sufficient skills to merit their employment in the formal sector on the same scale as persons without disabilities. This may stem from the fact that even elementary education is invariably insensitive to the special needs of children with disabilities. There are very few teachers trained in the field of special education just as there are few primary and secondary schools that offer requisite education to persons with disabilities. It is a fact that there are extremely few Primary and Secondary Schools that have facilities and personnel that will offer an education service to persons with various types of disabilities.

Table 3**Forms of discrimination faced by individuals with disabilities with respect to employment**

Item	Responses			
	Yes	%	No	%
Lack of access to employment	5	10	40	80
Discrimination against employment	8	16	37	74
Discrimination during employment	16	32	29	58
All the above	25	50	20	40
No response	5	10	45	90

According to table 3, individuals with disabilities faced discrimination of all forms such as lack of access to employment as indicated by 10 % 'yes' response meaning that 10% of the respondents were victims to this kind of discrimination. Discrimination against employment was indicated by 16% of the respondents, discrimination during employment was indicated by 32% of the respondents while the 'all the above' response was indicated by 50% of the respondents meaning that they experienced all the mentioned discriminatory acts against employment of individuals with disabilities.

The above discriminatory acts go against the Persons with Disabilities Act which stipulates that "an employer should not treat a person with a disability different from a person without a disability when advertising for employment; recruiting persons for employment; offering terms or conditions of employment; considering promotion, transferring or training such persons; or producing any other benefits related to employment."

From these findings therefore it may be concluded that despite the laws that seem to favour individuals with disabilities, when it came to implementation of the same, it appeared there

was no mechanism in place to enforce the law. Perhaps all the acts needed to be supported by institutions that should ensure effective implementation. At present, the problem that seemed eminent was the issue of lack of implementation of whatever was stipulated in the laws. As long as this weakness of the formation of institutions that were theory oriented went on, the potentials of individuals with disabilities would continue to be under utilised.

Table 4 essentially presents data on the knowledge of individuals with disabilities concerning statutory bodies dealing with discrimination of people with disabilities. This part of the questionnaire endeavoured to find out whether or not persons with disabilities knew any statutory bodies that could assist them in the discriminatory eventuality during the course of employment as well as whether they took advantage of these statutory bodies.

Table 4

Legislation, Statutory Bodies and Individuals with Disabilities

Item	Responses				
	Yes	%	No	%	No response
Do you know of any statutory body dealing with discrimination against individuals with disabilities?	40	80	5	10	5
Have you ever reported your case in the event of discrimination to relevant institutions and authorities?	2	04	43	86	5
If at all you did report were there any disciplinary action taken against the perpetrators?	0	00	2	04	5

According to table 4, the majority of the respondents know about statutory bodies dealing with discrimination of individuals with disabilities as indicated by 80% 'yes' responses to item number one. Coming to whether they reported discrimination acts against them to relevant authorities only 4% indicated to have done so as compared to 86% who did not. In

addition, those individuals who reported their cases to relevant authorities concerning discriminatory vices against them did not receive favourable response from relevant authorities in that perpetrators of such vices received no disciplinary measures. This seemed to suggest that even when these disabled individuals reported discrimination acts against them, no action was taken in their favour. It may therefore be concluded that legislation as well as statutory bodies needed to do much more to respond to the discriminatory plight of individuals with disabilities as this may be one of the reasons discrimination was still practiced with impunity.

In the same light, Siyunyi observed that unemployment in Zambia was high, but for the handicapped in Zambia the situation was aggravated by lack of legal safeguards. Legislation had to be passed if the nation was to benefit from the massive potential of both skilled and unskilled man power which was latent in most disabled persons.⁷⁷ On the other hand, Mutale states that legislation for the disabled was very difficult to enforce and its success depended very largely on attitudes, economic conditions, social policy, cultural values and concerted efforts of the handicapped themselves.⁷⁸ In accordance with these profound statements, along with the research findings, the researcher may agree to the role of the social and cultural values of most Zambian societies as contributing factors to the predicament of individuals with disabilities.

