

**AN EVALUATION OF THE INADEQUACIES OF THE LAWS IN ADDRESSING THE
PLIGHT OF THE DISABLED FEMALE IN EMPLOYMENT**

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**A Directed Research essay submitted to the University of Zambia in Partial fulfillment of
the requirements for the Award of the Bachelor of Laws (LLB) Degree.**

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I MWAANGA KASONGOLA.K COMPUTER NUMBER 26096919 do hereby declare that the contents of this Directed Research are based on my own findings 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 Bachelor of Laws Degree or any other award. I have not in any manner used any persons' work without due acknowledgement of the same to be so. I do hereby bear the absolute responsibility for errors, defects or any omissions herein.

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ABSTRACT

The susceptibility of women with disabilities to discrimination is a global phenomenon, but how a society or culture understands and addresses this issue varies greatly. Women with disabilities in the developing world experience a triple discrimination. They are discriminated against because they are women, because they have disabilities and because they are from the developing world where they are more likely to be poor, where opportunities and accessibility for girls and women with disabilities are extremely restricted and where prejudice against this group is pervasive.

This research therefore focuses on the laws in Zambia in an effort to determine whether or not they are adequate for this group of people particularly in the employment sector in addressing their many needs and if such laws offer sufficient protection for them. In so doing, the research looked at the history of discrimination against women and women with disabilities in employment. It also analyzed the current situation pertaining to access to employment, the nature and conditions that disabled women are subjected to. An analysis of the laws in Zambia in comparison to those of Uganda and Ethiopia was done in an effort to establish whether women with disabilities in Zambia are adequately catered for by the law with regards to employment.

The research concluded that the laws in Zambia are inadequate to cater for women with disabilities particularly with regards to employment. It is therefore important to amend the existing legislation as well as enact new laws that are gender specific for women with disabilities with regards to employment. This will lead to a situation where this group of people will not be discriminated against. They will become independent, self reliant and will develop personally which in turn will lead to development of the nation as a whole.

DEDICATION

To my parents, Simon Muumba Kasongola and Aivy Munyimba Kasongola for your unwavering love, support, resources, sacrifice and your belief in me. You are an inspiration to me and I am all that I am today because of you.

To my siblings, Maimbo, Luyando, Muchindu, Banji, Pimpa and to my nieces Pimpa Mbala and Chaangu Kasongola and my nephew Banji Mbala, thank you for always being there for me, for lifting me up, encouraging me and having faith in me throughout my studies.

To my partner and my best friend Delax Chilumbu, thank you for standing by me, supporting and encouraging me every single day.

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My debt to all of you is beyond measure, may God bless you all.

LIST OF STATUTES

LEGISLATION

ETHIOPIA

Constitution of the Federal Democratic Republic of Ethiopia

UGANDA

The National Council for Disability Act (No. 14) of 2003

The Constitution of the Republic Of Uganda 1995

The Local Government Act of 2007

The Parliamentary Elections Statute of 1996

The Movement Act of 1998

The Persons With Disabilities Act of 2006

The Employment Act (No. 6) of 2006

ZAMBIA

The Constitution of Zambia. Cap 1 of the laws of Zambia.

The Persons with Disabilities Act, Cap 65 of the laws of Zambia

Workers Compensation Act No. 10 of 1999

INTERNATIONAL INSTRUMENTS

United Nations Convention on the Rights of persons with Disabilities. (2006)

CASE

Sara Longwe v. Intercontinental Hotel (1992/HP/765)

GLOSSARY OF ACRONYMS

CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
FNDP	Fifth National Development Plan
ILO	International Labour Organisation
NBA	National Basketball Association
NVRC	National Vocational and Rehabilitation Centre
PRSP	Poverty Reduction Strategy Programme
PWD	Persons With Disabilities
WNBA	Women's National Basketball Association
ZFE	Zambia Federation of Employers

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CHAPTER ONE

DISABILITY, GENDER DISCRIMINATION AND EMPLOYMENT

1.0 INTRODUCTION

Both the intellectually and physically disabled persons are regarded as a weaker and marginalized group in society.¹ Women are also regarded as a weaker sex and are currently fighting for gender equality.² It has been argued that the law is presented as beyond reproach because it is said to be un-biased, neutral, objective, coherent and rational however, feminist jurisprudence denies that law has these attributes arguing that basically law is made by men and in their image, reflecting masculine values and standards, and serving male interests.³ This is referred to as patriarchy. Patriarchy is male control and domination, the 'power of the father', a system in and out of the family in which through law, force, pressure, ritual, education, customs, language and so on determines the woman's role in society and subsumes the female under the male.⁴

Patriarchy persists because it is resilient and adaptable. Constant awareness of the drawbacks of patriarchy on our lives is one of the first steps to challenging it. It helps in our day to day lives always to be aware of the insidious nature of patriarchy and how we ourselves help to maintain it. By doing this we may become more and more conscious of our actions and seek to change them in ways that offer alternatives.⁵

¹H. P. M. Winchester and P. E. White. The Location of Marginalised Groups in the Inner City. 12th November, 1986. <http://www.envplan.com/abstract.cgi?id=d060037>. Accessed 23rd September 2010.

²S. Orbach. The New Feminists: Still Fighting. 15th August, 2010. <http://www.guardian.co.uk/world/2010/aug/15/meet-the-new-feminist>. Accessed 23th September

³C. Anyangwe, An Outline of The Study of Jurisprudence, UNZA Press, Lusaka, 2005. Page 345

⁴C. Anyangwe, An Outline of The Study of Jurisprudence. Page 345.

⁵A. Perkins, The Nature and Influence of Patriarchy. 14th April 2009.

Challenging patriarchy is not about hating men. It is about building a more humane system where men are not pressured to satisfy a very restricted notion of manhood and the limitations placed on women are removed so all can enjoy more fruitful lives and relationships.⁶

Gender equity is the concept that all human beings, both men and women, should be free to develop their personal abilities and make choices without the limitations placed by stereotypes, rigid gender roles and prejudices.⁷

Gender equity can increase development and poverty reduction. The development community acknowledges gender as a social and economic issue that must be captured in policy analysis. Conclusions have been drawn by gender and development economists and social scientists that gender inequalities impede economic growth and frustrate efforts to reduce poverty. Eradicating or reducing gender disparities is seen, in this scenario, as an effective way of achieving economic growth, reducing poverty and securing livelihoods at the household level.⁸

The current global fight for disabled people, should promote gender equality by giving special attention to disabled females.⁹ It does not follow as a matter of course in our society that all citizens are equal. To quote George Orwell in *Animal Farm*: "Some animals are more equal than others". Disabled people are definitely not part of the "more equal". Discrimination against disabled people is a global phenomenon, and girls and women with a disability suffer even more. They carry a double burden.¹⁰

The aim of this paper is therefore to examine the various laws that are existent in Zambia with regards to access and conditions of employment of disabled women. In so doing, the paper will identify the laws dealing with employment and whether or not they do indeed protect the rights of the disabled as contained in the constitution and other pieces of legislation making provision for non discrimination. These will be compared to laws of selected jurisdictions that have made

⁶ A. Perkins, *The Nature and Influence of Patriarchy*. 14th April 2009.

⁷ *Zambia Strategic Country Gender Assessment*. A Report of The World Bank. June 2004.

⁸ *Zambia Strategic Country Gender Assessment*. A Report of The World Bank. June 2004.

⁹ H. Asamo, *Promote Gender Equality and Empower Women*. 1st August, 2009. <http://www.make-development-inclusive.org/mdg3>. Accessed 24th September 2010

¹⁰ M, Ziesler, *Double discrimination against disabled women in rich and poor countries*. June-August 2002.

notable progress in this area such as Ethiopia and Uganda. The paper will then consider whether or not the fight for gender equality has also been applied to the employment of disabled women considering that by them being females they are in most cases already discriminated against. Of importance in this paper will be the role played by international instruments in ensuring that all human beings are accorded their rights without discrimination.

