

**LEGAL PERSPECTIVES OF RESOLVING SOCIAL STIGMA TOWARDS MENTALLY
DISABLED PERSONS IN ZAMBIA**

BY

SANDRA JACOBS

26096986

**A directed research essay submitted to the University of Zambia Law Faculty in Partial
fulfillment of the requirements or the Award of the Bachelor of Laws (LLB Degree)**

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By

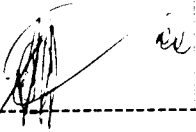
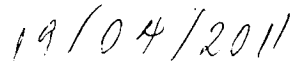
SANDRA JACOBS

26096986

**Being a directed research essay submitted to the University of Zambia Law Faculty in Partial
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Declaration

I. **Sandra Jacobs** of computer number 26096986, 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 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 authorization in writing of the author.

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SANDRA JACOBS

26096968

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WITH DISABILITIES IN ZAMBIA

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C. Chitupila

Miss. C. Chitupila

(Supervisor)

19.04.2011

Date

List of Acronyms

EPSS Department	Education, Psychology, Sociology and Special Education Department
MCDSS	Ministry of Community Development and Social Services
MHAZ	Mental Health Association of Zambia
MHUNZA	Mental Health Users Network of Zambia
NELP	National Employment and Labour Market Policy
NGO	Non-Governmental Organisation
UTH	University Teaching Hospital
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
ZAPD	Zambia Agency for Persons with Disabilities

Abstract

This essay sets out to give legal perceptions on resolve social stigma towards the mentally disabled persons in Zambia. It focuses on the stigma towards persons with mental disabilities and questions why society finds it difficult to accept mentally disabled persons as being comparable to physical disabled persons, and as amenable to treatment and prevention. The essay further establishes what society itself is doing to integrate persons with mental disabilities into mainstream society.

The essay proceeds to establish how government has interfered in resolving social stigma towards persons with mental disabilities. It discusses Article 23 of the constitution which generally protects from discrimination but however does not protect from discrimination based on mental disability, how the mental Disorders Act reinforces stigma towards persons with mental disabilities and the role of the Zambia Agency for Persons with Disabilities. The essay also considers reasons why persons with mental disabilities in Zambia cannot benefit from the provisions of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) despite Zambia having ratified it.

Based on the findings, the essay proceeds to give recommendations such as the need to use the media in educating society on the facts of the different causes, treatments and prevention of mental disabilities and the need for communities to form self-help support groups for families of mentally disabled persons. The essay also strongly advocates for the need to repeal of the Mental Disorders Act and the domestication of the UNCRPD so that mentally disabled persons are legally protected from social stigma in all sectors of society.

Dedication

To my adorable parents, P. J and Delphine and all those who have contributed to my academic life. They too have made sacrifices; they too have endured great pain to support me, especially when I needed them the most. Therefore, it is altogether fitting and proper that I dedicate a part of this work to them. But, in a larger sense, I cannot dedicate; I cannot consecrate; neither can I measure to any degree what they've done for me. For this, I forever remain indebted to them and ceaselessly love and cherish them.

Acknowledgements

All praises are due to the Lord Almighty for his love, blessings, peace and mercy. He breathed the spirit of life into my chest and spine when I was born to the greatest parents a child can ever wish for. He then gave me strength to accomplish all that I have accomplished thus far, all according to the life plan He has for me.

My special thanks go to my supervisor Miss C. Chitupila for all her stanch support and superb suggestions that made me try to be both candid and precise in my elucidations enabling me to complete this work in the manner that I did. So grateful I am for her supervision and instruction.

My deep and profound gratitude also go to my family. To my only sister Debra, thank you for always taking care of my hair and your continued emotional support. Alfred, Cornelius and Patrick Jr, my three great and amazing brothers, you have been there for me when I needed you the most. The road may have been taut and the challenges may have been many, but still, you have always believed in me. God sanctify you.

Heartfelt salutes also go to my nephew, Clive Jacobs Banda. You have been a great source of motivation and a great source of buoyancy in my pursuit of an LLB Degree. Bless you.

To the International Labour Organisation (ILO), I am grateful for your financial contribution towards this research. I wish you all the best in your marvelous works that helps the world's venerable people beyond their wildest dreams. Thank you very much.

Other thanks go to Mr. Kasonde, Director General of Care Ministries for the Mentally Ill, and Mr. Katontoka, President of Mental Health Network of Zambia for the guidance on mental health during the course of my research and for all the materials you provided me with. I remain forever grateful to you.

Thanks to Froza, Elisha, Lontia, Justine and many others whose names are just too numerous to mention. God bless all.

Table of Cases

Zambia Sugar Plc V. Fellow Nanzaluka. Appeal No. 82/2001.

Table of Statutes

Constitution of Zambia, Chapter 1 of the Laws of Zambia.

Education Act, Chapter 134 of the Laws of Zambia.

Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

Mental Disorders Act, Chapter 305 of the Laws of Zambia.

Penal Code, Chapter 87 of the Laws of Zambia.

Persons with Disabilities Act, Chapter 65 of the Laws of Zambia.

Table of International Instruments

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

Table of Contents**Page**

Title Page-----	i
Declaration-----	ii
Supervisor's Approval-----	iii
Abstract-----	iv
Dedication-----	v
Acknowledgements-----	vi
List of Abbreviation-----	vii
Table of Cases-----	viii
Table of Statutes-----	ix
Table of International Instruments-----	x
Table of Content-----	xi
 <u>Chapter 1: General Introduction</u>	
Introduction-----	1
1.2.0 Statement of Problem-----	2
1.3.0 Objectives of the Research-----	2
1.4.0 Rationale and Justification of the Research-----	3
1.5.0 Specific Research Questions-----	3
1.6.0 Research Methodology-----	4
1.7.0 Outline of Chapters-----	4
 <u>Chapter 2: Society's responses towards the challenges of the mentally disabled persons in Zambia.</u>	

2.1.0 Introduction-----	7
2.2.0 Challenges of the mentally disabled persons in Zambia-----	8
2.3.0 Negative social responses towards the mentally disabled persons in Zambia-----	12
2.4.0 Positive social responses towards the mentally disabled persons in Zambia-----	14
2.5.0 Society's efforts in resolving social stigma towards the mentally disabled persons in Zambia-----	15
2.6.0 Conclusion-----	18
<u>Chapter 3: Government's intervention in resolving social stigma towards the mentally disabled persons in Zambia.</u>	
3.1.0 Introduction-----	19
3.2.0 Discussion of the Zambian laws attempting to resolve social stigma towards the mentally disabled persons in Zambia-----	20
3.3.0 Achievements of the Zambian laws in resolving social stigma towards the mentally disabled persons in Zambia-----	24
3.4.0 Shortfalls of the Zambian laws in resolving social stigma towards the mentally disabled persons in Zambia-----	26
3.5.0 Conclusion-----	28

Chapter 4: The efficacy of the United Nations Convention on the Rights of People with Disabilities

in Zambia

4.1.0 Introduction-----	29
4.2.0 Discussion of the United Nations Convention on the Rights of People with Disabilities-----	30
4.3.0 Efficacy of Government's implementation of the United Nations Convention on the Rights of People with Disabilities in resolving social stigma towards the mentally disabled persons in Zambia-----	34
4.4.0 Conclusion-----	36
<u>Chapter 5: Conclusion and Recommendations</u>	
5.0 Conclusion-----	37
5.1 Recommendations-----	38
Bibliography-----	40

CHAPTER 1

GENERAL INTRODUCTION

1.1.0 Introduction

Mental health has been defined as the capacity of the individuals and groups to interact with one another and the environment, in ways that promote subjective well-being, optimal development and the cognitive, affective and relational abilities.¹ Poor mental health is associated with social disadvantage, human rights abuse, and poor health and productivity and increased risk of mental disorder.²

It is advisable to note that there are different types of mental illnesses calling for different types of responses. Common mental disorders found in Zambia are acute psychotic episodes, schizophrenia, affective disorders, alcohol related problems and organic brain syndromes.³ Nevertheless, throughout history, attitudes have been unfavourable and those labeled as mentally disabled have been unfairly treated.⁴

Article 23 of the Constitution of Zambia⁵ does not allow discrimination thus Zambia has adopted a number of Laws such as the Mental Disorders Act⁶ and the Persons with Disabilities Act⁷ to govern mental health in the Country. Further, Zambia is also a signatory to the United Nations Convention on the Rights of the Disabled.

However, to a larger extent, people who are mentally disabled are stigmatized, feared, scorned at, humiliated and condemned in Zambia.⁸ It is based on such attitudes that mentally disabled persons are discriminated against and denied jobs and any meaningful interaction with other members of society.⁹ Furthermore, rising rates of mental illnesses in Zambia are being met with growing levels

¹ Mental Health Country Council of Australia, 'Mental Health Fact Sheet: A Range of Definitions of Mental Health/Illness' (2010), page 1. <http://www.mhca.org.au/documents/Definition>. Accessed on August 28, 2010.

² R Horton, 'Stigma and Mental Health', *The Lancet* (September 4, 2007), page 34

³ J Mayeya et al, 'Zambia Mental Health Country Profile', *International Review of Psychiatry* 16 1-2 (February 15 2004), page 63.

⁴ O K. Hwaku, 'Mental Health: Perspectives on Resolving Social Stigma in Employment for Ex-Mental Patients', *Journal of Social Development in Africa* 4, 1 (1989), page 68.

⁵ Constitution of Zambia, Chapter 1.

⁶ Mental Disorders Act. Chapter 305.

⁷ Persons with Disabilities Act, Chapter 65.

⁸ J Mayeya et al, 'Zambia Mental Health', page 63.

⁹ O K Hwaku, 'Mental Health', page 63.

of stigma and discrimination, with sufferers often isolated by their communities.¹⁰ Evidence suggests that the stigma and discrimination attached to mental illness is the main obstacle to the provision of care for people with disability¹¹ thus, mentally disabled persons are persistently in a situation where they are disqualified from full social acceptance.¹²

1.2.0 Statement of Problem

Mentally disabled persons are recognised to have the inherent right to respect for their dignity whatever seriousness their disability may be and to have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and as full as possible.¹³ For that reason, the government of Zambia has adopted a number of laws. Such as Mental Disorders Act,¹⁴ the Persons with Disabilities Act¹⁵ and is also a signatory of the United Nations Convention on the Rights of Persons with Disabilities (2006). Regardless of this, it has been observed that mentally disabled persons in Zambia are still met with growing levels of stigma and discrimination.¹⁶ The issue therefore is to question these laws thereby scrutinizing their efficacy in resolving social stigma towards the mentally disabled persons in Zambia. Accordingly, the paper will endeavor to provide tangible working solutions that may immediately or progressively resolve social stigma towards the mentally disabled persons in Zambia.