In most cases disabled children were not exposed to opportunities in terms of social integration, education and later on training and employment. At family level, most disabled children were not exposed. They were either hidden or treated as “by the way objects”. Most parents felt it was a waste of resources taking such children to school as they believed that even if they were educated they would be of no use to society because of their disability. As a result of these discrimination acts in employment, the family and society equally adopt these unfair attitudes, as such, disabled persons experience discrimination everywhere they go. In support of the above proposition, literature also indicates that traditionally society believed that disability was a result of some misfortune in the family brought about by offending

⁷⁷ L. Siyunyi, *Handicapped Persons in Zambia*. Page 45

⁷⁸ Mutale, *Legislation and Services for the Blind: A Resource Paper Presented to the First Southern African*

ancestors and witchcraft. Having a person with a disability was considered a taboo and such people were hidden or cast out from society by family members as they were considered to be an embarrassment.⁷⁹

Finally, as to whether those who experienced discrimination reported this to the relevant authorities, the affirmative response was only 4% as opposed to 86% who did not report. There may be various reasons for this, one of which may be that perhaps individuals with disabilities become so used to the status quo that being discriminated against began to seem normal. Another explanation may be the lack of enlightenment on human rights and the law in general and their roles in protecting individuals against violations as well as its mechanisms for doing so. This may also be enforced by the fact that individuals with disabilities realised that even when they report nothing was done to ameliorate the situation. It could also be that they already felt inferior to the systems because of their disability.

Table 5

Challenges faced by individuals with disabilities at the place of work

Items	Responses				
	Yes	%	No	%	Not Returned
Buildings not responsive to needs of disabilities in terms of structure	12	27	33	73	5
Discrimination by fellow employees	08	18	37	82	5
Discrimination by employers	06	13	39	87	5
Disability restricts the versatility of the nature of the work I can embark on	15	33	30	67	5
All the above	30	67	15	33	5

⁷⁹ Zambia Agency for Persons with Disabilities, Strategic Plan 2007-2010

According to table 5, it is statistically significant that individuals with disabilities faced a number of challenges in the institutions they worked, 67% alluded to the fact that individuals with disabilities had challenges related to infrastructure not being responsive to their unique needs; discrimination by employers; discrimination by fellow employees and versatility of the nature of work they can embark on as a result of disability.

These findings seem to go contrary to what the Constitution of the Republic of Zambia stipulates concerning persons with disabilities in places of work. The Constitution of the Republic of Zambia as amended in 1996 contains one provision on disability relating to the provisions of just and equitable social benefits and amenities suitable to the needs of disabled people. The Fifth National Development Plan (FNDP) 2006-2010 among other objectives aims at maintaining full participation, equality and empowerment of persons with disabilities. It seeks to enhance support of disabled persons through increased government spending on disability, developing inclusive mainstream policies, strengthening of institutions and facilities that cater for people with disabilities.

Despite what sounds encouraging for persons with disabilities, the findings of this study do not seem to suggest anything in support of the objectives on persons with disabilities as proposed in the National Development Plan. In short it may be concluded that despite what the documents stipulate in favour of individuals with disabilities, what obtained in reality left much to be desired. Therefore, it was imperative for the statutory bodies to strengthen their monitoring procedures to ensure that government objectives did not only end up on paper.

On the other hand, the study revealed that employers had somewhat conflicting views. 80% of employers interviewed alluded to the fact that the reason they had very few and for others no employees with a disability in their labour establishment was because persons with disabilities never approach them with requests for employment but invariably for handouts. They however, unanimously agreed to the fact that persons with disabilities can economically contribute not only to their industries but also to national development in a positive way. 60% of employers interviewed however, agreed to having and retaining prejudices against persons with disabilities.

They also disclosed some of the challenges they faced that invariably deterred them from employing individuals with disabilities. One of the emerging issues was the fact that most institutions are out to make profits or at least thrive in their industries and they therefore needed the most efficient individuals they could employ. The popular perception was that an individual with a disability could not match up to a 'normal' individual. Some of the buildings that these businesses and institutions operate from do not accommodate individuals with physical certain impediments. Employers would have to take on the job of modifying their buildings which was an extra cost. If for instance even if person with visual impairment could do the job of an accountant excellently, yet equipment to facilitate the work of an Accountant with visual impairment has not been produced yet, hence the employer would much rather employ an individual without such a disability who was an average accountant rather than bear the cost of modifying the building.