1.1 STATEMENT OF THE PROBLEM

Women are a vulnerable group of individuals in society because of patriarchy.¹¹ The law which to a very large extent is based on patriarchy tends to discriminate against women despite it being regarded as equal to all persons.¹² Society holds women out to be the weaker sex hence in all aspects of life women are treated as subordinate to men or subsumed under the male.¹³ With regards to employment, women are mostly found doing what are viewed as less important jobs if recognized as jobs at all and earn less than their male counterparts.¹⁴ Women generally perform the majority of household tasks, work in the informal as well as agricultural sectors. They also work in the formal sector but in relatively small numbers in comparison to men except in sectors which are traditionally viewed as women's work such as nursing and secretarial work.¹⁵

Women are increasingly involved in both the formal and informal (or self employed) sectors of the economy but unfortunately, they encounter substantial discrimination as they enter these fields in terms of access to employment, in pay and benefits, and in the legal treatment of their labor.¹⁶ The disabled woman therefore would be at a greater disadvantage because firstly, she will suffer discrimination owing to her sex and secondly owing to the fact that she is disabled. The disabled woman will therefore be faced with multiplicity of discrimination.¹⁷

In Zambia, there are various laws such as the Constitution of Zambia¹⁸ and the Persons with Disabilities Act¹⁹ pertaining to people with disabilities.²⁰ Of these laws, none of them address the

¹¹ C Anyangwe, *An Outline of The Study of Jurisprudence*, UNZA Press, Lusaka, 2005, Page 345

¹² C Anyangwe, *An Outline of The Study of Jurisprudence*. Page 345

¹³ C Anyangwe, *An Outline of The Study of Jurisprudence*. Page 345

¹⁴ M Munalula, *Women Gender Discrimination and The law*, UNZA: Press, Lusaka, 2005, Page 159

¹⁵ M Munalula, *Women Gender Discrimination and The law*. Page 159

¹⁶ C. G. Bowman and A. Kuenyehia, *Women and Law in Sub-Saharan Africa*, Sedco Publishing Limited, Accra, 2003, Page 513

¹⁷ K. Yibeltal, *Report on the progress of Including women with disabilities in mainstream women's entrepreneurship development activities*, Addis Ababa, 8-9 May 2007, Page 7

¹⁸ Chapter 1 of the Laws of Zambia

plight of the disabled woman specifically. All the laws that deal with disability related issues talk about disability in general without looking into the inadequacies of the law in an effort to find a permanent solution and achieve gender equality and non discrimination for the disabled woman.

1.2 OBJECTIVES

The overall objective of this paper is to show how the laws relating to the employment of persons with disabilities are inadequate for the disabled woman who suffers multiple discrimination. The paper encourages the enactment of gender specific laws with regards to access to employment as well as working conditions during employment of disabled women.

1.3 RATIONALE AND JUSTIFICATION

This study comes at a time when the fight for gender equality has reached great heights globally²¹. Women have for a long time been treated as subordinate to men in many aspects of life, employment being one of them²².

In this current fight for gender equality therefore, the disabled woman who is highly likely to suffer more discrimination than the able bodied woman should be given special attention in terms of the laws enacted to protect disabled people. There are some countries such as Uganda and Ethiopia that have made notable progress in this area. Zambia is only beginning to take such steps now hence the need to advocate for the ratification of international conventions that contain provisions that promote employment of the disabled female as well as the enactment of national legislation.

¹⁹Chapter 65 of the Laws of Zambia.

²⁰International Labour Organisation, Inclusion of people with disabilities in Zambia, October, 2009, Page 5

²¹ UN Women: United Nations Entity for Gender Equality and the Empowerment of Women, 2nd July, 2010.

²²M Munalula, Women Gender Discrimination and The law, Page 159

1.4 RESEARCH QUESTIONS

1. Are there any laws protecting the disabled with regards to employment in Zambia?
2. If the answer to question one is yes, do these laws take into account gender equality?
3. Do disabled women and disabled men have equal access to employment?
4. What is the nature of jobs that women in general do in comparison to men?
5. What is the nature of jobs that disabled women do in comparison to disabled men?
6. Are the laws that deal with disabled persons sufficient to cater for disabled women who are faced with multiplicity of discrimination?
7. What has Zambia done in terms of local and international legislation in promoting gender equality with regards to disabled women's access to employment as well as working conditions during employment?
8. Is that which Zambia has done with reference to the above question sufficient in comparison to other states?

1.5 METHODOLOGY

In carrying out this research, primary data in the form of interviews and secondary data in the form of books, journals, scholarly articles as well as the internet was used.

CHAPTER TWO

HISTORY OF DISCRIMINATION AGAINST WOMEN

2.0 INTRODUCTION

Discrimination can be seen at all ages and stages of development for women. Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics. We live in a world in which women do not have basic control over what happens to their bodies. Millions of women and girls are forced to marry and have sex with men they do not desire. Husbands and other male family members obstruct or dictate women's access to reproductive health care. Doctors and government officials disproportionately target women from disadvantaged or marginalized communities for coercive family planning policies.²³

2.1 HISTORY OF DISCRIMINATION AGAINST WOMEN AND THE INFLUENCE OF PATRIARCHY ON THE LAW

Prior to colonization, at the top of the household structure was the male head and at the bottom the permanent dependants including women. The male head represented the family in all dealings with the outside world and exercised social control over the family in terms of decision making powers.²⁴

In Zambia, constitutional provisions have been problematic over a long period of time. Prior to 1991, the anti discrimination clause in the constitution made no specific reference to either sex or

²³ Human Rights Watch, Gender Discrimination throughout a Lifetime ,UNICEF's report on state of the world's children, 2007

²⁴ M.J. Hay and S. Stichter, *African Women South of The Sahara*, Longman, London, 1984, Page 7

marital status as grounds for discrimination.²⁵ The inclusion of the two categories however has made little substantive improvement because of the retention of extensive exceptions to the guarantee of non discrimination.²⁶

Article 23(1) of the constitution provides that;

“Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.”

Article 23(4) (c) goes on to state that

“Clause (1) shall not apply to any law so far as that law makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;” and (d) “for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.”²⁷

There have been cases where women have failed to rely on this anti discrimination clause despite having been discriminated against. In the case of *Sarah Longwe v. Intercontinental Hotel*²⁸ for example, the petitioner sued Intercontinental Hotel Lusaka because she had been and was likely to continue to be unfairly discriminated against on the grounds of sex after she was refused entry into Luangwa Bar of the respondent hotel on the ground that she was an unaccompanied female meaning that she did not have male company, which was the requisite company for women wanting to go into that bar.

Although favourably decided, Mabula observes in her critique of the case that, the case was unable to rely on the Zambian constitution’s anti discrimination clause despite the fact that it was a case of gender specific discrimination.²⁹

The application of customary law in Zambia is highly problematic as it is fundamentally gender-biased.³⁰ In 2005, the United Nations Committee on Economic, Social and Cultural Rights noted

²⁵ M Munalula, Women Gender Discrimination and The Law. Page 49

²⁶ M Munalula, Women Gender Discrimination and The Law. Page 50

²⁷ The constitution of Zambia. Chapter 1 of the laws of Zambia.

²⁸ 1992/HP/765

²⁹ T.K.Mabula, The enforcement of Human Rights of Zambian Women: Sara Longwe v. Intercontinental Hotel Revisited, in Zambia Law Journal Vol 21-24 1989. Pages 30-47.

³⁰ Summary record of the 3rd meeting of the committee on Economic, Social and Cultural Rights, Geneva, Consideration of the initial report of Zambia, April 26, 2005

that “discrimination against women is rooted in Zambia’s customary law, and it is so serious that it amounts to a breach of both their human and natural rights.”³¹

Issues highlighted in article 23(4) (c) and (d) are mostly those in which women are discriminated against and the constitution seems to affirm this in this clause.³² This is because the state through the constitution will not interfere in matters such as adoption, marriage, divorce and devolution of property after deaths, which in most cases affect women negatively.