1.3.0 Objectives of the Research

The ultimate objective of this paper is to analyse the municipal laws governing mentally disabled persons in Zambia and the United Nations Convention on the Rights of Persons with Disabilities (2006) in view of resolving social stigma towards the mentally disabled persons in Zambia. The following are the specific objectives of the study;

- i. To give a brief historical background of the development of mental health laws from the colonial era till the present time in Zambia,

¹⁰IRIN, 'Zambia: Mental Illness Sufferers Shunned and Isolated' (2007), page 1. <http://www.allafrica.com/200709070903.html>.

¹¹ R Horton, 'Stigma and Mental Health', page 34.

¹² O K Hwaku, 'Mental Health', page 64.

¹³ P D C Phiri, 'Zambia' (2008), page 3. <http://www.erasmusmundus.be/zambia.pdf>. Accessed on August 28, 2010

¹⁴ Mental Disorders Act, Chapter 305.

¹⁵ Persons with Disabilities Act, Chapter 65.

¹⁶ IRIN, 'Zambia: Mental Illness', page 1.

- ii. To discuss the factors which have contributed to social stigma towards the mentally disabled persons in Zambia,
- iii. To evaluate the efficacy of the Zambian legal framework governing mental health in resolving social stigma towards the mentally disabled persons in Zambia,
- iv. To scrutinize the efficacy of the United Nations Convention on the Rights of Persons with Disabilities in resolving social stigma towards the mentally disabled persons in Zambia,
- v. Finally, to recommend measures both immediate and progressive that may resolve social stigma towards the mentally disabled persons in Zambia.

1.4.0 Rationale and Justification of the Research

This essay is considering the resolution of social stigma towards the mentally disabled persons in Zambia. The study is justified because previous studies have shown that most people, whether young or old, highly educated or with little schooling, feel that mentally disabled persons are dangerous, dirty, unpredictable and worthless.¹⁷ Though it is acknowledged that mentally disabled persons have the inherent right to respect for their dignity and with the same fundamental rights as their fellow citizens of the same age, implies first and foremost the right to enjoy a decent life, as normal and full as possible,¹⁸ the mentally disabled persons in Zambia are currently being met with growing levels of stigma and discrimination, with sufferers often isolated by their communities.¹⁹ The question therefore is, despite the municipal laws and the United Nations Convention on the Rights of Persons with Disabilities, why is this so, and what more can be done? The study aims at making useful suggestions and recommendations to that effect.

1.5.0 Specific Research Questions

- i. To what extent are the Zambian mental health laws and the United Nations Convention on the Rights of Persons with Disabilities effective in resolving social stigma towards the mentally disabled persons in Zambia?

¹⁷ R Horton, 'Stigma and Mental Health', page 34.

¹⁸ P D C Phiri, 'Zambia' (2008), page 3.

¹⁹ IRIN, 'Zambia: Mental Illness Sufferers Shunned', page 1.

- ii. What challenges has the Zambian government faced in resolving social stigma towards the mentally disabled persons in Zambia?
- iii. To what extent has society itself attempted to resolve social stigma towards the mentally disabled persons and what have been the shortfalls?
- iv. Finally, what measures can society and government respectively consider in resolving social stigma towards the mentally disabled persons in Zambia?

1.6.0 Research Methodology

This study will be based on both primary and secondary information. The primary information will include interviews with personnel of the Mental Health Association of Zambia (MHAZ), Zambia Agency for Persons with Disabilities (ZAPD), Mental Health Users Network of Zambia, Care ministries for the Mentally Ill, Chainama Hills Hospital, involved religious groups and families of the mentally disabled persons. Secondary sources include statutes, international instruments, judicial decisions, books, articles periodicals, reports, journals, newspapers and obligatory essays.

1.7.0 Outline of Chapters

1. Chapter 1: General Introduction

1.1.0 Introduction

1.2.0 Statement of Problem

1.3.0 Objectives of the Research

1.4.0 Rationale and Justification of the Research

1.5.0 Specific Research Questions

1.6.0 Research Methodology

1.7.0 Outline of Chapters

2. Chapter 2: Society's responses towards the challenges of the mentally disabled persons in

Zambia.

2.1.0 Introduction

2.2.0 Challenges of the mentally disabled persons in Zambia

2.3.0 Negative social responses towards the mentally disabled persons in Zambia

2.4.0 Positive social responses towards the mentally disabled persons in Zambia

2.5.0 Society's efforts in resolving social stigma towards the mentally disabled persons
in Zambia

2.6.0 Conclusion

3. Chapter 3: Government's intervention in resolving social stigma towards the mentally disabled persons in Zambia.

3.1.0 Introduction

3.2.0 Discussion of the Zambian laws attempting to resolve social stigma towards the mentally disabled persons in Zambia

3.3.0 Achievements of the Zambian laws in resolving social stigma towards the mentally disabled persons in Zambia

3.4.0 Shortfalls of the Zambian laws in resolving social stigma towards the mentally disabled persons in Zambia

3.5.0 Conclusion

4. Chapter 4: The efficacy of the United Nations Convention on the Rights of People with Disabilities in Zambia.

4.1.0 Introduction

4.2.0 Discussion of the United Nations Convention on the Rights of People with Disabilities

4.3.0 Efficacy of Government's implementation of the United Nations Convention on the Rights of People with Disabilities in resolving social stigma towards the mentally disabled persons in

Zambia

4.4.0 Conclusion

5. Chapter 5: Conclusion and Recommendations.

5.0 Conclusion

5.1 Recommendations

CHAPTER 2

SOCIETY'S RESPONSES TO THE CHALLENGES OF THE MENTALLY DISABLED PERSONS IN ZAMBIA

2.1.0 Introduction

This chapter focuses on society's responses to the challenges of the mentally disabled persons in Zambia. Mental disability is an example of illness as stigma.²⁰ While most forms of illness arouse feelings of sympathy or compassion²¹ amongst non-sufferers, mental disability is perceived as 'a mark of dishonour' and the 'healthy' population may reject 'sufferers'.²² The stigma attached to mentally disabled persons is perceived as a common phenomenon, mostly associated with local belief systems regarding the causes of mental illness.²³ For instance, on one hand, religiously, mental disabilities are claimed to be caused by demons. On the other hand, traditionally, they are claimed to be due to acts against traditional norms.²⁴

Even though it is a fact that many of the mentally disabled persons who receive proper and adequate treatment not only get well and prosper at work, but also live a satisfactory and productive life,²⁵ it is difficult for society to accept mental disabled persons as being comparable to physical disabled persons, and as amenable to treatment and prevention.²⁶ Stigma towards persons with mental disabilities manifests in the tendency to believe that mental illness is a permanent condition and those with the condition can never recover.²⁷ Stigma frequently makes it difficult for ex mentally disabled persons to and from re-entering the workforce.²⁸ Furthermore, lack of education on mental disabilities also brings about myths and misconceptions against persons with mental disabilities.²⁹

²⁰ B Anderson, 'A Human Rights Approach to HIV Testing: Voluntary, Mandatory or Routine?' AIDS Legal Network (September, 2006), page 1.

²¹ Examples include illnesses such as cancer, heart disease or brain damage.

²² B Anderson, 'A Human Rights Approach', page 1.

²³ R Horton, 'Stigma and Mental Health', page 52.

²⁴ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁵ O K Hwaku, 'Mental Health', page 64.

²⁶ O K Hwaku, 'Mental Health', page 64.

²⁷ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁸ O K Hwaku, 'Mental Health', page 64.

²⁹ K Schriener, 'South African Leader Calls for HIV/AIDS Education for People with Disabilities', Southern Africa HIV/AIDS and Disability 58 (December, 2003), page 2.

2.2.0 Challenges of the mentally disabled persons in Zambia

2.2.1 Stigma and Discrimination

A stigma is any characteristic that sets an individual or group apart from the majority of the population, with the result that the individual or group is treated with suspicion or hostility.³⁰ The origins of the word 'stigma' can be traced to classical Greece, where 'outcasts groups' were branded, or physically marked, as a permanent measure of their status.³¹ Evidence suggests that the stigma attached to mental illness is the main obstacle towards mentally disabled persons in Zambia.³²

Mentally disabled persons are persistently in a situation where they are disqualified from full social acceptance,³³ Users and mental health advocates in Zambia note that stigma towards persons with mental disabilities can be more destructive and disabling than the illness itself, and is a major obstacle to seeking help.³⁴ For instance, in 2009, a 19 years old orphaned mental patient living in Kafue was chased from his uncle's due to the shame of living with a person known in the community as mentally unstable. Fortunately, the Kafue Marketers Association intervened by contributed money for his transportation, admission and rehabilitation fees at Chainama hills hospital.³⁵

Moreover, stigma does not stop at the illness.³⁶ It marks those who are ill and their families over generations.³⁷ Family members who help care for people with mental illness report feeling stigmatised as a result of their association with their loved one having a mental illness.³⁸ For instance, admitted in the high cost area at Chainama hills hospital is a 19 years old Zambian girl raised in Canada. After having expressed violent symptoms of depression after her father's murder, her mother, an employed nurse in Canada decided to send her back to Zambia for medical treatment although it is a notorious fact that Canada can provide far much better medical treatment and

³⁰ B Anderson, 'A Human Rights Approach', page 1.

³¹ B Anderson, 'A Human Rights Approach', page 1.

³² R Horton, 'Stigma and Mental Health', page 53.

³³ O K Hwaku, 'Mental Health', page 64.

³⁴ S Katontoka, 'MHUNZA President Calls on Stakeholders', page 5.

³⁵ Interview with D J (anonymous), Kafue Marketers Association, Marketer, Kafue, November 18, 2010.

³⁶ D. Roe et al, Self Stigma, May 13, 2010, p.1.

³⁷ D. Roe et al, Self Stigma, p.1.

