

**A CRITICAL ANALYSIS OF THE LAW GOVERNING PERSONS WITH
DISABILITES IN ZAMBIA WITH PARTICULAR REFERENCE TO EMPLOYMENT**

By

MULENGA MAYBIN CHANDA

(26129540)

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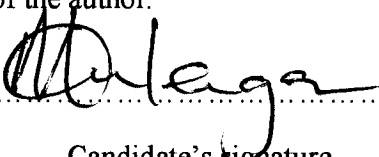
Being a Directed Research essay submitted to the University of Zambia Law Faculty in
Partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

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2011

DECLARATION

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ABSTRACT

Throughout the preceding decades of the twentieth century and continuing into the 21st century, many governments in the world have undertaken efforts to encourage employment opportunities for persons with disabilities. Legislation of diverse types has been formulated and International Labour Organization has offered guidance and information to governments throughout the world. Persons with disabilities like anyone else are supposed to enjoy parity of opportunities and treatment in relation to accessing employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment. Persons with disabilities face patterns of discrimination. All the problems faced by persons with disabilities can be termed as disability-based discrimination when accessing employment

A piece of legislation called the Persons with Disabilities Act was passed in 1996. This piece of legislation does not allow discrimination on the basis of disability. Consequently, the question to regard is whether the law is enough in addressing disability-based discrimination when accessing employment. It is a well known fact that disability restricts access to employment. This means that persons with disabilities are excluded economically and socially. One therefore wonders, is it that there is no employment for persons with disabilities as a matter of fact, or that they are deprived of employment by virtue of their condition?

The research has revealed that there are many laws that govern issues related to persons with disabilities. However, persons with disabilities habitually find employment difficult to acquire and feel excluded from the labour market because of their disabilities. This impenetrability is often traced to the attitudes of employers toward employing persons with disabilities. Persons with disabilities are considered to be of little value in the sphere of employment. Following this, they are discriminated against as they access employment.

It is therefore recommended that the government and other relevant authorities should take action to raise awareness in society about persons with disabilities' rights, needs, potential and their contribution. Secondly, there is need to empower persons with disabilities to exercise their human rights, particularly in the field of employment. Lastly, other recommendations include: the funding to Zambia Agency for Persons with Disabilities should be increased, NGOs should coordinate, integrate persons with disabilities into employment, establish effective data base on persons with disabilities in employment, and create a Tribunal for Persons with Disabilities.

ACKNOWLEDGEMENTS

I would like to honestly thank Mrs. Anne Chewe-Chanda my supervisor who gracefully took the thorough task of reading, correcting and offering valuable critic and suggestions on the content and character of the research. Ms. Chanda read every sentence and criticized it in a smart and meticulous way. I hope her excellence is reflected on every page of this paper though I remain individually responsible for any errors or otherwise.

I am perpetually grateful to my siblings Mwimba, Lwipa, Kasonde, Chikwanda and Kangwa for their support, endurance, courage and confidence during my academic life and family moments. Sometimes the journey has been rough, our climb has been steep. Yet in all our experiences we have stayed together, growing and learning to love each other in new and intimate ways.

I am deeply grateful to the International Labour Organization, Zambia Federation for Persons with disabilities and the University of Zambia for providing me with information during the period I was conducting interviews with their respective personnel.

I wish to thank my good friend Sitwala Lufoma who rendered her advice even in critical moments. May the good Lord bless you.

I further extend my well founded and heartfelt gratitude to Abigail Banda who was therefore for me inclusive of crucial moments. May the good Lord bless you in abundance.

My gratitude is also extended to every member of the 2011 Law School graduating class for the friendship and erudition during this long journey. The notable ones being Muleba Chitupila, Nsomboshi Savior, Chitalu Chali, Yuma Zacks, Mwinamo Dominic, Mundia Christopher, Phiri Layeni, Mushenya Daniel, Ng'andwe Kambafwile, Lwansa Musonda, Mandumbwa Francis, Siuluka Prudence, Mulimbika Annette and many others.

Finally, I thank God for calling me to be a Lawyer. I must state that it has not been easy. There was a time when I nearly gave up after getting 0/20 in contract II test during my second year of study. I thank my Lord for granting me grace and strength up to this time.

DEDICATION

This is dedicated to three people namely my son Kabeleka Mulenga, my late parents Mulenga Joseph Gabriel Kabeleka and Juliana Kankuni Mulenga. Mum, you left me when I was barely two years old. Without your motherly love, life has been so rough. Dad, you left when I was 10 years old. Honestly, growing up without your assistance has made my life so tough. You always told me that the best gift a parent can give to his children was education .A principle which I followed and today I am able to see light at the end of the tunnel.

My Son Kabeleka Mulenga and others to come, Life is not easy and the surest way of making it is by achieving higher educational qualifications. As your Father, I shall endvoured to create a conducive environment for you.