The influence of patriarchy on the law

According to the Bosnia and Herzegovina NGO Shadow Report to the United Nations CEDAW Committee, the patriarchal heritage reinforces the dominant cultural position of men in all spheres of life, while confirming their absolute dominance over the political and public life of the nation. This dominance is often viewed as a natural extension of the critical decision-making role of men.³³

Due to harmful stereotypes relating to the inherent capabilities of each gender, many men and women alike accept and perpetuate the view that men possess superior leadership and decision making skills.³⁴ For this same reason, men are also expected to govern within their family and their broader social community.³⁵ At the same time, the traditional distribution of roles within the family, where household chores are reserved for women and girls, provides men with additional time and energy to engage in public activities.³⁶

Patriarchy places limits on the achievements of women and reduces the value of the feminine by picturing women as limited human beings, the opposite of privileged and capable men.³⁷

³¹ Summary record of the 3rd meeting of the committee on Economic, Social and Cultural Rights, Geneva, Consideration of the initial report of Zambia, April 26, 2005

³² J. Mulenga and P. Mutzenburg, Human rights situation in Zambia, OMCT, Lusaka, 2008 Page 35

³³ J. Baksic-Muftic, Bosnia and Herzegovina NGO Shadow Report to the UN CEDAW Committee, January 2004, Page 10

³⁴ R. Traustadottir, Obstacles to equality: The Double Discrimination of Women with Disabilities Overview Article, July 1990

³⁵ R. Traustadottir, Obstacles to equality: The Double Discrimination of Women with Disabilities. Overview Article.

³⁶ R. Traustadottir, Obstacles to equality: The Double Discrimination of Women with Disabilities Overview Article.

³⁷ A. Perkins, The Nature and Influence of Patriarchy, 9th March 2009. <http://www.stabroeknews.com/2009/features>. Accessed 18th November 2010

Women are the majority of the unemployed and men are the overwhelming majority in parliament. The things women normally do in the home are less valued than men's activities in public. Women are less free to go places for fear of harassment and rape. In activities associated with both men and women, such as sports, women are usually given much less resources and support.³⁸

For instance, according to the United States national committee on pay equity, the average salary in the Women's National Basketball Association (WNBA) is only 2 per cent of the all-male National Basketball Association's (NBA) average.³⁹ This clearly illustrates how grave gender discrimination is. The only difference between the two associations is the sex but the difference in the amount of money they receive is so large.

Zambia has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. However in practice women are severely disadvantaged in employment and education. They are over represented among the unemployed and underemployed and in some sectors men are paid twice as much as women for work of equal value. Labour market segregation is high, women being concentrated in low skilled and low wage sectors.⁴⁰

Current legislation does not specifically address the issue of equal remuneration for work of equal value between men and women, which is often where disparity or inequality in wages can be found.⁴¹ The constitution and the Employment act are silent when it comes to this issue. This is despite the fact that women and men have for a long time done work of equal value but receive different remuneration.

It follows therefore that basically, laws are made by men and in their image, reflecting masculine values and standards, and serving male interests. This maleness of the law, it is contended, is a

³⁸ A. Perkins, The Nature and Influence of Patriarchy.

³⁹ International Labour Organisation, Planet Work: Women in sports: How level is the playing field? World of work magazine No. 56, April 2006

⁴⁰ International Trade Union Confederation (ITUC) Internationally Recognised Core Labour Standards In Zambia Report For The WTO General Council Review Of The Trade Policies Of Zambia Geneva, 27 - 29 July 2009

⁴¹ International Trade Union Confederation (ITUC) Internationally Recognised Core Labour Standards In Zambia.

manifestation of patriarchal power, a power that engenders the inequality between women and men and the oppression of women by men.⁴²

2.2 HISTORY OF DISCRIMINATION AGAINST WOMEN WITH DISABILITIES IN GENERAL

Over the past several decades, the treatment of people with disabilities has been evolving from a charity model to a civil rights model.⁴³ Women with disabilities face pervasive negative stereotypes that call into question their ability to function as independent, competent, sexual adults.⁴⁴ Women with disabilities face disability based and gender based stereotypes that are mutually reinforcing and further limit their roles and options.⁴⁵

Women with disabilities have historically been neglected by disability studies and feminist scholarship alike and issues of importance to women with disabilities have, for the most part, been ignored by the disability rights movement as well as the women's movement.⁴⁶ The situation of women with disabilities around the world has not been given the visibility and political importance it deserves and requires.⁴⁷

Disability studies have traditionally used a gender blind approach to examine the lives of people with disabilities and have neglected to explore the influence of gender in the lives of men and women with disabilities. The field of disability has not yet recognized the combined discrimination of gender and disability experienced by women who have disabilities, and policies and practices in the field have not been designed to meet the specific needs of women with disabilities.⁴⁸

It is only within the last decade that serious attempts have been made to identify and understand the forces shaping their lives. These attempts have mainly focused on understanding how being

⁴² C. Anyangwe, *An Outline of The Study of Jurisprudence*. Page 345

⁴³ B. Smith, *The Readers Companion to U.S Women's History*, Oxford University Press, New York, 1999, Page 567

⁴⁴ R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

⁴⁵ R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

⁴⁶ A. Asch and M. Fine, *Women with disabilities: Essays in psychology, culture and politics*, Temple University Press, Philadelphia, 1988, Page 3

⁴⁷ A. Asch and M. Fine, *Women with disabilities: Essays in psychology, culture and politics*. Page 3

⁴⁸ R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

female and having a disability interacts and how women with disabilities view their experiences. This decade of writing has provided us with rich personal accounts as well as research-based information about the social situation of women with disabilities and a long awaited theoretical framework to understand and interpret their lives and experiences.⁴⁹

Maria Leonor Beleza, further affirms this by stating in her report that, although on the one hand, problems relating to women and, on the other, problems relating to people with disabilities are being addressed separately with increasing attention and urgency, no serious approach has yet been taken to tackle the dual form of discrimination to which women with disabilities are subjected. There is still an insufficient level of awareness of the existence of this twofold source of discrimination; its effects have been largely un-researched.⁵⁰

Studies suggest that disabled women are perceived more negatively than are disabled men or non disabled women.⁵¹ Both stereotypes about women and disability emphasize passivity, weakness and helplessness so that women with disabilities have few models for positive identification. In contrast, the positive male stereotypes of assertiveness and independence serve as a counterforce to negative disability stereotypes.⁵²

Thus men with disabilities have some affirmative imagery with which to identify. People with disabilities face many obstacles in their struggle for equality. Although men and women with disabilities are subject to discrimination because of their disabilities, women with disabilities are at a further disadvantage because of the combined discrimination based on gender and discrimination based on disability.⁵³

⁴⁹ R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

⁵⁰ M. L. Beleza, *Discrimination against women with disabilities Report*, October 2003. Page 9

⁵¹ A. Asch and M. Fine, *Women with disabilities: Essays in psychology, culture and politics*. Page 4

⁵² R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

⁵³ R. Traustadottir, *Obstacles to equality: The Double Discrimination of Women with Disabilities*.

2.3 HISTORY OF DISCRIMINATION AGAINST WOMEN WITH DISABILITIES IN THE EMPLOYMENT SECTOR

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. Federal and state statutes make up most of the employment discrimination laws.⁵⁴

Women were long considered naturally weaker than men, squeamish, and unable to perform work requiring muscular or intellectual development. In most preindustrial societies, for example, domestic chores were relegated to women, leaving "heavier" labor such as hunting to men. This ignored the fact that caring for children and doing such tasks as milking cows and washing clothes also required heavy, sustained labor.⁵⁵

While stereotypes about sexuality and nurturance limit the access of women with disabilities to partner and parent roles, stereotypes about their competence also limit their access to worker roles. It is typically assumed that women with disabilities need care and not jobs. In fact women with disabilities are less likely to be employed than are men with disabilities.⁵⁶

According to the People with Disabilities: Pathways to Decent Work Report,⁵⁷ in recent decades, the exclusion of many people with disabilities from society has been recognized as a human rights issue resulting from social barriers rather than the individual's inability to participate. Women with disabilities are less likely than men with disabilities to be employed and earn less when they are employed.⁵⁸

People with disabilities in general face difficulties in entering the open labour market, but seen from a gender perspective, men with disabilities are almost twice as likely to have jobs as

⁵⁴ Employment Discrimination Law - Guide to Employment Discrimination Law, 2010. Page1

⁵⁵ Women's History in America Presented by Women's International Center.1994-1995 <http://www.wic.org/misc/history.htm>. Accessed 18th November 2010

⁵⁶ R. Traustadottir, Obstacles to equality: The Double Discrimination of Women with Disabilities.