³⁸ Author's interview with S. M. Muleya, (a mother of a 33 years old mentally disabled man), Kafue, November 14, 2010.

rehabilitation services that Zambia.³⁹ It is on the basis that it can safely be concluded that social relationships of people with mental illness deteriorate very rapidly as family members and friends often dissociate themselves from the person with mental illness due to stigma.⁴⁰

Another obstacle that may result from stigma is “self-stigma” whereby people with a mental illness adopt and internalize the social stigma and experience loss of self-esteem and self-efficacy.⁴¹ For instance, within formal institutional structures, although words such as ‘emotionally ill’, ‘psychologically disturbed’ and ‘mentally deficient’ may be professionally valuable because they are descriptive use, they often have a stigmatising effect.⁴²

Thus, it ought to be noted that discrimination is a double edged sword wielded by society in that society discriminates against persons with mental disabilities and at the same time reinforces their feelings of self-worthlessness resulting in self-discrimination.⁴³ This is in line with Prof. Roe’s observation which confirms that people with a mental illness with elevated self-stigma report low self-esteem and low self-image, and as a result they refrain from taking an active role in various areas of life, such as employment, housing and social life.⁴⁴

Sister Harriet the assistant sister in charge of Chiweledi Community School based in Handsworth, Lusaka, Zambia, observes that mentally disabled persons usually grow up with neither any responsibilities nor education therefore end up being dependents on their families or society at large.⁴⁵ For instance, Investigation established that at Chainama hills hospital is a mentally ill man though not admitted, has on several occasions been admitted and later discharged from the institution.⁴⁶ It was also found that he consumes two weeks medication in three days to get intoxicated when discharged from the hospital because he is jobless and fully dependent on his mother.⁴⁷ Unfortunately, Mr. X’s mother recently left the country and is now living in France hence he has no one to financially help nor give him the necessary emotional support.⁴⁸

³⁹ Author’s interview with A. T. (an anonymous mental health patient), Lusaka, November, 2010.

⁴⁰ J Ssebunnya et al, ‘Stakeholder Perceptions of Mental Health Stigma and Poverty in Uganda’ (2009), page 1. <http://www.biomedcentral.com/1472-698X/9/5>. Accessed on August 28, 2010.

⁴¹ D Roe et al, ‘Self Stigma’, page 1.

⁴² O K Hwaku, ‘Mental Health’, page 64.

⁴³ C C Soko, ‘The Mental Disordered in Zambia- A Broader Perspective’, (2007), page 18.

⁴⁴ D Roe et al, ‘Self Stigma’, page 1.

⁴⁵ Interview with Sister Harriet, Chiweledi Community School, Assistant Sister in Charge, Lusaka, November 15, 2010.

⁴⁶ This was established during author’s visit at Chainama hills hospital.

⁴⁷ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

⁴⁸ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

2.2.2 Difficulty in accessing financial services

The stigma attached to persons with disabilities manifested in the tendency to believe that mental illness is a permanent condition and those with the condition can never recover.⁴⁹ This makes it hard for them to access financial services such as loans from micro-finance institutions.⁵⁰ According to a reported study, although it may not be a formally documented policy, micro-finance institutions do not extend loan services to people known to have a mental illness, thereby denying them opportunities to engage in income generating activities.⁵¹

2.2.3 Poverty and Unemployment

While mental illness affect individuals at all economic levels, many people with mental health problems end up in poverty due to the stigma attached to being labeled mentally ill.⁵² This stigma frequently makes it difficult for them to enter or re-enter the workforce.⁵³ For instance, Bwalya Mubanga, 31, has lived in seclusion in the capital, Lusaka, for nearly five years since he was discharged from Chainama hills hospital, the country's biggest treatment facility for mental health problems.⁵⁴ Mr. Mubanga complains as follows;

"Before I started suffering from the problem I worked as a cashier in a supermarket. I became very depressed when I was abruptly retired and, after coming out of the hospital, I have been looking for another job. Everyone is refusing to give me a job around here; they say they cannot employ a mad person."⁵⁵

Thus, if employed, individuals with mental illness may suffer disparaging remarks at work due to a lack of sympathy and understanding.⁵⁶ This situation is made worse by outright social exclusion of mentally challenged people that constrains their participation in the job market.⁵⁷

MHUNZA President, Mr. Sylvester Katontoka who has experienced emotional difficulties argues that as many as one million people could be affected by mental health problems in Zambia, thus,

⁴⁹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁵⁰ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁵¹ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

⁵² O K Hwaku, 'Mental Health', page 64.

⁵³ O K Hwaku, 'Mental Health', page 64.

⁵⁴ IRIN, 'Zambia: Mental Illness', page 1.

⁵⁵ IRIN, 'Zambia: Mental illness', page 1.

⁵⁶ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

⁵⁷ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

there is need to undertake powerful awareness campaigns against stigma, discrimination, marginalisation and exclusion.⁵⁸

He further observes as follows:

"Most of our members are sidelined from developmental projects after undergoing treatment in the communities where they live. This makes them to continuously living in poverty, and we have high numbers of our people having relapses as a result. It is a cost to the country because our members, who are just languishing in destitution, are still capable of contributing to national development but they are not being given a chance."⁵⁹

2. 2. 4. Access to mental health services

Access to better mental health services was reported to be extremely hard for the poor, especially those in the remote areas.⁶⁰ Even where free services are available in public health facilities, transport costs remain a major obstacle, particularly for those living in remote rural areas.⁶¹ This prolongs the period for which the poor people will battle with their mental illnesses, worsening the effects and making it more likely that their condition will become chronic, thereby exposing them to more stigma.⁶²

2. 2.5 Limited number and type of human resources trained in mental health

Over time the number of frontline mental health workers and professional staff has been declining. This is due to the 'brain drain', retirement, death and low output from training institutions.⁶³ For practicing psychiatrists, only one is available for the whole country.⁶⁴ Other key mental health workers such as psychologists, social workers and occupational therapists are also in short supply.⁶⁵ All in all, the mental health services situation in Zambia could be described as critical, requiring urgent attention.⁶⁶

⁵⁸ IRIN, 'Zambia: Mental illness', page 1.

⁵⁹ IRIN, 'Zambia: Mental illness', page 1.

⁶⁰ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

⁶¹ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

⁶² J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

⁶³ J Mayeya, et al, 'Zambia Mental Health', page 63.

⁶⁴ J Mayeya, et al, 'Zambia Mental Health', page 65.

⁶⁵ J Mayeya, et al, 'Zambia Mental Health', page 65.

⁶⁶ J Mayeya, et al, 'Zambia Mental Health', page 65.

2.3.0 Negative social responses towards the mentally disabled persons in Zambia

2.3.1 Denial of Access to Credit Services

An important finding was that users and other participants reaffirmed denial of access to credit services for people with mental illness.⁶⁷ This is in line with earlier findings by Ntale, that while there is no evidence of an official policy by financial institutions to exclude disabled people from accessing loans, most disabled people are denied credit facilities in nearly all financial institutions.⁶⁸ These findings are also in line with comments by MHUNZA President, Mr. Katontoka, who argues that poverty acts through economic stressors such as unemployment and lack of affordable housing, preceding mental illnesses such as depression and anxiety, makes poverty an important risk factor for mental disabilities as well as a consequence of mental disabilities.⁶⁹

The foregoing negative attitude is justified on the basis that individuals with mental illness would not be charged before the law in case they defaulted.⁷⁰ As a result, financing institutions would prefer not to risk their money with people who could easily be acquitted for reasons of insanity, thereby causing financial losses.⁷¹ This practice has important implications for people with mental illness.⁷² Therefore, decreased access to social and financial services has been found to increase the disability.⁷³

2.3.2 Social sanctions

Social sanctions against marrying a mentally disabled person may mean that they are likely to become involved in a series of unstable relations.⁷⁴ Similarly, past experience as shown that mentally challenged individuals (both male and female) are more likely to be victims of sexual abuse and rape than their non-disabled peers.⁷⁵ For instance, in the 1980s a female Kafue Town based mentally ill

⁶⁷ J Mayeya, et al, 'Zambia Mental Health', page 66.

⁶⁸ J Mayeya, et al, 'Zambia Mental Health', page 66.

⁶⁹ Interview with S, Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁷⁰ J Ssebunnya et al, 'Stakeholder Perceptions', page 2.

⁷¹ J Ssebunnya et al, 'Stakeholder Perceptions', page 2.

⁷² J Ssebunnya et al, 'Stakeholder Perceptions', page 2.

⁷³ J Ssebunnya, et al, 'Stakeholder Perceptions', page 2.

⁷⁴ K Schriener, 'Southern African Leader', page 2.

⁷⁵ K Schriener, 'Southern African Leader', page 2.

patient popularly known as 'Joyce' is said to have had about five pregnancies and her children disappeared a short period after giving birth. Her whereabouts are currently unknown.⁷⁶

2.3.3 Difficulty in school enrolment

Teachers who were interviewed confirmed that children with mental illness are less likely to attend and continue with school.⁷⁷ If they are already in school at the time of onset of the mental illness, chances are high that they will be forced to drop out due to the following two reasons;⁷⁸

Firstly, such children often fall victims of stigma by schoolmates and teachers, prompting them to abandon school.⁷⁹ This was confirmed by Mrs. A. Chulu who said that her son had to stop school due to occasional epileptic seizures hence castigated as a threat to other pupils.⁸⁰

Secondly, the parents might not only look at them as a disgrace but have very little hope in them and believe it is a waste of money to keep them in school.⁸¹ In an interview conducted with Mrs. S. M. Muleya, the mother of 31 years old Nashu Muleya, confirmed that her late husband could not send her mentally disabled son to school for fear of worsening his mental status if put in a school of the mentally challenged.⁸² The resulting lack of education is believed to perpetuate trans-generational poverty.⁸³

2.3.4 Misconceptions and Myths

Myths on curing HIV, which proclaims that HIV- positive individuals can rid themselves of the virus by having unprotected sex with virgins, have contributed to a significant rise in the rape of the mentally challenged children and adults.⁸⁴ Assumed to be virgins, they are specifically targeted for the purposes of fulfilling this myth treatment.⁸⁵ The then Deputy President of South Africa, Jacob Zuma conceded to the fact that it may be more difficult to reach individuals with intellectual

⁷⁶ Interview with P J (an anonymous Kafue resident), Kafue, November 18, 2010.

⁷⁷ J Ssebunnya et al, 'Stakeholder Perceptions', page 3.

⁷⁸ J Ssebunnya et al, 'Stakeholder Perceptions', page 3.

⁷⁹ J Ssebunnya et al, 'Stakeholder Perceptions', page 3.

⁸⁰ Interview with A. Chulu, (mother of a mentally ill 16 years old boy), Kafue, November 14, 2010.

⁸¹ J Ssebunnya et al, 'Stakeholder Perceptions', page 3.

⁸² Interview with S M Muleya (mother of a 33 years old mentally ill man), Kafue, November 14, 2010.

⁸³ J Ssebunnya et al, 'Stakeholder Perceptions', page 3.

⁸⁴ K Schriener, 'South African Leader', page 2.