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CHAPTER 1

1.0 Introduction

Employment issues in Zambia are governed by the Employment Act Chapter 268 of the Laws of Zambia. Usually, a contract of employment consists of the following: the title accompanying the position which a person will be employed in, the duties to be performed, the salary or wage that will be paid to the employee, the benefits that will be provided, the starting date of employment, the hours which the employee will be required to work and the date on which employment may end.¹ Although the Act does not define employment, the term has been defined:

“as the act of employing an individual who is qualified to occupy a particular position for the sole purpose of discharging functions as espoused in the contract agreement. The relationship is premised on the mutual understanding between an employee and employer².”

This means that the employee must be qualified by education standards and must also be skilled in the requirements of the job. The employer must remunerate the employee for the services rendered. This definition of employment is aimed at general application in the sense that for as long as a person is qualified according to the demands by the employer, that person can and should ordinarily be employed.

However, the definition does not take into account other issues that may reduce chances of persons being employed. One important issue is that of disability. Disability is a condition, situation or restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered to be normal for a human being³. Therefore, the prospects of securing and seeking suitable employment are substantially reduced as a result of a duly recognized physical, sensory, intellectual or mental

¹ W.S Mwenda, *Employment Law in Zambia: Cases and Material*. Unza Press 2004

² J Collins, *English Dictionary*, 10th ed, Harper Collins publishers 2009

³ *Persons with Disabilities Act Chapter 65 of the Laws of Zambia*

impairment⁴. This means that although a person may be qualified on educational levels or standards, they may be incapacitated in other ways. The exclusion has been viewed as discriminatory.

Since the Independence Constitution⁵, discrimination has been prohibited in Zambia for all intents and purposes. The current Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia provides for non discrimination in the following terms:

“a law shall not make any provision that is discriminatory either of itself or in its effect”⁶.

Discrimination has been defined as:

“affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”⁷

By necessary implication, persons with disabilities are also protected from discrimination of any kind including access to employment.

Disability issues have been on the political agenda in Zambia for many years. This is because every person in Zambia constitutionally, has been and shall continue to be entitled to the fundamental rights and freedoms of the individual.⁸ This means that the system is premised on the principles of equality notwithstanding the status of an individual unless in permitted limitations. The permitted limitations may include where an act is done in the best interest of preserving public security, safety, morality and peace.

⁴ ILO. **Strategies for skills acquisition and work for persons with disabilities in southern Africa**, Zambia 2007

⁵ Section 25 of the Independence Constitution of the Republic of Zambia Cap 1 of the Laws of Zambia

⁶ Article 23 of the Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia

⁷ Article 23(3) of the Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia

⁸ Article 11 of the Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia

Zambia has also ratified ILO conventions, committing herself to the goals of equal opportunity and non-discrimination. Therefore, the protection of persons with disabilities in Zambia has been through the formulation of policy guidelines and enactment of laws. The Handicapped Act was passed in 1968⁹. It championed or facilitated the establishment of the Zambia Council for the Handicapped. The Zambia Council for Handicapped was to act as a platform for meeting the challenges of persons with disabilities. The Handicapped Act was also based on improving access to education of disabled people. The Act was viewed as the answer to the challenges that persons with disabilities encountered as it was inclusive regardless of the nature of disability. However, the 1968 Act was inadequate in addressing the issues of persons with disabilities. This is because it lacked provisions on certain disability issues, for instance the one relating to promoting equal access to employment opportunities.

A new law was therefore passed in 1996 called the Persons with Disabilities Act Chapter 65 of the Laws of Zambia. This Act does not allow discrimination on grounds of disability when accessing employment. It provides in section 20 that:

“an employer shall not treat a person with a disability differently from a person without a disability when, advertising for employment, recruiting persons for employment and offering terms or conditions of employment”¹⁰.

This means that when employers are recruiting, they are not supposed to discriminate on the premise of disability.

Despite the Persons with Disabilities Act Chapter 65 of the Laws of Zambia being in existence for the past fourteen (14 years), persons with disabilities have continued to experience common patterns of discrimination when accessing employment. The importance of protecting the disabled people against discrimination when accessing employment cannot be over emphasized. Therefore, this research seeks to give an appraisal of the law governing persons with disabilities in curbing disability-based

⁹ Handicapped Persons Act Chapter 511 of the Laws of Zambia

¹⁰ Persons with Disabilities Act Chapter 65 of the Laws of Zambia

discrimination in accessing employment. The research examines difficulties faced by persons with disabilities when seeking employment, employer perception of the disabled persons, the role of ILO, the role of government, and finally recommends strategies that can help address disability based discrimination in accessing employment.