⁵⁷ ILO, Lilongwe, 16-17 May 2006. page1

⁵⁸ United Nations Enable-Convention on the Rights of Persons with Disabilities. December 2006. <http://www.un.org/disabilities/default.asp>. Accessed 18th November 2010

women with disabilities.⁵⁹ When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision making.⁶⁰

Employment is of prime importance to everyone as a basis for independence and self-sufficiency.⁶¹ Obviously people with disabilities, whether male or female, are no different in this respect. It is accepted that men must have access to work, but there is no such consensus about women with disabilities, who tend to be steered towards a passive existence. All too often, the prevailing idea is that employment fulfils a different role for women with disabilities than for men. For women, work would appear to represent a means of filling time rather than offering a guarantee of independence.⁶²

Occasionally, women with disabilities also develop the negative idea that employment fulfils a different role for them. Women with disabilities are more likely to be employed in low-status, lower-paid jobs with poorer working conditions. Lack of self esteem and education further complicates the matter.⁶³

2.4 CONCLUSION

It has been noted in this chapter that discrimination against women goes as far back as the pre-colonial era. After gaining independence but prior to 1991, the anti discrimination provisions in the constitution made no reference to sex or marital status. Currently, the anti discrimination clause in the constitution still seems to be gender biased to a large extent because of the influence of patriarchy on the law.

Discrimination against women with disabilities can also be traced far back and this group of women tends to face double discrimination because of stereotypes about women and about

⁵⁹ A, O'Reilly, Employment Barriers for Women with Disabilities in The Right to Decent Work of Persons with Disabilities IFP/Skills Working Paper No. 14. International Labour Organization 2003

⁶⁰ Arthur O'Reilly. Employment Barriers for Women with Disabilities" in "The Right to Decent Work of Persons with Disabilities.

⁶¹ M L Belez, Discrimination against women with disabilities Report, Page 35

⁶² M L Belez, Discrimination against women with disabilities Report, Page 35

⁶³ M L Belez, Discrimination against women with disabilities Report, Page 35

persons with disabilities as they fall in both categories. One sector where such discrimination manifests itself is the employment sector which ideally is supposed to be a means for one to become self dependent as well as better their economic well being.

CHAPTER THREE

WOMEN WITH DISABILITIES AND EMPLOYMENT

3.0 INTRODUCTION

Overall, people with disabilities experience common patterns of discrimination. They suffer high unemployment rates, are confronted with prejudices regarding their productivity and are often excluded from the labour market. They also face discrimination at the hiring stage. A survey carried out in France shows that less than 2% of those having mentioned their disability in their Curriculum Vitae were called for an interview. People with disabilities are mainly recruited through temporary job agencies to minimize risks for employers.⁶⁴

A general trend worldwide is that women with disabilities are less likely to be referred to vocational training, have a harder time gaining access to rehabilitation programmes, are less likely to obtain equality in training, and if they are successfully rehabilitated, it is more likely to lead to part-time jobs or worse unemployment.⁶⁵

This chapter seeks to highlight the many obstacles that are faced by women with disabilities with regards to access to employment, nature of employment, and conditions of service during employment.

⁶⁴International Labour Organisation, Declaration on Fundamental Principles and Rights at Work: Disability discrimination at work. Page1

⁶⁵A O'Reilly, The right to decent work of persons with disabilities.

3.1 ACCESS TO EMPLOYMENT OF DISABLED WOMEN

Disabled people in general, and disabled women in particular, often find themselves unemployed, underemployed or in low paying jobs.⁶⁶

Women with disabilities are disadvantaged because women's work is seen as secondary to that of men's. A woman's main role, in most communities, is still to be a wife, mother, and homemaker, while the man is the main decision-maker and income-earner.⁶⁷ Since education and vocational training are seen as investments for higher-value employment, a woman is less likely to have the opportunity to receive them. While public attitudes are changing, illiteracy rates among women worldwide are falling, and more and more women are entering the labour market.⁶⁸

The situation, however, has changed little for women with disabilities. The general attitude is still that a disabled woman has little hope of becoming a wife or a mother, or of getting a productive and rewarding job. Thus, the normal tendency among the laymen is to visualize the women with disabilities as a burden on her family, society or the state for the rest of her life.⁶⁹

According to the People with Disabilities: Pathways to Decent Work Report⁷⁰, there are certain conditions that need to be fulfilled if people with disabilities are to be enabled to obtain decent productive work in which rights are protected, which generates an adequate income, with adequate social protection. People with disabilities must have access to training in skills which are relevant to labour market opportunities locally, regionally or nationally.

⁶⁶ Zohra Rajah in the disabled women's international newsletter 4 1989-1990

⁶⁷ Employment Rights of Disabled Women in India: A Study of Compliance & Impact of the PDA with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamilnadu. Page 2

⁶⁸ Employment Rights of Disabled Women in India: A Study of Compliance & Impact of the PDA with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamilnadu. Page 2

⁶⁹ Employment Rights of Disabled Women in India: A Study of Compliance & Impact of the PDA with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamilnadu. Page 2

⁷⁰ ILO, Lilongwe, 16-17 May 2006. Page 9

Employment for the disabled in India is a matter of right, which is endowed to the disabled women by the constitution. If the State limits itself to only adopting a quick - fix or short-term solution, then it is failing in its duty of protecting the constitutional provisions for the disabled.⁷¹

In Zambia however this does not seem to be the case. According to Mr. John Banda, with regards to access of employment of disabled women, provided the disabled women have the required competencies, employers do not discriminate unless in a situation where the disabled person will be affected by performing the job.⁷²

However, Mr. Cretus Kapato, a senior lecturer at the National Vocational and Rehabilitation Centre (NVRC) who is disabled was of a different opinion with regards to access to employment of disabled women. According to him, regardless of how well a disabled woman performs, she is still discriminated against because of her disability.

He further stated that when the students complete their training, the institution tries to find them jobs but it is very challenging as most of them are turned away for no valid reason. He gives an example of one of the top students who was a very intelligent physically disabled female in the school of electronics who could not be employed because when the employers saw that she was in a wheel chair, they would not even interview her.⁷³

Mrs. Lungu, the registrar at the National Vocational and Rehabilitation Centre (NVRC) attributes the lack of access to decent employment to the type of education and training that the disabled women get. At the National Vocational and Rehabilitation Centre for example, most females take up courses such as secretarial and office management, home management and tailoring. These according to her are not highly marketable and as a result most of them end up being

⁷¹ Employment Rights of Disabled Women in India: A Study of Compliance & Impact of the PDA. Page 8

⁷² Interview: John Banda, Research Manager. Zambia Federation of Employers. Conducted at Zambia Federation of Employers Offices, Electra House Lusaka on 15th December 2010

⁷³ Interview: Cretus Kapato, senior lecturer at the National Vocational and Rehabilitation Centre (NVRC). Conducted at NVRC, Ndola on 11th December 2010

employed in low paying jobs or being self employed. They generally cannot compete with able bodied women.⁷⁴

3.2 NATURE OF JOBS GIVEN TO DISABLED WOMEN

Examples of work done by disabled women and girls include labour-intensive and poorly paid activities such as weaving, sewing, basket-making, the assembling of toys and production of handicraft items.⁷⁵ The materials are delivered to their homes and the finished products are collected by agents.⁷⁶

The nature of jobs given to disabled women mostly depends on the training they have undergone. Most women with disabilities go for courses such as secretarial training or being telephone operators which are offered at disability friendly colleges such as the National Vocational and Rehabilitation Centre and get secretarial jobs.⁷⁷

On the other hand, Mrs. Lungu alluded to the fact that despite getting the training that is offered, most disabled women remain unemployed. Those that do get employed do low paying jobs in areas which they were not trained. Others struggle as self employed women, especially those that are trained to be tailors.⁷⁸

3.3 CONDITIONS UNDER WHICH DISABLED WOMEN WORK

In addition to the prejudice and discrimination barrier, the inaccessibility of the physical environment (e.g., buildings, roads, and transport and toilet facilities) is a serious obstacle to disabled women working outside their homes. Since the lack of mobility limits disabled women

⁷⁴ Interview: Mrs Lungu, Registrar at National Vocational and Rehabilitation Center (NVRC) conducted at NVRC Ndola on 11th December 2010.