⁸⁵ K Schriener, 'South African Leader', page 2.

disabilities, though this group is the most vulnerable. He further observed that young women with intellectual disabilities are vulnerable to sexual abuse and infection with HIV/AIDS.⁸⁶

2.4.0 Positive social responses towards the mentally disabled persons in Zambia

MHUNZA President, Mr. S. Katontoka observes that there is a lot of ignorance on the issue of mental illness and further stresses as provided below;

“People who suffer or have suffered from mental illness have many obstacles to overcome. Don’t let your attitude or action be yet another hurdle. Mental Illness can strike anyone. It knows no age limit, economic status, race, creed, and color, culture and tradition. Mental illness can affect anyone.”⁸⁷

Mr. Katontoka has since called on all Zambians to support people living with mental illness because although it is very difficult to be cured, it can be managed and controlled.⁸⁸ Moreover, he argued that if we are to fight stigma, we must ensure that mentally ill patients receive better treatment.⁸⁹ There is need to train more professionals in this intervention and root the method in rehabilitation centers and community health centers, so as to assist in recuperation processes and in community inclusion over a larger and more significant population of people with mental illnesses.⁹⁰ The need to narrow the distance between needs and services is the only way to acquire mental health services.⁹¹ Mr. Katontoka accordingly calls for the Government, civil society, Development agencies and Donors to combine and join hand to make health services available, accessible and affordable to all the people in need.⁹²

Sister Harriet observes that due to the disability, mentally challenged pupils must be enrolled in special schools with regard to their special needs. She observed that academically, since mentally ill pupils may not perform as well as other children without mental disabilities, it is important to empower them by teaching them life skills that they can best perform thus helping them feel part of

⁸⁶ K Schriener, ‘South African Leader’, page 2.

⁸⁷ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁸⁸ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁸⁹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

⁹⁰ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

⁹¹ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

⁹² P Phiri et al, ‘MHAZ Branch Round Table’, Mental Health Association of Zambia Newsletter (Second Quarter 2009-2010), page 5.

society.⁹³ Thus, children at Chiweledi community school are taught personal hygiene, basic home chores and also how to stitch doormats which they can put up for sale.⁹⁴

2.5.0 Society's efforts in resolving social stigma towards the mentally disabled persons in

Zambia

World Mental Health Day falls on the 10th of October every year and the theme for last year's celebration was 'Mental Health in Primary Care Enhancing Treatment and Promoting Mental Health'.⁹⁵ The Mental Health Association of Zambia (MHAZ), being the mother body of all Non-Governmental mental health organizations together with other mental health stakeholders planned a joint celebration in order to achieve a greater impact aimed at urging policy makers to make mental health issues a priority.⁹⁶

2.5.1 MHAZ

MHAZ is an indigenous non-governmental, non-partisan and membership driven organization for women, men, children and other vulnerable groups through service delivery; advocacy, networking and research in order to achieve the highest level of mental health for all Zambians.⁹⁷ MHAZ has carried out capacity building workshops in Kasama, Chipata, Mazabuka, Mongu, Kabwe, Livingstone, Kitwe and Solwezi.⁹⁸ The mental health topics covered during these workshops includes

- What is mental health?
- Mental Health and Human Rights,
- Mental Health in Work places,
- Mental Health and Coping with Stress,
- Project Proposal writing and,

⁹³ Interview with Sister Harriet, Chiweledi Community School, Assistant Sister in Charge, Lusaka, November 15, 2010.

⁹⁴ Interview with Sister Harriet, Chiweledi Community School, Assistant Sister in Charge, Lusaka, November 15, 2010.

⁹⁵ P Phiri et al, 'MHAZ Branch Round Table', page 5.

⁹⁶ P Phiri et al, 'MHAZ Branch Round Table', page 5.

⁹⁷ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

⁹⁸ P Phiri et al, 'MHAZ Branch Round Table', page 5.

- Mental Health and Advocacy.⁹⁹

Portraying people with disabilities with dignity and respect in the media can help promote more inclusive and tolerant societies.¹⁰⁰ It is on this basis that MHAZ has come up with the initiative of producing a newsletter to disseminate mental health related issues to the general public. It further runs a mental health program occasionally on radio Christian voice.¹⁰¹

2.5.2 Lifeline Zambia Chapter

The media - television, radio, newspapers, magazines, the internet, social media and other forms play an important role in influencing public opinion and attitudes towards persons with mental disabilities.¹⁰² The choice of words, images and messages can determine perceptions, attitudes and behaviours.¹⁰³ Lifeline Zambia Chapter is the only Zambian mental health organization that offers anonymous telephone counseling through the provision of toll free counseling services by offering counseling services to their actual receivers.¹⁰⁴ The toll free number is 399 and is available to all mobile networks in Zambia.¹⁰⁵

2.5.3 MHUNZA

MHUNZA is another indigenous non- governmental, non-partisan and membership driven organization advocating for the human rights and empowerment of not only the mentally disabled persons but and also the ex-mental patients found in Zambia.¹⁰⁶ Most mentally ill patients are dependents.¹⁰⁷ In view of that, MHUNZA engages 30 ex mental patients on the discharge list at Chainama hills hospital, identifies their area of business interests and empowers them with business skills.¹⁰⁸ Relatives are also invited to these seminars thereby encouraging family members to be involved in the ex-mental patient's business. This measure has proved to be successful as it keeps the ex-mental patient not only busy but also destructed from relapses.¹⁰⁹

⁹⁹ P Phiri et al, 'MHAZ Branch Round Table', page 5.

¹⁰⁰ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

¹⁰¹ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

¹⁰² International Labour Organisation, 'Media Guidelines for the Portrayal of Disabilities' (April, 2010), page 46. http://www.ilo.org/./wcm_127002.pdf. Accessed on September 13, 2010.

¹⁰³ International Labour Organisation, 'Media Guidelines', page 47.

¹⁰⁴ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

¹⁰⁵ Interview with K K (anonymous), Mental Health Association of Zambia, Accountant, Lusaka, November 16, 2010.

¹⁰⁶ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

¹⁰⁷ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹⁰⁸ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

¹⁰⁹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

2.5.4 Care Ministries for the Mentally Ill

Care Ministries for the Mentally Ill is another Zambian NGOs whose mission is to transform people with mental illnesses into socially acceptable individuals by reducing stigma and discrimination and also increasing the awareness of mental health problems in the community through innovative intervention voluntarily and impartially.¹¹⁰ According to Mr. J. Kasonde, Care Ministries for the Mentally Ill's target group is the homeless mentally ill.¹¹¹ He stressed that the NGO's vision is to have socially empowered and interactive people with mental illnesses.¹¹²

Consequently, Care Ministries for the Mentally Ill has designed a program for the homeless mentally ill called the 'Personal Hygiene and Nutrition' conducted on a monthly basis.¹¹³ During this program, the first step is to go to the dwelling places of the homeless mentally ill patient and try to create friendship through offering them food. He said that after several occasions of offering the homeless mentally ill food, a friendship is created. It is at this friendship basis that Care Ministry for the Mentally Ill personnel try to persuade the homeless mentally ill patient to go with them for the sole purpose of psychiatric assessment, admission and rehabilitation at Chainama hills hospital. Mr. Kasonde further said that when a patient is admitted under this program and later recovers, talks are conducted with the patient to try and trace his family. If the family is traced, they try to establish what might have been the causes of the mental illness and try to come up with ways of preventing relapses.¹¹⁴

Inclusion of the mentally disabled persons into the community also involves ensuring that they participate in all basic services available to the general population and the removal of barrier that prevent them from fully participating in society.¹¹⁵ Thus, Care Ministries for the Mentally Ill is currently in talks with the donor community to help ex mental patients open up a car wash service in Northmead, Lusaka thereby encouraging community integration.¹¹⁶

¹⁰ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹¹ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹² Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹³ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹⁴ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹⁵ International Labour Organisation, 'Media Guidelines', page 47.

¹⁶ International Labour Organisation, 'Media Guidelines', page 47.

2.5.5 Chiweledi Community School

Material resources are central elements in the fight against stigma of mental illness.¹¹⁷ So is the importance of education and stigma reduction programmes in protecting those with mental illness from social isolation, particularly in conditions of poverty.¹¹⁸ Thus, at Chiweledi Community School run by St. Ignatius Catholic Church in Lusaka mentally disabled children are not only taught personal hygiene and basic home chores but also how to stitch doormats for sale.¹¹⁹

2.6.0 Conclusion

From the foregoing, it is apparent that it is difficult for society to accept mental disabled persons as being comparable to physical disabled persons, and as amenable to treatment and prevention. Indigenous NGOs, civil societies and churches have become active in order improve mental health education and advocate for quality mental health services in order to resolve stigma and discrimination towards mentally disabled persons in Zambia. This is based on the belief that NGOs, civil societies and churches must come together and work with government to effectively make mental health issues a priority.

Chapter 3 focuses on the Zambian government's intervention in resolving social stigma towards the mentally disabled persons in Zambia. Article 23 of Constitution of Zambia prohibits discrimination in general terms. The government deals with disability issues at an inter-ministerial level though the main ministry dealing with cases of disability is the Ministry of Community Development and Social Services, which has a government agency known as Zambia Agency for Persons with Disabilities (ZAPD). The current law governing mental illnesses in Zambia is the 1951 colonial Mental Disorders Ordinance which became an Act of parliament in 1964 when Zambia gained independence.

¹¹⁷International Labour Organisation, 'Media Guidelines', page 48.

¹¹⁸International Labour Organisation, 'Media Guidelines', page 48.

¹¹⁹ Interview with Sister Harriet, Chiweledi Community School, Assistant Sister in Charge, Lusaka, November 15, 2010.

CHAPTER 3

GOVERNMENT'S INTERVENTION IN RESOLVING SOCIAL STIGMA TOWARDS THE MENTALLY DISABLED PERSONS IN ZAMBIA.

3.1.0 Introduction

This chapter focuses on Government's intervention in resolving social stigma towards the mentally disabled persons in Zambia. Historic records show that there was no formal mental health care in Zambia (then Northern Rhodesia) before 1927.¹²⁰ The Lunacy Ordinance was enacted in 1927 and it was subsequently followed by the Mental Disorders Ordinance of 1951.¹²¹ In June 1962, the main hospital (Chainama hills hospital) was opened and provided guidance on mental health policy issues until 1974 when the Ministry of Health took over.¹²² The government currently deals with disability issues at an inter-ministerial level through the Ministry of Community Development and Social Services which is the main ministry dealing with cases of disability in general via the government agency known as the Zambia Agency for Persons with Disabilities (ZAPD),¹²³ established under Act No. 33 of 1996.¹²⁴

The constitution of Zambia, the supreme law of the land merely governs disability in a general form.¹²⁵ Further, Zambia is currently using the 1951 Mental Disorders Act¹²⁶ as its principle act governing mental health in Zambia.¹²⁷ The Act has been criticised for demeaning and discriminates against people living with mental illnesses as it labels persons with mental as idiots and criminals.¹²⁸ It is reported that people with mental illness have been adversely affected by the old Act as ex-mental patients find it hard to be accepted in the community.¹²⁹

This chapter accordingly analyses the law put in place to resolve social stigma towards persons with disabilities in light of the need to put in place legislation that will bring social order and stop the discrimination of people with mental disabilities.