With respect to the adequacy of current labour laws in protecting against disability discrimination, 50% of the employers interviewed were of the view that they were satisfactory; while 20% said they should be reviewed if persons with disabilities were to actively participate in the employment sector. 30% of the employers who responded to the questionnaire alleged that they were not aware of statutory provisions pertaining to the subject matter.

4.2 Conclusion

The findings of the study seemed to highlight a number of issues concerning the plight of individuals with disabilities. This is incredible given that there are a number of statutes and international instruments aimed at promoting and protecting the interests and security of individuals with disabilities in the places of work. The findings of this study therefore seem to suggest that more needs to be done in order for individuals with disabilities to feel they are adequately accommodated in the mainstream of society.

CHAPTER 5

5.0 Conclusion and Recommendations

This chapter presents the conclusion and recommendations of a study that was aimed at investigating discrimination of individuals with disabilities from the employment perspective. This is in an attempt to ensure that the objectives for which the research was carried out have been satisfied. Therefore, having analysed and interpreted the data, this chapter presents a summary of the entire investigations, draws a conclusion to the study and finally presents some recommendations pertaining to the entire research.

5.1 Conclusion

Discrimination of individuals with disabilities against employment may seem as if it is a myth when approached casually. However from the findings of this study, discrimination of individuals with disabilities in the employment sector is a reality. The findings tally with Geneva ILO News which reported that everyday around the world, discrimination at work was an unfortunate reality for hundreds of millions of people⁸⁰. Throughout the world there is an undeniable link between poverty and exclusion.

This study revealed that ableism is a widespread societal vice as individuals with disabilities are discriminated against employment both on entering the employment sector as well as during employment should they be fortunate enough to find it. Further, discrimination in employment takes various forms some of which may be buildings constructed without taking individuals with disabilities into consideration. For instance, buildings with no wheelchair access or very narrow elevators are particularly very challenging for persons with physical impairments.

Discrimination is also often perpetuated by employers and fellow employees. For instance, some individuals have been declared redundant after unfortunately developing a disability during the course of employment. Despite the fact that the Workers Compensation Act⁸¹

⁸⁰ <http://www.ilo.org/about-the-ilo.html> accessed 18/10/10

⁸¹ Chapter 271 of the Laws of Zambia

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provides for compensation of such persons, it is more often than not blatantly violated as sometimes the compensation is delayed without proper reasons. It may therefore be concluded that this denial of equal employment opportunities to people with disabilities forms one of discrimination and cause for the poverty and exclusion of many members of this group. Consequently most of them elect for begging as source of their livelihood.

The labour laws in their current form are extremely inadequate with respect to protecting individuals with disabilities. As highlighted in chapter three, important statutes such as the Employment Act⁸² and the Industrial and Labour Relations Act⁸³ do not make express provisions to protect individuals with disabilities. This may probably be one of the reasons why there is very little litigation as the law does not explicitly include disability as a ground on which to place a discrimination claim. What is even more disheartening in this respect is that even the Constitution of the Republic of Zambia⁸⁴, being the supreme law of the land in Zambia, is silent and has not made explicit provisions to protect individuals with disabilities.

The laws as well as their enforcers are not vigilant against perpetrators of ableism. One of the functions of the law is to deter individuals from behavior inimical to social values by imposing sanctions. However, in many instances in this regard, the law is silent as to measures to be taken against persons who discriminate against individuals with disabilities. Worse still there are no sanctions or remedial measures expressly provided by various statutes in respect of violation of the rights of persons with disabilities except for injuries sustained in the course of employment.

It may also be concluded that society at large does not fully appreciate the value of persons with disabilities and their ability to positively contribute to national development. The fact that someone is impaired does not mean they are incapable of doing anything at all. Individuals with a disability can in some instances work even more efficiently than 'normal' people as was observed during the collection of primary data. They however require the support and confidence of society.