⁷⁵ Asian and Pacific Decade of Disabled Persons, Social Development Division, United Nations ESCAP, 1993-2002

⁷⁶ Asian and Pacific Decade of Disabled Persons, Social Development Division, United Nations ESCAP, 1993-2002

⁷⁷ Interview: James Banda, 15th December 2010

⁷⁸ Interview: Mrs. Lungu, 11th December 2010

from obtaining raw materials and marketing their products themselves, engaging in piece-work is the most common form of income-generation available to them.⁷⁹

Further, there is no legal or social protection for this group of women.⁸⁰ Disabled women and girls may be exposed to unsafe materials and subjected to excessive hours of work under harsh conditions. Even where disabled women have jobs, their rights as workers may be overlooked. Faced with discrimination, little job mobility and few skills, disabled women workers may be forced to endure oppressive working conditions.⁸¹

In Zambia, mobility and the kind of buildings also seem to be a huge barrier for disabled women. There are some cases where one may be bound to a wheel chair and finds a job as a secretary but the office which she is required to operate from is upstairs. Even those that use crutches find it very difficult to find their way up and down stairs.⁸²

Further, most of these disabled women depend on public transport to get to their places of work. This mode of transport does not provide for disabled people.⁸³ This makes it almost impossible for some persons with disabilities to find their way to their places of work. The toilets at most places of work do not have facilities for disabled people.⁸⁴

This for them also turns out to be a big problem as one is not expected to spend a whole day at work without needing to use the toilet. This for the employer turns out to be a problem as it is a burden to try and fit this group of people into their workforce. Most employers look at the disability and not the capability of the person.⁸⁵

In terms of wages, when disabled women do find jobs, they receive considerably lower wages. For example, even for an industrialized country, studies have shown that a disabled woman working full-time earns only 56 per cent of the salary of a full-time employed disabled man. In fact, disabled women earn the lowest wages compared to disabled men or non-disabled women.⁸⁶

⁷⁹ Asian and Pacific Decade of Disabled Persons, Social Development Division, United Nations ESCAP, 1993-2002

⁸⁰ Asian and Pacific Decade of Disabled Persons, Social Development Division, United Nations, ESCAP 1993-2002

⁸¹ Asian and Pacific Decade of Disabled Persons, Social Development Division, United Nations ESCAP, 1993-2002

⁸² Interview: Mrs Lungu, 11th December 2010

⁸³ Interview: Cretus Kapato, 11th December 2010

⁸⁴ Interview: Cretus Kapato, 11th December 2010

⁸⁵ Interview: Cretus Kapato, 11th December 2010

⁸⁶ Asian and Pacific Decade of Disabled Persons, Social Development Division

3.4 COMPARISON BETWEEN DISABLED MEN AND WOMEN WITH REGARDS TO DECENT EMPLOYMENT

Disability is a heavy cross for anyone to bear but for women it is all the more burdensome. Because of persisting gender inequalities and because of their impairment, they experience a double bias.⁸⁷ As a result of the dual bias afflicting disabled women they are more likely to be poor, destitute, illiterate, unskilled, jobless, socially isolated and even ostracized. In addition, their access to vocational rehabilitation and employment opportunities is limited or largely non-existent. The plight of disabled women in industrialized countries is bad enough, but it is even worse in the third world where some 80% of these women live in isolated rural areas.⁸⁸

Women in general face discrimination in employment. For women with disabilities, this discrimination is far greater. In situations where there is high unemployment, opportunities for remunerative work tend to be severely limited.

Disabled men get better jobs than disabled women and this is linked to the training that they have undergone.⁸⁹ Disabled men have better employment opportunities and this is traced back to education and training. This can be ascertained from the number of disabled male students that enroll. They way exceed that of the disabled female students.⁹⁰

Because men are generally regarded as better able to do almost anything than women are, the disabled male is highly likely to be employed as opposed to a disabled female with similar qualifications.⁹¹

3.5 CONCLUSION

Discrimination affects both men and women with disabilities, but handicapped women are also penalized on account of their gender, which exposes them to poverty and unemployment. This is as a result of difficulties they face in accessing employment either because they are not qualified

⁸⁷ Zohra Rajah in the disabled women's international newsletter 4 1989-1990

⁸⁸ Zohra Rajah in the disabled women's international newsletter 4 1989-1990

⁸⁹ Interview: James Banda, 15th December 2010

⁹⁰ Interview: Mrs Lungu, 11th December 2010

⁹¹ Interview: Cretus Kapato, 11th December 2010

enough which is largely attributable to the kind of education and training they receive or simply because of their disability. Further, those who are employed are not provided with the necessary requirements to suit their needs so as to enable them to perform like all other employees.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF THE LAWS: ZAMBIA, ETHIOPIA and UGANDA

4.0 INTRODUCTION

This chapter looks at both national and international legislation with regards to employment, disability and women. It seeks to set out the laws that Zambia has and compare them to those of Uganda and Ethiopia. The rights of persons with disabilities are protected by a combination of special and general legislation. The judicial mechanism adopted to protect the rights of persons with disabilities is due process. Administrative and other non-judicial mechanisms include a Governmental body.⁹²

The general legislation applies to persons with different disabilities with respect to education and employment. The following benefits are guaranteed by law to persons with disabilities: health and medical care, training, rehabilitation and counselling, employment, and participation in decisions affecting them.⁹³

4.1 LAWS THAT ADDRESS PERSONS WITH DISABILITIES IN ZAMBIA

The anti discrimination clause in the constitution of Zambia only vaguely mentions persons with disabilities. Article 23(1) states that,

“Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

Article 23(4) further states that,

“Clause (1) shall not apply to any law so far as that law makes provision:
(e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its

⁹² Government Action on Disability Policy A Global Survey Part II - Government Replies as Country Profiles Zambia. February, 1996

⁹³ Government Action on Disability Policy A Global Survey Part II - Government Replies as Country Profiles Zambia. February, 1996

nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justified in a democratic society.”⁹⁴

The Zambian Constitution guarantees formal equality of women and men. Importantly, however, the Constitution contains a limitation in Article 23(4) (c) that reserves the right to legislate laws with respect to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law” with no requirement to ensure equal rights to women and men.⁹⁵

Furthermore, the United Nations Committee on Economic, Social and Cultural Rights noted in 2005 that “discrimination against women is rooted in (Zambia)’s customary law, and it is so serious that it amounts to a breach of both their human and natural rights.”⁹⁶

Another piece of legislation that deals with persons with disabilities is the *Persons with Disabilities Act*. This act prohibits discrimination on the grounds of disability and establishes a state agency, the Zambia Agency for Persons with Disabilities, to promote, coordinate and provide services for disabled persons.⁹⁷ Section 20 of this act provides with regards to discrimination in employment that:

An employer shall not treat a person with a disability different from a person without a disability when

- (a) Advertising for employment;
- (b) Recruiting persons for employment;
- (c) Offering terms or conditions of employment;
- (d) Considering promotion, transferring or training such persons; or
- (e) Providing any other benefits related to employment

⁹⁴ The constitution of Zambia. Chapter 1 of the Laws of Zambia.