¹²⁰ Mental Health Users Network of Zambia, 'Together lets Support and Care for Persons with Mental Illness' (2009), page 4.

¹²¹ K J D Dube, 'Mental Health and the Law-Analysis of the Commitment Law of Zambia' (1982/83), page 56.

¹²² Mental Health Users Network of Zambia, 'Together lets Support', page 4.

¹²³ Mental Health Users Network of Zambia, 'Together lets Support', page 4.

¹²⁴ Persons with Disabilities Act, Chapter 65, s.3.

¹²⁵ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

¹²⁶ Mental Disorders Act, Chapter 305.

¹²⁷ IRIN, 'Zambia: Mental illness', page 4.

¹²⁸ IRIN, 'Zambia: Mental illness', page 4.

¹²⁹ IRIN, 'Zambia: Mental illness', page 2.

3.2.0 Discussion of the Zambian laws attempting to resolve social stigma towards the mentally disabled persons in Zambia

3.2.1 The Constitution of Zambia¹³⁰

Zambia is a constitutional supremacy nation.¹³¹ The Zambian bill of rights is incorporated in part three of the Constitution of Zambia.¹³² The Persons with mental disabilities are catered for in part three of the constitution¹³³ under the general head of disability.¹³⁴ Under Article 23, disability is one of the grounds on which one should not be discriminated.¹³⁵ Further, Article 23(4) (e), as a derogation of non-discrimination, persons with mental disabilities may be accorded advantages or privileges, having regard to the nature of the disability and the special circumstances of these people if such advantages or privileges are reasonable justifiable in a democratic society.¹³⁶

Nevertheless, mental disability is not a ground for discrimination under Article 23 but regrettable, under the directive 'Principles of State Policy'.¹³⁷ Article 112 (d) and (h) of the Constitution outline guidelines that Government has to follow in providing physical and mental health. These guidelines are merely directive or guidelines and not compulsory.¹³⁸ What good is a right that cannot be claimed or implemented?¹³⁹ Government should instead place measures to ensure that the directives of state policy are followed strictly by the concerned ministry or organ.¹⁴⁰

¹³⁰ Constitution of Zambia, Chapter 1.

¹³¹ Constitution of Zambia, Chapter 1, Art.1(3). 'This Constitution is the Supreme law of Zambia and if any other law is inconsistent with this constitution that other law shall, to the extent of the inconsistency, be void.' This means that the constitution is the supreme law of the land and all the other laws should be *intra vires* the constitution.

¹³² C Anyangwe, 'Introduction to Human Rights Law' (Unza Press: At Lusaka, 2004), page 198.

¹³³ This is under the Zambian Bill of Rights containing articles 111 to 26. A bill of rights is a statement of the basic human rights that can either be incorporated into the constitution or annexed to some other legislation aimed at guaranteeing and giving legal protection to human rights and fundamental freedoms.

¹³⁴ C C Soko, 'The Mentally Disordered', page 2.

¹³⁵ Constitution of Zambia, Chapter 1.

¹³⁶ Constitution of Zambia, Chapter 1, Art.23(4)(e).

¹³⁷ Constitution of Zambia, Chapter 1, Art.111. This article exempts these directive principles of state policy from justiciability. However, a government could be sanctioned politically at the polls by being voted out of office if they fail to deliver.

¹³⁸ Constitution of Zambia, Chapter 1, Art.111, provides that the directive principles of state policy set out shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

¹³⁹ C C Soko, 'The Mentally Disordered', pages 2-3.

¹⁴⁰ That is, the Ministry of Community Development and Social Services via the Zambia Agency for Persons with Disabilities.

3.2.2 Mental Disorders Act¹⁴¹

The Lunacy Ordinance was enacted in 1927 and it was subsequently followed by the Mental Disorders Ordinance of 1951.¹⁴² The current law governing mental illnesses in Zambia is the 1951 colonial Mental Disorders Ordinance which became an Act of parliament in 1964 when Zambia gained independence. The Act dates back to 1949 with four amendments, through to 1994.¹⁴³

The Act's preamble provides for the care of persons suffering from mental disorder or mental defect and for the custody of their persons and the administration of their estates.¹⁴⁴ It is clear from the preamble that it is a custodial Act and it may be inferred that this was a response to the perceptions of society that persons with mental disabilities are dangerous and should be confined to an institution.¹⁴⁵ To this effect and in disregard of the fact that persons with mental disabilities are highly vulnerable and need the protection and care of their society, the Act has no express provision protecting their rights as members of the human family.¹⁴⁶

Notably, the definitions and categories of mentally disabled persons as provided by the Mental Disorders Act are hampered by a lamentable lack of uniformity in the use of and meaning of terms.¹⁴⁷ The Mental Disorders Act defines a mental disabled person in the following terms;

- “(a) is incapable of managing himself or his affairs; or
- (b) is a danger to himself or others; or
- (c) is unable to conform to the ordinary usages of the society in which he moves; or
- (d) requires supervision, treatment or control.”¹⁴⁸

Due to the above given definitions, the Mental Disorders Act is routinely criticised for perpetuating stereotypes through the act's use of pejorative language, such as 'imbecile', 'idiot', 'stupid' and 'mentally-invalid person', when referring to mentally challenged people, or anyone who has undergone treatment.¹⁴⁹

The Act divides mentally disordered or defective persons into the following classes:

¹⁴¹ Mental Disorders Act, Chapter 305.

¹⁴² Mental Health Users Network of Zambia, 'Together lets Support', page 2.

¹⁴³ C C Soko, 'The Mentally Disordered', page 5.

¹⁴⁴ See the preamble of Mental Disorders Act, Chapter 305.

¹⁴⁵ C C Soko, 'The Mentally Disordered', page 5.

¹⁴⁶ C C Soko, 'The Mentally Disordered', page 5.

¹⁴⁷ K J D Dube, 'Mental Health and the Law-Analysis of the Commitment Law of Zambia' (1982/83), page 56.

¹⁴⁸ Mental Disorders Act, Chapter 305, s. 2.

¹⁴⁹ IRIN, 'Zambia: Mental illness', page 2.

"Class I.-A person suffering from mental disorder, that is to say, a person who owing to some form of mental disorder is incapable of managing himself or his affairs.

Class II.-A person mentally infirm, that is to say, a person who through mental infirmity arising from age or from its common disorders is incapable of managing himself or his affairs.

Class III.-An idiot, that is to say, a person in whose case there exists mental defectiveness of such a degree that he is unable to guard himself against common physical dangers.

Class IV.-An imbecile, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to idiocy is yet so pronounced that he is incapable of managing himself or his affairs, or, if he is a child, of being taught to do so.

Class V.-A feeble-minded person, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that he requires care, supervision and control for his own protection or for the protection of others, or, if he is a child, appears by reason of such defectiveness to be permanently incapable of receiving proper benefit from the instruction in ordinary schools.

Class VI.-A moral imbecile, that is to say, a person who displays mental defectiveness coupled with strongly vicious or criminal propensities and who requires care, supervision and control for his own protection or for the protection of others."¹⁵⁰

The Mentally Disorders Act has classified mentally defective persons into moral imbeciles, mentally infirms, idiots, imbeciles and feeble minded persons.¹⁵¹ However, attention must be drawn to the fact that according to the classification of mentally defective persons, idiots, mentally infirm imbeciles are classed together with mentally ill persons and there is no mention in the remainder of the Act, in the way they are supposed to be treated.¹⁵²

3.2.3 The Persons with Disabilities Act 1996¹⁵³

The government deals with disability issues at an inter-ministerial level though the main ministry dealing with cases of disability is the Ministry of Community Development and Social Services, which has a government agency known as Zambia Agency for Persons with Disabilities (ZAPD).¹⁵⁴

ZAPD was established under Act No. 33 of 1996 and mandated inter alia to provide rehabilitation, training and welfare services to persons with disabilities.¹⁵⁵ However, it has serious financial constraints and receives no co-operation from other governmental ministries in its efforts to reintegrate persons with mental disabilities into the main stream society.¹⁵⁶

¹⁵⁰ Mental Disorders Act, Chapter 305, s.5.

¹⁵¹ K J D.Dube, 'Mental Health', pages 57-58.

¹⁵² K J D Dube, 'Mental Health', page 58.

¹⁵³ Persons with Disabilities Act, Chapter 65.

¹⁵⁴ Mental Health Users Network of Zambia, 'Together lets Support', page 2.

¹⁵⁵ See the preamble of Persons with Disabilities Act, Chapter 65.

¹⁵⁶ Interview with X X (anonymous), Zambia Agency for Persons with Disabilities, Rehabilitation Officer, Lusaka, November 15, 2010.

3.2.4 Industrial and Labour Relations Act¹⁵⁷

Section 108 (1) of the Industrial and Labour Relations Act¹⁵⁸ prohibits discrimination in the place of work and persons with disabilities are covered by this section.¹⁵⁹ It provides that persons with disabilities should not be discriminated against due to their status.¹⁶⁰

It can be implied from the given section that mentally disabled persons in employment should not be discriminated against due to their status.¹⁶¹ The Act accordingly directs that if the Industrial Relations Court (IRC)¹⁶² finds in favour of the complainant, it may grant to the complainant damages or compensation for loss of employment; or make an order for re-employment or re-instatement in accordance with the gravity of the circumstances of each case.¹⁶³

3.2.5 Penal Code¹⁶⁴

The Penal Code¹⁶⁵ provides for the protection from Defilement of imbeciles or person with mental illness in the following terms:-

“Any person who, knowing a child or other person to be an imbecile or person with mental illness, has or attempts to have unlawful carnal knowledge of that child or other person in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the child or other person was an idiot or imbecile commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and may be liable to imprisonment for life.”¹⁶⁶

Despite of the various amendments to the penal code, the above given reference to mentally disabled persons as imbecile has not yet been amended.¹⁶⁷

¹⁵⁷ Labour Relations Act, Cap. 269.

¹⁵⁸ Labour Relations Act, Cap. 269.

¹⁵⁹ Labour Relations Act, Cap. 269, s. 108 (1).

¹⁶⁰ Labour Relations Act, Cap. 269, s. 108 (1).

¹⁶¹ C C Soko, ‘The Mentally Disordered’, page 13.

¹⁶² The legal basis of the IRC is Article 94 of the Constitution of Zambia. It is conferred with unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under the Industrial and Labour Relations Act

¹⁶³ Labour Relations Act, Chapter. 269, s. 108 (3).

¹⁶⁴ Penal Code, Chapter 87.

¹⁶⁵ Penal Code, Chapter 87.