⁸² Chapter 268 of the Laws of Zambia

⁸³ Chapter 269 of the Laws of Zambia

⁸⁴ Chapter 1 of the Laws of Zambia

From this study, it may also be concluded that people with disabilities are more likely than others to experience disadvantages, exclusion and discrimination in the employment sector as well as elsewhere. From the findings, it may also be concluded that although the Government of Zambia like other governments across the world has attempted to provide a number of acts essentially put forth to prevent job discrimination against persons with disabilities during recruitment, promotion, bonus and many other social incentives, nothing really seems to materialise.

Education is directly correlated to employment. Noted in this respect are the appalling standards of education amongst individuals with disabilities particularly those disabled from birth and early childhood. There is a serious inadequacy in the education sector when it comes to providing for children with special needs as available schools and trained personnel are too few to cater for the demand. This then translates into a lot of disabled persons being uneducated and their opportunities at a better life made slim. The conclusion therefore, is that the education system at present does not adequately prepare persons with disabilities for the type of employment they may desire.

In addition, there is very little representation for individuals with disabilities in the three organs of government that meet as the Labour Consultative Council. This simply means that the law makers, the law implementers as well as the law interpreters often overlook the interests of disabled persons. There is need for representation in every organ of the state that will take a keen interest in the plight of persons with disabilities.

It may also be concluded that the government has not lead the way in promoting equal employment opportunities for persons with disabilities hence even as these laws meant to improve employment opportunities for individuals with disabilities have been enacted, enforcement is absent as the main player is a 'culprit' also.

5.2 Recommendations

Having realised how much effort the Government of Zambia has invested in advocating for the noble cause of protecting human rights in general and particularly some of the efforts made towards advancing those of individuals with disabilities, yet the problem seems to be

worsening rather than yielding the intended results. The researcher sought to come up with the following recommendations.

1. One of the major issues noted was the inadequacy of the law in protecting against disability discrimination particularly the laws regulating the employment sector. If disability discrimination is to be ameliorated and possibly eradicated, it is pertinent that the laws in this respect be reviewed and amended appropriately. Most statutes i.e. the Constitution, the Industrial and Labour Relations Act and even the Employment Act do not expressly protect against discrimination on grounds of disability, therefore, the laws should be revised so as to explicitly address this aspect in greater detail. They should also include specific sanctions that should be taken against the perpetrators of ableism.
2. Zambia should also adopt international standards with regard to the issue at hand. The current deliberations on the domestication of the United Nations Convention on the Rights of Persons with Disabilities are definitely a step in the right direction as it is a very comprehensive instrument. However, it is not enough for laws to be enacted but rather a more pragmatic approach in dealing with disability discrimination would be appropriate; its transformation from black letter law to living law.
3. Practical steps should be taken by all the stakeholders in ensuring that the law is enforced and enforcement mechanisms are put in place. For instance, adequate resources should be given to the judicial system and particularly the Industrial and Labour Relations Court and its jurisdiction in such matters expressly included in the law.
4. A Legal Aid Clinic for the Persons with Disabilities to offer assistance to the Persons with Disabilities must be set up. This Clinic should be well funded to assist them access legal representation in matters of discrimination at places of work as they are not be able to afford the current high cost of litigation since they are indigent. Furthermore, statutory bodies such as Zambia Agency for Persons with Disabilities that are currently more administrative in nature should be given *locus standi* to enable them represent individuals with grievances who otherwise may not have the tenacity to do it themselves. The Agency must be assisted in terms of capacity building to

undertake effective advocacy and sensitization programme both or their for their members and society at large.