⁹⁵ Human Rights Violations in Zambia Part II: Women’s rights Shadow Report UN Human Rights Committee 90th session July 2007

⁹⁶ Summary record of the 3rd meeting of the Committee on Economic, Social and Cultural Rights, Geneva, 26 April 2005

⁹⁷ International Labour Organisation, Inclusion of People with Disabilities in Zambia, October 2009. Page2

Further, according to section 24 (1)

“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.”

This provision which provides an incentive to the employer in an effort to encourage her to employ persons with disabilities benefits the employer more than it does the employee. There are no standards or conditions laid down for the employer to satisfy so as to ensure that employed persons with disabilities are employed under suitable conditions.

With the ending of the Poverty Reduction Strategy Programme (PRSP) in 2004 and the Transitional National Development Plan in December 2005, in 2006 the government prepared the Fifth National Development Plan (FNDP), launched in January 2007, which will run up to 2011. The Plan, whose theme is “Achieving broad based wealth and job creation through technological advancement and citizenry participation”, is comprised of a number of chapters or sectors. Although almost all “sectors” include themes and topics of potential ILO concern, the five most relevant were: Macro-economics, within which “employment” fell.⁹⁸

The Fifth National Development Plan⁹⁹ has as one of its objectives to attain the full participation, equality and empowerment of persons with disabilities. It seeks to provide enhanced support to disabled persons through increased 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 to people with disabilities.¹⁰⁰

With regards to international legislation, Zambia has ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol¹⁰¹ whose main purpose 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.¹⁰²

⁹⁸ International Labour Office. Zambia Decent Work Country Programme, June 2007

⁹⁹ The Fifth National Development Plan 2006-2010

¹⁰⁰ International Labour Organisation, Inclusion of People with Disabilities in Zambia. Page 2

¹⁰¹ August, 2010.

¹⁰² United Nations Convention on the Rights of Persons with Disabilities, 2006. Article 1

The rights of persons with disabilities are grounded in a broad human rights framework based on the United Nations Charter, the Universal Declaration of Human Rights, international covenants on human rights and other human rights instruments. On 13 December 2006, the General Assembly adopted the Convention on the Rights of Persons with Disabilities. The convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention entered into force on the 3rd of May 2008.¹⁰³ This convention is of great importance for women with disabilities.

From the preamble, paragraphs (p), (q) and (s) focus on women with disabilities.

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.

Further, Article 3 which contains General Principles states in part (g) that one of the principles of the present Convention shall be Equality between men and women.¹⁰⁴

Article 6 of the convention which focuses on women with disabilities states that

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 27(1) of the convention which deals with work and employment provides that,

“States Parties 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

¹⁰³ Women Watch: Feature on Women with Disabilities 2006-2008. UN Global Programme on Disability / UN enable http://www.un.org/womens_watch/ Accessed 12th February 2011

¹⁰⁴ Women Watch: Feature on Women with Disabilities 2006-2008.

disabilities. States Parties shall safeguard and promote the realization 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:

- (a) 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;
 - (b) 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.
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - (f) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) 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.
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
- (2) State parties shall 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.

It is important to note however, that despite having ratified it, Zambia has not yet domesticated this very important convention.

4.2 LAWS THAT ADDRESS PERSONS WITH DISABILITIES IN UGANDA

Disability concerns today in Uganda have reached a level where they are part and parcel of the general country's concerns which have to be addressed in National policies and programmes. The concerns have been enshrined within the Ugandan Constitution of 1995 and have subsequently been addressed through a number of legal provisions¹⁰⁵.

Each of these Legal provisions has mainstreamed disability concerns in matters they regulate and the solutions have always been geared to improving accessibility of persons with disability to all environments of the Ugandan Society and provision of equal opportunities to persons with disabilities to increase their capacity to participate in the development of the Ugandan society.¹⁰⁶

The Government of Uganda has adopted a number of laws and policies pertaining to people with disabilities including their right to productive and decent work and basic services.¹⁰⁷

Firstly, Article 21 of the 1995 Constitution of Uganda prohibits discrimination against persons with disabilities. It is important to note that Uganda is one of the few countries in the world to recognize sign language in its constitution.¹⁰⁸

The *Persons with Disabilities Act* and the *Employment Act*¹⁰⁹ (No. 6) both of 2006, further make provisions for the elimination of all forms of discriminations against people with disabilities, promote equal opportunities and prohibit discrimination of persons in employment based on

¹⁰⁵ The Political Process That Led To the Inclusion of Disability in the Constitution of Uganda. An International Disability Law and Policy Symposium, October 22-26, 2000

¹⁰⁶ The Political Process That Led To the Inclusion of Disability in the Constitution of Uganda.

¹⁰⁷ International Disability Law and Policy Symposium, October 22-26, 2000

¹⁰⁸ International Labour Organisation, Inclusion of People with Disabilities in Uganda. October 2009. Page 2

¹⁰⁹ The 2006 Employment Act provides a list of conditions that amount to disability. These conditions are listed as: a) physical disability or impairment; b) physical illness; c) psychiatric illness; d) intellectual or psychological disability or impairment; e) loss or abnormality of physiological, psychological or anatomical structural functions; f) reliance on guide dog, wheelchair or any other remedial means; g) presence in the body of organisms capable of causing illness.¹⁰⁹ Article 6 the Act forbids discrimination in employment, which it defines as "any distinction, exclusion or preference made on the basis of disability which has the effect of nullifying the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service".

disability respectively.¹¹⁰ The Persons with Disabilities Act of 2006 in section 21 (1) urges government authorities to promote the right of Persons with Disabilities (PWDs) to access information through;

- a) The development and use of sign language, tactile, sign language interpreters in all public institutions and at public functions;
- b) Brailing of public information such as government documents, government newspapers and other publications.

It further stipulates in Sub-section (2) that; any person who owns a television station shall provide sign language inset or sub titles in at least one major news cast program each day and in all special programs of national significance.¹¹¹

The latter also provides for a tax reduction of 15 per cent to private employers who employ ten or more persons with disabilities either as regular employees, apprentice or learner on a full time basis.¹¹²

The *Local Government Act* of 1997, the *Parliamentary Elections Statute* of 1996 and the *Movement Act* of 1998, all aim at increasing the representation of disabled people in the public sphere. The Local Government Act, for example, provides for representation of disabled people at the various Local Council levels. In addition, Section 37 of the Parliamentary Elections Statute provides for five seats in Parliament for representatives of persons with disabilities.¹¹³

The *National Council for Disability Act* establishes a body for the purpose of monitoring and assessing the rights of persons with disabilities as set out in international conventions and legal instruments, the Constitution and other national legislation.¹¹⁴

¹¹⁰ A Review Of The Ugandan Legal Framework Relevant To Persons With Disabilities: Comparative Analysis to the Convention on the Rights of Persons with Disabilities, August 2008. Page29

¹¹¹ Christine Mugimba, Accessibility For Persons With Disabilities In Africa Region: Uganda's Country Report. Uganda Communications Commission, 30th June 2008

¹¹² International Labour Organisation, Inclusion of People with Disabilities in Uganda. Page 2

¹¹³ International Labour Organisation, Inclusion of People with Disabilities in Uganda. Page2

¹¹⁴ The National Council for Disability Act (No. 14) of 2003

With regards to international legislation, Uganda has ratified and domesticated the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Convention on the Rights of Persons with Disabilities (CRPD) opened for signature on March 30, 2007. The Republic of Uganda ratified the Convention and its Optional Protocol on 25 September 2008 and therefore assumed the obligation under international law to implement it.¹¹⁵

Article 6 which covers Women with Disabilities states that,

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

The constitution has provisions that reflect the above article. Firstly, Article 21 forbids discrimination including on the grounds of sex and disability.¹¹⁶ Further, Article 32 provides for affirmative action in favour of marginalized groups and establishes the duty of the State to take affirmative action in favour of groups marginalized on the basis of gender and disability with the purpose of redressing imbalances which exist against them.¹¹⁷

Article 33 on the Rights of Women recognizes the equal dignity of women with men and their right to equal treatment, establishes the State's duty to contribute to women's potential and empowerment and recognizes women's right to affirmative action.¹¹⁸

¹¹⁵ A Review of The Ugandan Legal Framework Relevant To Persons With Disabilities: Comparative Analysis to the Convention on the Rights of Persons with Disabilities, August 2008. Page 1

¹¹⁶ Constitution, article 21 "(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause(1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability."