¹⁶⁶ Penal Code, Chapter 87, s. 139.

¹⁶⁷ This is according to the research findings carried on by the author on the amendments to the Penal Code with particular interest in section 139 of the Act.

3.3.0 Achievements of the law in resolving social stigma towards the Mentally Disabled

Persons in Zambia

3.3.1 Creation of an enabling environment

The Zambian government has had challenges insofar as family attitudes towards children with disabilities are concerned.¹⁶⁸ Family attitudes have not been favourable to children with disabilities. Some communities within the country look upon a disabled child as a curse or a punishment from God. Others believe it is as a result of parents engaging in witchcraft.¹⁶⁹ Therefore, from a false sense of shame or embarrassment, many parents do not divulge information on their disabled children; as a result, their children's problems remain unknown and untreated.¹⁷⁰ This is compounded by the lack of a system of identifying disabled children. Reliable statistical information on disabilities is not readily available.¹⁷¹

Government has however created an enabling environment for members of the public to form any organizations that promote equality before the law and protect human rights.¹⁷² Through the Societies Act, a number of NGOs¹⁷³ have been registered, which among other things sensitise and educate members of the public on issues of human rights and also offer legal assistance to the vulnerable.¹⁷⁴

3.3.2 Policy formulation

At governmental level, the Ministry of Community Development and Social Services (MCDSS) is entrusted with formulating policy for people with disabilities.¹⁷⁵ ZAPD has the responsibility to coordinate the implementation of the National Policy on Disability and acts as an advisory body to the Ministry.¹⁷⁶ In that view, the Ministry has formulated the National Employment and Labour Market Policy (NELP), 2005, to cater for the improved care and support services to vulnerable

¹⁶⁸ G Kunda, '40_Zambia's Initial State Report on the Implementation of the African Charter on Human and Peoples Rights' (2009), page 64. <http://www.achpr.org/40-Zambia-Initial-State-Report.pdf>. Accessed on August 28, 2010.

¹⁶⁹ Interview with J. Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

¹⁷⁰ G Kunda, '40_Zambia's Initial State Report', page 64.

¹⁷¹ G Kunda, '40_Zambia's Initial State Report', page 64.

¹⁷² G Kunda, '40_Zambia's Initial State Report', page 64.

¹⁷³ These have been discussed in the chapter 2.

¹⁷⁴ G Kunda, '40_Zambia's Initial State Report', page 67.

¹⁷⁵ G Kunda, '40_Zambia's Initial State Report', page 64.

¹⁷⁶ G Kunda, '40_Zambia's Initial State Report', page 64.

groups, including people with disabilities.¹⁷⁷ However, it is not clear on how persons with mental disabilities benefit from this policy.¹⁷⁸

The Zambian Bill of Rights is narrow, being confined to civil and political rights.¹⁷⁹ For that reason, education is not a guaranteed right in Zambia.¹⁸⁰ Conversely, the Education Act¹⁸¹ provides for non-discrimination only on the grounds of religion race but not mental status.¹⁸² In the last decade there been policy considerations on the subject recognizing the need to amend the Education Act¹⁸³ so as to cater for the mentally disabled.¹⁸⁴

Furthermore, there have been, though not adequate special schools set up for the sole purpose of catering for children with mental disabilities. Examples include the specialised school at Chainama hills hospital and the University Teaching Hospital (UTH) in Lusaka,¹⁸⁵ Nangogwe basic school and Kasenje basic school both located in Kafue district¹⁸⁶ and also, Ndola Vocational School which provides skills training in fields like carpentry, trading and catering to mentally disabled students.¹⁸⁷ Noteworthy also is Education, Psychology, Sociology and Special Education Department (EPSS Department) in the School of Education at the University of Zambia training students under its programme about how to handle people with disabilities in general.¹⁸⁸ The EPSS Department airs a radio programme titled 'Ability Our Concern' on UNZA radio every Tuesdays at 14:00.¹⁸⁹

¹⁷⁷ G Kunda, '40 Zambia's Initial State Report', page 64.

¹⁷⁸ Interviews with personnel at the ministry proved futile.

¹⁷⁹ C Anyangwe, 'Introduction to Human Rights Law', page 202.

¹⁸⁰ C C Soko, 'The Mentally Disordered', page 13.

¹⁸¹ Education Act, Chapter 134.

¹⁸² Education Act, Chapter 134. s. 24 provides, 'No pupil shall be refused admission to any school or school hostel on the grounds, of his race or religion.'

¹⁸³ Education Act, Chapter 134.

¹⁸⁴ C C Soko, 'The Mentally Disordered', page 13.

¹⁸⁵ C C Soko, 'The Mentally Disordered', page 13.

¹⁸⁶ Interview with A Chulu (mother of a mentally disabled 16 years old boy), Kafue, November 14, 2010.

¹⁸⁷ C C Soko, 'The Mentally Disordered', page 13.

¹⁸⁸ Interview with Edward Mtchotsa (a third year special education student at the University of Zambia), Lusaka, February 14, 2011.

¹⁸⁹ This programme is aimed at educating the general public on the different types of disabilities by inviting different specialist in the various groups of disabilities in Zambia.

3.3.3 Criminalisation of sexual contacts with mentally disabled persons in Zambia

In fulfillment of section 139 of the Penal Code which criminalises defilement of a mental patient, it was reported in the Post Newspaper that a Kapiri Mposhi Magistrate Estone Kafunyi convicted and committed to the High Court a 42 years old man for having sex with a 12-years old insane girl.¹⁹⁰

3.4.0 Shortfalls of the law in resolving social stigma toward the Mentally Disabled

Persons in Zambia

It has been observed that rights of mentally challenged persons are often inadequately protected or overlooked in the laws Zambia. The constitution itself governs disability in a general form.¹⁹¹ So does the Persons with Disabilities Act 1996,¹⁹² Education Act¹⁹³ and the Industrial and Labour Relations Act.¹⁹⁴ These laws fail to promote the dignity, respect, autonomy and non-discrimination of people with mental disabilities or to incorporate safeguards against abuses related to involuntary admission and treatment.¹⁹⁵ The critical issues related to free and informed consent are overlooked and essential safeguards to prevent abuse of seclusion and restraints, special treatments or clinical and experimental research are lacking.¹⁹⁶

Like most other African countries, Zambia's mental health legislation is outdated and fails to adequately promote the rights of people with mental disabilities.¹⁹⁷ The government of Zambia is currently reviewing the Mental Health Act's language, promulgated in 1951, which is routinely criticised for perpetuating stereotypes through the act's use of pejorative language, such as 'imbecile', 'idiot', 'stupid' and 'mentally-invalid person', when referring to mentally challenged people, or anyone who has undergone treatment.¹⁹⁸

¹⁹⁰ I Zulu, '42 years old man convicted for having sex with 12-years old insane girl', The Post (November 23, 2010), page 7.

¹⁹¹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

¹⁹² Persons with Disabilities Act, Chapter 65.

¹⁹³ Education Act, Chapter 134.

¹⁹⁴ Industrial Relations Act, Chapter 269.

¹⁹⁵ Zambia Mental Health and Poverty Project Country Report, 'Policy Brief Developing Effective Mental Health Laws in Zambia' (2008), page 13.

¹⁹⁶ Zambia Mental Health and Poverty Project Country Report, 'Policy Brief Developing', page 13.

¹⁹⁷ Zambia Mental Health and Poverty Project Country Report, 'Policy Brief Developing', page 13.

¹⁹⁸ IRIN, 'Zambia: Mental illness', page 2.

Care ministries for the Mentally Ill Director General, Mr. Kasonde observes that the Mental Disorders Act which is the Principle act governing mental health in Zambia allows families to make important decisions about admission and treatment, but do not contain sufficient safeguards to protect the rights of the family member with the mental disability.¹⁹⁹ The role of the family is neither clearly stipulated nor regulated, and there is little to stop individuals from being forcibly admitted by their families for psychiatric treatment. It is thus recommended that clear statements on patients' and caregivers rights are needed which place the patient at the centre of the mental health system while giving caregivers the rights necessary to enhance patient care and health.²⁰⁰

Mr. Kasonde observes that the older laws focused mainly on issues related to incapacity and involuntary treatment and failed to adequately promote voluntary treatment on the basis of free and informed consent.²⁰¹ Contrary to international human rights standards, the older laws reflect a presumption that people with mental disabilities lack capacity and this often extends beyond the issue of mental health treatment, to questions of general legal competence to make a range of decisions and to exercise one's human rights.²⁰²

Further, Mr. Katontoka said the Mental Disorders Act²⁰³ does not take into account the social and health aspects of people with the illness and therefore needs to be revised.²⁰⁴ He said government needs to put in place legislation that will bring social order and stop the discrimination of people with mental disabilities. Further, the country needs to take into account the recent development in human rights issues as regards to people living with the disease.²⁰⁵ He said people with mental illness have been adversely affected by the old Act as mental patients find it hard to be accepted in the community.²⁰⁶

Mr Katontoka also pointed out that there are little or no facilities for people with the disease adding that this has denied them opportunities in life.²⁰⁷ He has since called on all Zambians to support

¹⁹⁹ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

²⁰⁰ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

²⁰¹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁰² Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁰³ Mental Disorders Act, Chapter 305.

²⁰⁴ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁰⁵ Author's interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁰⁶ Author's interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁰⁷ IRIN, 'Zambia: Mental illness', p.2.

people living with mental illness because although it is very difficult to be cured, it can be managed and controlled. Consequently, MHUNZA has called on government to formulate and enact new legislation that will promote and protect people with mental illness in the country.²⁰⁸

Finally, until mentally challenged persons are recognised as people with sexual rights, until they are seen as a vulnerable group, until they are included in planning, designing, implementation and dissemination of information about HIV and AIDS they will remain marginalised and vulnerable.²⁰⁹

About 70-80% of people with mental health problems consult traditional health practitioners before they seek help from conventional health practitioners.²¹⁰

3.5.0 Conclusion

Mental disability is not a ground for discrimination under Article 23 of the constitution of Zambia but regrettable, under the directive 'Principles of State Policy'. In view of Article 111 of the Constitution of Zambia, mental health is not justiciable. Further, the Mental Disorders Act promulgated in 1951 is outdated and closer look at it establishes that it actually promotes stigma towards persons with mental disabilities. In consequence, the Zambian laws need to be reviewed in order to achieve equalization of social opportunities for persons with mental disabilities. These laws ought to take into account the recent development in human rights issues as regards to people living with mental disabilities.

Chapter four focuses on the efficacy of the United Nations Convention on the Rights of People with Disabilities (UNCRPD) in Zambia. The UNCRPD is an international human rights instrument of the United Nations which intends to protect the rights and dignity of persons with disabilities in the world. Zambia's ratification of the UNCRPD in January 2010 indicates its acceptance of an inclusive approach to all forms of disability issues in the country.