5. It has been said time and again that knowledge is power. Individuals with disabilities need to form pressure groups aimed at *inter alia*, educating and familiarising members of such group with the current provisions of the law to make it living law among them. This will enable them to use the law to challenge perpetrators of such discriminatory acts. It however, can only be done if keen interest is taken especially by the most probable victims, who in this case are individuals with disabilities. The groups can also be used to pressurise the government into strengthening the laws regarding their human rights by visiting the relevant institutions or statutory bodies concerned with discrimination vices against individuals with disabilities; much more when anyone of them falls victim to discriminatory vice. As a group they should ensure that the law enforcing statutory bodies work flat out to bring perpetrators of such vices to book. In addition the state can utilize these groups as a platform to sensitize society on the vices of disability discrimination.
6. All law enforcement officers such as Policemen, Lawyers, Judges and Members of Parliament should be counseled and enlightened on matters relating to disability discrimination. This is in an attempt to ensure that when an individual with a disability reports matters touching on discrimination, their condition will be taken into account by the officers attending to them.
7. The government should not only stipulate laws and policy documents, but should also set examples and also ensure that some monitoring procedures are put in place so that such laws are reinforced. The monitoring institutions should also be set up so that employers and all other participants in the employment sector are made aware well in advance of what would constitute discriminatory conduct and most importantly the punishment it warrants. There is need for strict implementation such that laws will act as a deterrent not only to employers but everyone else in the labour market from discriminating against individuals with disabilities.
8. A deliberate policy should be put in place in support of individuals with disabilities where a certain percentage of vacancies should be reserved for individuals with

disabilities whenever an institution or firm is in need of workers. This ought to begin with various levels in the governance of the nation.

9. In addition, investors intending to set up businesses in the country should be made well aware of the fact that Zambia is not a country with well bodied individuals only but that it also has individuals with disabilities. As opposed to popular perception, individuals with disabilities can provide some of the services their businesses may require. In some instances even better than 'normal' individuals. Therefore, provisions should be placed in the Zambia Development Agency Act and possibly the Companies Act placing an obligation on corporations and investors (local as well as international) to include quotas for Persons with Disabilities in their operations.
10. The government should provide special benefits to firms and institutions that employ a certain number of people with disabilities for example by exempting them from paying a certain percentage of tax or giving them loans to support their projects at a reduced interest rate. Tax exemptions in this regard have been provided for in the Persons with Disabilities Act No. 33 of 1996. It has however been noticed that employers seldom use it perhaps due to lack of awareness. Its practical application is likely to encourage many employers to take on individuals with disabilities in their circle of labour relations.
11. Despite incentives, social and cultural attitudes that have permeated society's attitude towards individuals with disabilities may remain resistant to positive change with respect to employing persons with disabilities. Therefore, the state needs to adopt a more aggressive stance on affirmative action towards economically empowering such individuals. This may be done, for instance, by giving them priority in government programmes such as the Citizen's Economic Empowerment Fund, provided other standard requirements are met. Hence, this will encourage them to actively participate in the employment sector, not as employees as invariably is the case, but rather as employers.
12. In order to ameliorate the problem of illiteracy among individuals with disabilities, more schools and institutions offering tertiary training along with staff that are adequately trained in teaching children with disabilities should be put in place by the government in order to address this issue. This will adequately prepare persons with

disabilities with skills they may require to be active participants in the employment sector. Government can also set up a fund for the advancement of the education of Persons with Disabilities as well as Tax relief for business people that promote education and training of persons with Disabilities

13. In addition, government should take a proactive rather than a reactive role in addressing issues of disability discrimination. For instance, the Ministry of Information and Broadcasting should be tasked with the duty to educate the public, both the well bodied as well as the disabled, on the vice of disability discrimination and the positive contribution that individuals with disabilities can have to the economy and nation at large. This ministry should make use of present day technology to educate the public. They should implore the aid of television and radio broadcasting; telecommunications by way of partnering with mobile telecommunication companies; as well as the internet via web pages and social networks.
14. The state should also take a deliberate step to incorporate individuals with disabilities in the three main organs of government, particularly key positions such as the Cabinet in the executive arm of government, or quota in Parliament, be they appointed or elected. This is in an attempt to have representation for such individuals at every level of government so that that their interests be taken into account in creating and implementing state policies.

5.3 Final Conclusion

It is hoped that with increased dissemination of information on the subject matter will trigger the attitudes society in general towards persons with disabilities and their own perceptions will be altered such that they will regard themselves as positive contributors to society and particularly the employment sector. This study has shown that as a nation, we have a long way to go with respect to the attainment of the eradication of various forms of discrimination of persons against persons with disabilities. Persons with disabilities have proved in many sectors especially agriculture and Arts and Culture that they are just as important and contributive when opportunities are given to them.

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