¹¹⁷ Constitution, article 32 "(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article."

¹¹⁸ Constitution, article 33 "Rights of women". "(1) Women shall be accorded full and equal dignity of the person with men. (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

Although few provisions in the Ugandan legal framework recognize the specific circumstances of women with disabilities, in the field of political participation, both the 1997 *Local Government Act* and the 2001 *Parliamentary Elections Act* reserve seats for women with disabilities.¹¹⁹

Article 35 of the constitution provides for the Rights of persons with disabilities with regards to human dignity and places an obligation on the state through parliament to enact laws for their protection.¹²⁰

These achievements, many as they look, have not come as easily as they seem to pop out of writers mind. It has taken Decades of mobilisation, lobbying and advocacy to create the awareness and the Conviction that persons with disabilities can contribute to the development of our society, if their potentials are harnessed to the fullest by providing opportunities to them to enable them participate fully in all matters concerning development in Uganda.¹²¹

4.3 LAWS THAT ADDRESS PERSONS WITH DISABILITIES IN ETHIOPIA

Some five to eight million women and men in Ethiopia, or 7 to 10 per cent of the population, have a disability.¹²²

A vast majority of people with disabilities live in rural areas where access to basic services is limited. A survey on disability in Ethiopia reported that 60 per cent of persons with disabilities of

(5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.(6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

¹¹⁹ one of the two seats reserved for persons with disabilities at local government level and one of the five seats reserved in Parliament for representatives of PWDs, respectively

¹²⁰ Constitution, article 35” (1) Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.

(2) Parliament shall enact laws appropriate for the protection of persons with disabilities.

¹²¹ The Political Process That Led To the Inclusion of Disability in the Constitution of Uganda. An International Disability Law and Policy Symposium. (October 22-26, 2000)

¹²²UNICEF Ethiopia Disability Programme, Fact Sheet, http://www.unicef.org/ethiopia/ET_Disability_fact_sheet_Nov_06.pdf, (accessed on 23 April 2009).

working age were unemployed in 1995, of whom some two-thirds were self-employed in rural areas in occupations such as agriculture, animal husbandry or forest activities.¹²³ Begging is often a prevalent means of survival in urban centres, in addition to assistance from religious institutions and charities.¹²⁴

According to the International Rehabilitation Review¹²⁵, nearly 10% of the world's population has disabilities, of which 80% live in developing countries. Most of those in developing countries do not have access to rehabilitation services due to a lack of resources and other various factors¹²⁶.

The state of persons with disabilities in Ethiopia is even more tragic and severe due to the presence of diversified pre and post-natal disabling factors (like infectious diseases, difficulties contingent to delivery, under-nutrition, malnutrition, harmful cultural practices, lack of proper child care and management, civil war and periodic drought and famine) and the absence of early primary and secondary preventive actions.¹²⁷

Article 35 of the constitution of Ethiopia provides for the rights of women.¹²⁸ These range from equality with men, affirmative action to remedy the inequality and discrimination suffered by women in Ethiopia, to equal rights in employment and promotion.¹²⁹

¹²³ ILO, Ethiopia country profile. Employment of people with disabilities: The impact of legislation (East Africa), 2004. Page 3.

¹²⁴ ILO, Inclusion of People with Disabilities in Ethiopia, July 2009. Page 1

¹²⁵ United Nations Children's Fund -UNICEF, Rehabilitation International Technical Support Program to Prevent Childhood Disabilities and to Help Disabled Children Vol. 7, 1998

¹²⁶ Tirussaw, T. (1998), Persons with Disabilities of High Achievement Profile in Ethiopia, Radd Barner.

¹²⁷ Country Profile on Disability Federal Democratic Republic Of Ethiopia Japan International Cooperation Agency Planning and Evaluation Department. March 2002. Page 10

¹²⁸ Constitution, article 35 "1. Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men. 2. Women have equal rights with men in marriage as prescribed by this Constitution. 3. The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions. 4. The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. 5. (a) Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family. (b) Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay. 6. Women have the right to full consultation in the

Further, the Ethiopian Federation for Persons with Disabilities partnership project on “Developing Entrepreneurship among Women with Disabilities in Ethiopia” aims at facilitating access of women with disabilities and women with disabled dependants to start up or develop business activities through facilitating their access to training in micro-enterprise skills, vocational skills training and credit.¹³⁰

A small number of companies in Addis Ababa, including hotels, restaurants and commercial buildings, are demonstrating the business benefit of making their buildings accessible to people with disabilities.¹³¹

The Ethiopia labour proclamation¹³² under the principle of non discrimination in Section 14 states that:

(1) It shall be unlawful for an employer to:

(a) Impede the worker in any manner in the exercise of his rights or take any measure against him because he exercises his rights;

b) Discriminate against female workers in matters of remuneration, on the ground of their sex.

It is important to note that Ethiopia has ratified the International Labour Organisation’s Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983(No. 159) and has issued, at the federal level, Proclamations on the right of Disabled Persons to Employment (No.101/1994) and on federal civil servants (No.262/2002). The latter prohibits discrimination in

formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.

7. Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property. 8. Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements. 9. To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.

¹²⁹International Labour Organisation, Inclusion of People with Disabilities in Ethiopia, July 2009. Page 1

¹³⁰International Labour Organisation, Employment of people with Disabilities. A human rights approach (East and Southern Africa), Addis Ababa, 2005. Page 31

¹³¹ Yelibenwork Ayele, A Look At What Ethiopia Is Doing For Persons With Disabilities. April 2010.

¹³²nf42 of 1993

the civil service at Federal level and provides for affirmative action measures in the recruitment of persons with disabilities.¹³³

With regards to international legislation, Ethiopia became the 88th country to ratify the convention on the Rights of Persons with Disabilities on the 7th of July 2010.¹³⁴ This convention as has been shown contains among other rights, the rights of women with disabilities and those that look at discrimination in employment.

4.4 ANALYSIS

The constitution of Zambia which is the supreme law of the land appears not to have any provision that addresses women with disabilities. Firstly unlike the constitutions of Uganda and Ethiopia, the constitution of Zambia makes no mention of women's rights. These rights are of great importance in the promotion of gender equality in an effort to ensure equality in a patriarchal society. The fact that the supreme law has no such provision makes it difficult for all the other laws to include women's rights for it is from the constitution that all the other laws emanate.

Secondly, unlike in the constitution of Uganda, the constitution of Zambia has no provision which specifically focuses on the rights of persons with disabilities. The constitution of Zambia merely makes mention in Article 23 which is the anti-discrimination clause referring to the fact that among others, disability is one of the grounds on which one should not be discriminated against. This is not sufficient as it does not confer any rights on this marginalized group of persons.

Further, the other pieces of legislation like the *Persons With Disabilities Act* in section 20 and the *Workers Compensation Act* talk about non- discrimination of persons with disabilities in employment and compensation of people who become disabled during the course of employment respectively, but none of these laws mention women with disabilities. This can be attributed to

¹³³ International Labour Organisation, *Employment of people with Disabilities. A human rights approach*. Page 30

¹³⁴ [http:// www.usicd.org/index.cfm/news_ethiopia](http://www.usicd.org/index.cfm/news_ethiopia). accessed 7th February 2011

the fact that women's rights have not been taken into consideration in the constitution as earlier alluded to.

In comparison, Article 32 and 33 of the Ugandan constitution provide for affirmative action in favour of marginalized groups and establishes the duty of the State to take affirmative action in favour of groups marginalized on the basis of gender and disability with the purpose of redressing imbalances which exist against them, and the rights of women by recognizing the equal dignity of women with men and their right to equal treatment, and establishes the State's duty to contribute to women's potential and empowerment and recognizes women's right to affirmative action.