²⁰⁸ IRIN, 'Zambia: Mental illness', p.2.

²⁰⁹ G. Kunda, '40_Zambia's Initial State Report', page 95.

²¹⁰ J. Mayeya et al, 'Zambia Mental Health', page 65.

CHAPTER 4

THE EFFICACY OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES IN ZAMBIA

4.1.0 Introduction

As established in the previous chapter, Zambia's mental health legislation is outdated and fails to adequately promote the rights of people with mental disabilities.²¹¹ A renowned jurist named Roscoe Pound propounded that the law is an instrument of social engineering used to advance different interest of society and seek to offer the appropriate balance when a conflict arises.²¹² In the pursuit of this function of social control, law is faced with two perpetual problems: the maintenance of a balance between stability and change.²¹³ On this basis, it is vigorously advocated that Zambia needs to take into account the recent development in human rights issues as regards to people living with mental disabilities.²¹⁴ For these reasons, this chapter focuses on the efficacy of the United Nations Convention on the Rights of People with Disabilities in Zambia (UNCRPD).

The UNCRPD is an international human rights instrument of the United Nations (UN) which intends to protect generally the rights and dignity of persons with disabilities.²¹⁵ The document addresses key issues affecting persons with mental disabilities such as equality, non-discrimination, education, health, employment, rehabilitation and the rights to participate in public and political life.²¹⁶

The government of Zambia signed the UNCRPD²¹⁷ in May 2008, and finally ratified it in January, 2010²¹⁸ thus indicating its acceptance of an inclusive approach to disability issues.²¹⁹ Despite this, Zambia is a dualist state.²²⁰ This implies that the UNCRPD is currently not effective unless parliament, by an enabling instrument, has adopted and adapted it as part of its legislation.²²¹ It

²¹¹ Zambia Mental Health and Poverty Project Country Report, 'Policy Brief Developing', page 13.

²¹² C Anyangwe, 'An Outline of the Study of Jurisprudence' (Lusaka: At UNZA Press, 2005), page 243.

²¹³ C Anyangwe, 'An Outline of the Study of Jurisprudence', page 243.

²¹⁴ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²¹⁵ Convention on the Rights of Persons with Disabilities (2011), page 1. http://www.en.wikipedia.org/wiki/Convention_on_the_Rights_of_Persons_with_Disabilities. Accessed on January 18, 2011.

²¹⁶ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', The Post (January 10, 2010), page 8.

²¹⁷ The Convention was adopted by the United Nations General Assembly on 13 December 2006. It opened for signature on 30 March 2007 and came into force on 3 May 2008.

²¹⁸ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

²¹⁹ M Gilbert, 'Disability audit of the United Nations Development Assistance Framework (UNDAF) in Zambia' (2009), page 1. http://www.ilo.org/wcmsp5/groups/public/---e-empl---ifp_skills/documents/publication/wcms-1430. Accessed on January 18, 2011.

follows therefore that for persons with mental disabilities in Zambia to benefit from the provisions of this convention, parliament must domesticate it by enacting an Act of Parliament in accordance with the provisions of the Constitution.²²²

4.2.0 Discussion of the United Nations Convention on the Rights of People with Disabled

(UNCRPD)

It is correct to argue that the Universal Declaration of Human Rights²²³ in a perfect worked world protects everyone.²²⁴ But in practice, certain groups of people such as persons with mental disabilities may not be adequately protected.²²⁵ Thus, the UNCRPD is the first human rights treaty of the twenty-first century that marks the dawn of a new era in the long history and fight for the emancipation of persons with disabilities in the world over.²²⁶

The UNCRPD was adopted by the United Nations General Assembly on 13 December 2006 and opened for signature on 30 March 2007.²²⁷ Following ratification by the 20th party, it came into force on 3 May 2008.²²⁸ The document addresses key issues affecting persons with mental disabilities such as equality, non-discrimination, education, health, employment, rehabilitation and the rights to participate in public and political life.²²⁹ The discussion that follows illustrates.

4.2.1 Prohibition of Stigma and discrimination

Evidence suggests that the stigma attached to mental disabilities is the main obstacle towards mentally disabled people.²³⁰ Further, the Zambian Mental Health Act's language, promulgated in 1951, and is routinely criticised for perpetuating stereotypes through the act's use of pejorative language, such as 'imbecile', 'idiot', 'stupid' and 'mentally-invalid person', when referring to mentally

²²⁰ C Anyangwe, 'Introduction to Human Rights Law', page 193.

²²¹ C Anyangwe, 'Introduction to Human Rights Law', page 193.

²²² Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²²³ This non-binding declaration was adopted by the United Nations in 1948. The UN General Assembly proclaimed it as a common standard of achievement for all peoples of all nations.

²²⁴ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

²²⁵ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²²⁶ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

²²⁷ Convention on the Rights of Persons with Disabilities (2011).

²²⁸ Convention on the Rights of Persons with Disabilities (2011).

²²⁹ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

²³⁰ R Horton, 'Stigma and Mental Health', page 34.

disabled people, or anyone who has undergone treatment.²³¹ However, article 5 of the UNCRPD prohibits state parties from all discrimination on the basis of disability²³² and encourages the Zambian government to guarantee persons with mental disabilities equal and effective legal protection against discrimination on all grounds.²³³

4.2.2 Active participation in policy decision-making processes

In the majority of countries, people with mental health conditions fail to participate actively in policy decision-making processes.²³⁴ A significant barrier to participation is the false assumption that people with mental health conditions lack the capacity to make meaningful contributions to society.²³⁵

The foregoing stands in contrast to issues such as HIV/AIDS, for example, where in many countries those most directly affected have had an important voice in policy development and allocation of resources.²³⁶ It is on this basis that the UNCRPD encourages the Zambian government to recognise that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them.²³⁷ MHUNZA President, Mr. Katontoka, was humbled with the Zambian government's request for him to contribute towards the ongoing Constitutional review process on the constitutional guarantee of the rights of persons with disabilities.²³⁸

4.2.3 Right to education

Education is well-recognized as an essential building block of human and economic development, yet most people with mental health conditions face disproportionate barriers in accessing

²³¹ IRIN, 'Zambia: Mental illness', page 1.

²³² Convention on the Rights of Persons with Disabilities, Art. 1., defines disability as including those who have mental impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

²³³ Convention on the Rights of Persons with Disabilities (2006).

²³⁴ M Gilbert, 'Disability audit', page 1.

²³⁵ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²³⁶ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²³⁷ This is stated in the preamble of the UNCRPD.

²³⁸ Art. 53 of the draft constitution of the republic of Zambia provided that the Zambian bill of rights would guarantee persons with disabilities generally on the equal basis with others. Recent developments have shown that on Tuesday, March 29, 2011, the constitutional bill failed to go through parliament. This means that the draft constitution has no legal force whatsoever. For a general reaction of parliament's rejection of the constitutional bill, see E Chanda and B Mukwasa, 'Kunda must Resign-TIZ', The Post (April 1, 2011), page 4.

schooling.²³⁹ The exclusion of children with mental health conditions is discriminatory and leads to further marginalization of this already vulnerable group.²⁴⁰ Despite this fact, in Zambia, people with mental disabilities are institutionalized in facilities that do not offer educational opportunities.²⁴¹ Those who are able to attend school or university often experience ridicule, discrimination, and rejection by their peers.²⁴² Consequently, the UNCRPD directs Zambia to ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.²⁴³ However, as stated in the previous chapter, Sister Harriet suggests that due to the disability, mentally challenged pupils must be enrolled in special schools with regard to their special needs.²⁴⁴

4.2.4 Right to employment

As stated in Chapter 2 of this paper, while mental illness affects individuals at all economic levels, many people with mental health problems end up in poverty due to the stigma attached to being labeled mentally ill.²⁴⁵ In Zambia, large disparities in unemployment rates exist between people with mental disabilities, and the general population.²⁴⁶

Further, the vast majority of people with mental disabilities would like to be employed, but stigma, discrimination, and lack of professional experience prevent them from doing so.²⁴⁷ MHUNZA President, Mr. Sylvester Katontoka who has experienced emotional difficulties confirms as follows:

"Most of our members are sidelined from developmental projects after undergoing treatment in the communities where they live. This makes them to continuously living in poverty, and we have high numbers of our people having relapses as a result. It is a cost to the country because our members, who are just languishing in destitution, are still capable of contributing to national development but they are not being given a chance".²⁴⁸

²³⁹ M Funk et al, 'Mental Health and Development: Targeting People with Mental Health Conditions as a vulnerable group', Mental Health and Poverty Project (2010), page 15.

²⁴⁰ M Funk et al, 'Mental Health and Development', page 15.

²⁴¹ Interview with J Kasonde, Care Ministries for the Mentally Ill, Director General, Lusaka, November 16, 2010.

²⁴² M Funk et al, 'Mental Health and Development', page 15.

²⁴³ Convention on the Rights of Persons with Disabilities, Art. 24.

²⁴⁴ Interview with Sister Harriet, Chiweledi Community School, Assistant Sister in Charge. Lusaka. November 15, 2010.

²⁴⁵ R Horton, 'Stigma and Mental Health', page 53.

²⁴⁶ M Funk et al, 'Mental Health and Development', page 15.

²⁴⁷ M Funk et al, 'Mental Health and Development', page 15.

²⁴⁸ IRIN, 'Zambia: Mental illness', page 1.

Consequently, the Convention directs the Zambia government to recognize the right of persons with mental disabilities to work on an equal basis with others.²⁴⁹

4.2.5 Right to health

As earlier submitted chapter 2 of this essay, in Zambia, key mental health workers such as psychologists, social workers and occupational therapists are also in short supply.²⁵⁰ Additionally, access to better mental health services is reported to be extremely hard for the poor, especially those in the remote areas²⁵¹ thus, prolonging the period for which the poor people will battle with their mental illnesses.²⁵² It follows therefore that the UNCRPD requires the Zambia government to provide those health services needed by persons with mental disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities.²⁵³

4.2.6 Protection from torture or to cruel, inhuman or degrading treatment or punishment

One study from the United States of America found that, compared with the general population, people with mental health conditions were eleven times more likely to be targets of violent crime (completed or threatened violence), and 140 times more likely to be victims of personal theft.²⁵⁴ In Australia, 88 percent of those admitted to a psychiatric ward had experienced victimization at some point in their lives: 84 percent having experienced physical assault and 57 percent having experienced sexual assault.³⁷ People with mental health conditions often are abused in prisons; women with mental health conditions are at particularly heightened risk for sexual victimization in prisons.²⁵⁵

Furthermore, it is an undisputed fact that it may be more difficult to reach individuals with intellectual disabilities, though this group is the most vulnerable to sexual abuse and infection with HIV/AIDS.²⁵⁶ Thus, the UNCRPD provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.²⁵⁷ Zambia is accordingly obliged to take all

²⁴⁹ Convention on the Rights of Persons with Disabilities, Art.27.