Further, article 35 of the constitution of Ethiopia provides for the rights of women. These range from equality with men, affirmative action to remedy the inequality and discrimination suffered by women in Ethiopia, to equal rights in employment and promotion. This constitution is also a step ahead of that of Zambia in this respect.

As for international legislation, the most comprehensive human rights document is the United Nations Convention on the Rights of Persons with Disabilities. While Zambia and Ethiopia have only ratified it, Uganda on the other hand has ratified and incorporated it in its national legislation as has been shown.¹³⁵

Ratification on its own is insufficient. In order for citizens to be able to exercise the rights that are contained in an international piece of legislation, besides a state party appending its signature to it, there is need for it to also ratify that piece of legislation and further domesticate it into its national laws. This is to enable citizens to make use of them and enforce such rights through the domestic courts. Enforcement through international structures and institutions is a protracted and complex process that is beyond the means of most people.

¹³⁵ A Review of The Ugandan Legal Framework Relevant To Persons With Disabilities: Comparative Analysis to the Convention on the Rights of Persons with Disabilities, August 2008. Page 1

4.5 CONCLUSION

It is undoubted that women with disabilities are a marginalized group and in a patriarchal society suffer multiple discrimination. As such they need the protection of the law so that they may carry on life like every other person despite their disability. The law needs to protect this group of people from discrimination in employment and other aspects of their lives. Therefore, there is need for the enactment of effective legislation with regards to women with disabilities in the employment sector. Further there is need to also domesticate international laws that address the needs of this group of people.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

The aim of this chapter, is to draw some conclusions from the findings of the research and based on those conclusions come up with some relevant recommendations on the topic at hand with the aim of changing the situation prevailing currently. This chapter therefore draws conclusions from the discussion on the inadequacies of the laws in Zambia in addressing the plight of the disabled women in with regards to employment and further makes recommendations as to how the situation in Zambia can change with regards to what is transpiring.

5.1 CONCLUSIONS

In recent decades, the exclusion of many people with disabilities from society has been recognized as a human rights issue, resulting from social barriers rather than the individual's inability to participate. This transition from a social welfare perspective to a rights-based approach has brought about a focus on improving access to education and skills training, reflected in legislation all over the world.¹³⁶

Throughout the world, women with disabilities are subject to two-tiered discrimination, based on their gender and disability. They are denied jobs, excluded from schools, are considered unworthy of marriage or partnership, and are even barred from certain religious practices. Women and girls with disabilities are often the last to receive the necessary support to enable them to overcome poverty and lead productive and fulfilling lives (e.g., education, employment, appropriate general health care services). They are at higher risk for abuse and violence, which

¹³⁶ Women and Girls with Disabilities. 2006. Human Rights Watch. <http://hrw.org/women/disabled.html>

can, in turn, aggravate existing disabilities or create secondary disabilities, such as psychosocial trauma.¹³⁷

While men with disabilities have serious employment problems, women with disabilities are significantly worse off and this seems to be true for all types and levels of disabilities. Men with disabilities are almost twice more likely to have jobs than women with disabilities. Women with disabilities are also significantly poorer than men with disabilities, partly due to the fact that they are more likely to be unemployed and partly due to the fact that when they work they receive considerably lower wages than men with disabilities.¹³⁸

The labor market does not adequately accommodate women with disabilities. According to the United Nations only one quarter of women with disabilities worldwide are in the workforce. Pervasive ignorance frequently leads potential employers to reject women with disabilities because they mistakenly assume that the women will not be able to fulfill job requirements or that reasonable accommodation will be extensive and costly. The unemployment rate for women with disabilities in developing countries is virtually 100%.¹³⁹

2 RECOMMENDATIONS

What have been highlighted in this paper are mainly the obstacles that persons with disabilities, particularly women, face and the desperate need to move towards a situation where persons with disabilities enjoy their rights and fully participate as equal citizens in their own development as well as that of the country hence the following recommendations.

1. Changing attitudes and behavior towards women with disabilities in Zambia should focus on educating and sensitising society as a whole. Institutions entrusted with the responsibility of

¹³⁷Factsheets on Women with Disabilities.” Dawn Ontario Disabled Women’s Network Ontario. <http://dawn.thot.net/fact.html>. Accessed 4th March 2011

¹³⁸ F. Bowe, Disabled women in America: A statistical report drawn from census data. Washington, DC: President's Committee on Employment of the Handicapped, 1984

¹³⁹“Factsheets on Women with Disabilities.” Dawn Ontario Disabled Women’s Network Ontario.

aiding women with disabilities should not only focus on them because the people with whom these people live with in society also need to learn how to treat with them if they are to live in any society without being discriminated against.

2. The media as well as publishers of books or any other literature must be made aware of the need to present positive images of girls and women with disabilities, rather than constantly showing them as either victims or extraordinary people.
3. Women with disabilities must instead be presented, as other people are, in ordinary situations such as working, learning in educational institutions, taking an active part in sports or expressing their views and taking part in everyday activities. The common tendency of always showing them being led through the streets as beggars asking for money should be done away with.
4. Women with disabilities should be channeled towards effective training, enabling them to find a satisfactory and financially rewarding job, which would guarantee their independence and equal opportunities and would ensure the using of each person's capabilities to the full.
5. All educational institutions such as the NVRC must be properly informed and must take the necessary steps to ensure that girls and women with disabilities receive education and preparation for employment that will guarantee them completion and liberty.
6. The people in charge as well as career guidance services should seek to offer women with disabilities the full range of possibilities and not merely steer them towards poorly paid jobs. In this regard, they must be educated to reject prejudice.
7. The women themselves must be actively involved in clearly stating what they want to do as opposed to simply accepting that which is thrown at them. There should be no restriction as to what females can or cannot enroll to study.
8. Those who work in educational institutions must themselves be educated to reject all forms of prejudice and to combat any prejudices held by girls and women with disabilities

themselves or even their families. They should be helped to do away with believing that they can only enroll for certain courses and in turn have a limited choice when it comes to employment which jobs do not usually result into self reliance of the disabled female as they are low paying jobs.

9. All the relevant services, employers, trainers, agencies, coworkers and trade unions must be sensitized about the situation of women with disabilities in order to understand, accept and promote their rights to obtain and remain in employment proportionate with their abilities.
10. Besides attaching certain benefits or incentives to employers who employ women with disabilities, public authorities themselves should employ women with disabilities and set a benchmark. This will encourage private employers sooner than later to do the same.
11. The government's role should not end at making the laws and policies, and forcing people to obey them. Instead, it should be the one to take the first step in ensuring that women with disabilities are employed in the public sector.
12. Employers must be encouraged to upgrade facilities and make them accessible to women with disabilities, and to introduce other practicable measures such as, where appropriate, home-based working, extended assignment times, part-time working or flexible working hours and also make available support such as transport to their places of work.
13. There should be provision of transport to places of work by the government. Seeing as this is one of the major hurdles that women with disabilities face, the government should provide as some sort of incentive to private employers who provide transport for women with disabilities to their places of work whether or not they are employed by the public authorities.
14. Further, employers should be encouraged to advertise job opportunities widely in various media. Such advertisement should include a specific clause encouraging women with disabilities who have the relevant qualifications to apply.

15. Mechanisms to ensure that selection of would be employees is done in a manner that would make sure that disqualification of any such applicant is not on the basis of disability should be put in place. In this regard therefore, there is need for the Government to institute policies aimed at encouraging employers to employ disabled persons with qualifications.
16. The Zambia Federation of Employers (ZFE) should encourage its member organizations to institute disability sensitive employment policies.
17. There is need to take into account and to address the concerns of girls and women of all ages with any form of disability in all policy-making and programming. Special measures are needed at all levels to integrate them into the mainstream of development.
18. The government of Zambia should appoint a committee to ensure that laws and policies are enforced and are achieving that which they set out to achieve. Further, these laws must have punitive measures for those that go against them. This will ensure that such laws are not just dead letter laws but are strictly obeyed.
19. The laws that the government enacts should be in line with the United Nations Convention on the rights for persons with Disabilities. This will lead to the desired development for women with disabilities as well as the country as a whole.

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