²⁵⁰ J Mayeya, et al, 'Zambia Mental Health', page 65.

²⁵¹ J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

²⁵² J Ssebunnya et al, 'Stakeholder Perceptions', page 1.

²⁵³ Convention on the Rights of Persons with Disabilities, Art. 25.

²⁵⁴ M Funk et al, 'Mental Health and Development', page 1.

²⁵⁵ M Funk et al 'Mental Health and Development', page 1.

²⁵⁶ K Schriener, 'South African Leader', page 2.

²⁵⁷ Convention on the Rights of Persons with Disabilities, Art. 16 and 17.

appropriate measures to protect persons with mental disabilities from all forms of exploitation, violence and abuse.²⁵⁸

4.2.7 Right to participate in political and public life

People with mental health conditions routinely experience restrictions in the exercise of their civil and political rights.²⁵⁹ This is due mainly to the false but common assumption that people with mental health conditions lack the capacity to assume responsibilities, manage their affairs, and make decisions about their lives.²⁶⁰

Supplementary, people with mental health conditions often lack access to proper judicial mechanisms.²⁶¹ Crimes committed against them go undocumented because of unfounded concerns by police or prosecutors about their reliability or credibility as witnesses.²⁶² Accordingly, articles 12 and 29, UNCRPD requires Zambia to recognize that persons with mental disabilities enjoy legal capacity on an equal basis with others in all aspects of life by ensuring that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others.

4.3.0 Efficacy of government's implementation of the United Nations Convention on the Rights of the Disabled Persons in resolving social stigma towards the Mentally Disabled Persons in Zambia

The ratification of the UNCRPD in 2010 was a major step forward in improving the lives of people with mental health conditions. It marks a paradigm shift away from viewing people with disabilities as objects of charity, towards viewing them as bearers of human rights with the capacity for self-determination.²⁶³ Importantly, the UNCRPD provides a comprehensive legal framework for ending the discrimination experienced on a daily basis by many people with mental disabilities.²⁶⁴

²⁵⁸ M Funk et al, 'Mental Health and Development', page 1.

²⁵⁹ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁶⁰ M Funk et al, 'Mental Health and Development', page 2.

²⁶¹ M Funk et al, 'Mental Health and Development', page 2.

²⁶² Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁶³ C Kafwabulula, 'Zambia: Ratification of the Disability Convention', page 8.

²⁶⁴ C Kafwabulula, 'Zambia: Ratification of the Disability Convention', page 8.

It is worth noting however that although the government has now ratified the Convention, the Convention will not even be worth the paper it is written on, if it is not translated into practical and workable deliverables.²⁶⁵ This is based on the fact that Zambia subscribes to a dualist²⁶⁶ legal system entailing that a treaty or Convention to which Zambia is a state party is not legally binding on citizens unless it is incorporated into domestic legislation through an Act of Parliament.²⁶⁷ The doctrine of dualism grew from the procedure whereby international agreements are rendered operative in municipal law by the device of ratification by the sovereign and the idea has developed from this that any rule of international law must be transformed, or specifically adopted, to be valid within the internal legal order.²⁶⁸

The landmark case of the effects of international instruments in Zambia is *Zambia Sugar Plc vs. Fellow Nanzaluka*.²⁶⁹ In that case, the facts are that the respondent was employed in 1992 by the appellant. His employment was terminated without notice in 1996. He was paid three months salary in lieu of notice. He brought an action in the Industrial Relations Court. The Court accepted that the conditions of service had been complied with but held that the termination was contrary to the

International Labour Organisation Convention No. 158 of 1982 that protects workers against termination of Employment without valid reasons.

On appeal to the Supreme Court it was held that international instruments on any law although ratified and assented to by Zambia cannot be applied unless domesticated and that in the instant case Zambia had not domesticated the convention in question. It follows therefore that currently, since the government has not domesticated the UNCRPD by an Act of Parliament, the UNCRPD has no effect on the persons with mental disabilities therefore they cannot benefit from its provisions.²⁷⁰ Henceforth, the ratification of the Convention is not an end in itself, but a means to an end.²⁷¹

²⁶⁵ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

²⁶⁶ The doctrine of dualism maintains that before any rule or principle of international law can have any effect within the domestic jurisdiction, it must be expressly and specifically 'transformed' into municipal law by the use of the appropriate constitutional machinery, such as an Act of Parliament.

²⁶⁷ D Ng'ambi, 'Harmonisation of Laws relating to Children' (February 11, 2010), page 2.

²⁶⁸ D Ng'ambi, 'Harmonisation of Laws', page 2.

²⁶⁹ Appeal No. 82/2001.

²⁷⁰ Interview with S Katontoka, Mental Health Users Network of Zambia, President, Lusaka, November 10, 2010.

²⁷¹ C Kafwambulula, 'Zambia: Ratification of the Disability Convention', page 8.

4.4.0 **Conclusion**

Although the government of Zambia has ratified the UNCRPD, the Convention will not even be worth the paper it is written on because Zambia subscribes to a dualist legal system entailing that a treaty or Convention to which Zambia is a state party though ratified is not legally binding on citizens unless it is incorporated into domestic legislation through an Act of Parliament as reflected in *Zambia Sugar Plc vs. Fellow Nanzaluka*. It follows therefore that for Zambian mental health patients and the ex-mental patients to benefit from the provisions of the Convention, the Zambian government must domesticate the UNCRPD via an Act of Parliament. By so doing, Zambia will not only have a law that will do away with the condemned 1951 Mental disorders Act but also introduce a new mental health law that conforms to international standards.

In any given society, laws ought to reflect the changing needs of the people bound by that given law. This implies that mental health laws must reflect the mentally disabled persons' dynamic needs. It is on this basis that the final chapter will base its conclusions and recommendations in view of the legal perspectives on resolving social stigma towards persons with mental disabilities in Zambia.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

This paper has shown that whilst most forms of illness arouse feelings of sympathy or compassion amongst non-sufferers, mental disabled persons are rejected by society thus many mentally disabled persons are suffering silently, suffering alone and beyond the frontiers of stigma, shame, exclusion, discrimination and more often than we know, death. In response to this situation, the paper has illustrated how society through indigenous NGOs, civil societies and churches have come together and work with government to effectively make mental health issues a priority actively participating in the improvement of mental health education and advocacy for quality mental health services.

The paper has also shown that mental disability is not a ground for discrimination under article 23 of the constitution but regrettable, under the directive Principles of State Policy. It follows therefore that discrimination based on mental disability is not justiciable in any Zambian tribunal or court of law.

The Mental Disorders, the principle Act addressing mental disabilities enacted in 1951 is outdated. Not only does it lack the recent developments in human rights issues as regards to people living with mental disabilities, it also fails in adequately integrating both the mentally disabled and ex mentally disabled persons into mainstream society. Moreover, although the government of Zambia has ratified the UNCRPD, mentally disabled persons in Zambia cannot benefit from the provisions of the Convention until parliament domesticates it through an Act of Parliament as reflected in the case of *Zambia Sugar Plc vs. Fellow Nanzaluka*.

The paper has accordingly established that for Zambian mental health patients and also the ex-mental patients to be accepted in society, the current Mental Disorders Act must be repealed, the UNCRPD domesticated and a new Mental Disorders Act in light of the UNCRPD be enacted as the laws governing persons with mental disorders thereby resolving social stigma towards persons with mental disabilities.

5.1 Recommendations

1. To fight stigma, society must be educated on the causes, treatment and prevention of mental disabilities. The media via television, radio, newspapers, magazines, the internet, social media and other forms must be used in influencing public opinion and attitudes towards persons with mental disabilities. This is based on the observation that establishes that portraying people with disabilities with dignity and respect in the media does promote more inclusive and tolerant societies.
2. Mental health has not been incorporated in primary mental health care thus there is a need for representation of mental health services at provincial and district levels. This is because promoting mental health services in primary care setting would help to reduce stigma associated with mental health problems and could prevent the unnecessary hospitalization and human rights violations of persons with mental disabilities. The need to narrow the distance between needs and services is the only way to reach the hard to reach mental health services.
3. Let us resolve to reduce the public health burden and the individual suffering of persons with mental disabilities in Zambia by embarking on community programmes aimed specifically at encouraging communities to form self-help support groups for families of mentally disabled persons, which are set up by in similar situation must be encouraged.
4. The Zambian government must hold annual awards for the most effective and efficient mental organization. It is hoped that this not only encourages current mental health organisations discharge quality services but also that community based organisations will be inspired enough to embark on this noble cause.
5. More schools must be opened aimed at specializing students in mental health. These schools must train students in counseling and medical rehabilitation that involves psychosocial support, occupational support. Further, these specialists must be given a reasonable remuneration that may prevent them from going abroad in search of greener pasture. Moreover, if Zambia can have more of its own mental health experts, the poor who cannot afford to take their mentally disabled relatives broad for treatment can also benefit from their services.

6. In order to ensure that ZAPD it is effective in its operations, different offices must be opened within ZAPD dealing with specific disabilities because it is a notorious fact that persons with mental disabilities have different special needs from people with physical disabilities. It is further proposed that in each office, an advocacy center should be set up so as to handle legal issues in its pursuit of protecting the interests of persons with disabilities.

It is proposed that the office specialised in mental disabilities be mandated to investigate and receive complaints on issues of discrimination on the labor market pertaining to persons with recurrent mental disorders and are in employment. Other issue affecting persons with mental disabilities may also be investigated such as the integration of ex-mental patients in the work place. It is in this capacity that it will be able to make recommendations to government on how best to guarantee the welfare of persons with mental disabilities.

7. The Mental Disorders Act needs to be reviewed in order to achieve equalization of social opportunities for persons with mental disabilities. It is accordingly proposed that the current Mental Disorders Act must be repealed in its entirety and replaced with a new piece of legislation that will bring social order and stop the discrimination of people with mental disabilities. This can be achieved by enacting a new Mental Disorders Act proposed based on recent development in human rights issues reflected in the UNCCRPD as regards to people living with mental disabilities.
8. Parliament must domesticate the UNCRPD so that mental and ex mental may enjoy their rights as guaranteed by the convention. by so doing, mentally disabled persons may also have locus standi to move any appropriate Zambian court of law or tribunal whenever they feel that they are likely, are been or have been discriminated by any sector of society. This way, society will respect the mentally and ex mentally disabled person's right especially if it knows that any violation of these people's rights renders any person or institution liable to legal action.

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