1. 1 Statement of the Problem

During the last decades of the twentieth century and continuing into the 21st century, many governments in the world have undertaken efforts to promote employment opportunities for people with disabilities.¹¹ Legislation of different types has been introduced and ILO has given advice and information to governments. Persons with disabilities are supposed to enjoy equality of opportunity and treatment in respect of access to employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment. Persons with disabilities experience common patterns of discrimination. All the challenges faced by persons with disabilities can be singularized into disability-based discrimination when accessing employment¹².

The Persons with Disabilities Act¹³ which was passed in 1996 prohibits discrimination on the grounds of disability. Thus, the issue to consider is whether the law is sufficient in addressing disability-based discrimination when accessing employment. It is common knowledge that disability limits access to employment, leading to economic and social exclusion. Could it be that there is no employment for persons with disabilities as a matter of fact, or that they are denied by virtue of their status? It is therefore necessary to

¹¹ ILO. **The Employment Situation of People with disabilities: Towards improved statistical information** 2007 p 1

¹² ILO. **Strategies for skills acquisition and work for persons with disabilities in southern Africa, Zambia** 2007

¹³ Persons with Disabilities Act Chapter 65 of the Laws of Zambia

critically analyse the extent to which the law protects persons with disabilities in accessing employment.

1.2 Significance and Purpose of the Study

The purpose of the study is to establish how best the law can help in curbing disability related discrimination when accessing employment by persons with disabilities. The study is premised on ensuring that there is equal opportunity for employment even for the disabled persons. The research is a contribution not only to a radical but also progressive legal framework in the protection and promotion of persons with disabilities in accessing employment. The research does not only seek to identify disability based discrimination as a challenge faced by persons with disabilities in accessing employment but more importantly it premises itself on ensuring that solutions are found. Therefore, this research may be viewed as a source of hope for persons with disabilities who face discrimination in accessing employment.

1.3 Research Objectives

The research objectives were to: identify the problems faced by persons with disabilities in seeking employment, critically analyse the extent to which the law governing persons with disabilities curbs disability-related discrimination with regard to accessing employment, identify and develop practical strategies that can help address disability based discrimination that many people with disabilities experience when they seek employment and map out where people with disabilities who want to find employment can find support and guidance.

1.4 Research Questions

In attempting find solutions that would curb disability related discrimination when accessing employment, the following questions were asked:

1. What is disability-based discrimination with regard to accessing employment?
2. What are the practical difficulties faced by persons with disabilities in the context of accessing employment?
3. Does the current employment law address the issues of persons with disabilities?
4. How crucial is the issue of disability within the employment sector in Zambia?
5. What assistance is currently available to support and help people with disabilities enter and remain in employment?
6. How do employers perceive persons with disabilities when recruiting?
7. What are the most pressing concerns of people with disabilities who might want to seek employment?

1.5 Methodology

The research is qualitative in nature as the mode of data collection involved both desk research and field investigation. This research has been done mainly by analyzing relevant literature at the University of Zambia Great East Road Campus. Reliable websites have been referred to in a bid to have updated information. Published and where strictly necessary unpublished works have been consulted for the sole purpose of informing this research. The researcher conducted direct interviews with officers at International Labour Organisation, Zambia Federation for Persons with Disabilities and Zambia Agency for Persons with Disabilities who have served as key informants.

1.6 Outline of Chapters

Chapter 1

This chapter introduces the research and in general terms given the synopsis of the research.

It also deals with the basic aspects of the research. These include the statement of the problem, objectives and significance of the study, the methodology and the chapter lay out.

Chapter 2

The role of ILO, NGOS and Government in Promoting Access to Employment for Persons with Disabilities

It is the duty of public and private sector organizations to promote equality of opportunity for disabled people. This chapter therefore examines the role of ILO, NGOs and Government in curbing disability based discrimination in accessing employment. It highlights the functions and mandates of the above three institutions.

Chapter 3

The Law Governing Persons with Disabilities in Zambia

This chapter discusses the relevant law governing persons with disabilities in Zambia with regard to accessing employment. It is concerned with the implementation aspect and the effects it has on persons with disabilities in accessing employment. Finally, the research considers the challenges that persons with disabilities face in accessing employment and how employers perceive the persons in question when carrying out the recruitment process.

Chapter 4

Comparative Analysis

This chapter undertakes a comparative analysis that is to say, what other countries have adopted. The research considers the situation in British and Malawi. Finally the research considers major commonalities and disparities in curbing disability based discrimination in accessing employment

Chapter 5

Conclusion and Recommendations

This is a concluding chapter, it has dealt with the essential aspects of the research conducted and given an overture to the area under discussion. It has also highlighted the most important or salient features of each Chapter. The chapter identifies and recommends practical strategies that can help address disability-based discrimination that most people with disabilities experience when they seek employment

1.7 Conclusion

This Chapter has dealt with the basic aspects of the research conducted. It has also highlighted the salient features of the Chapters in the paper. The most important point that has been brought to the fore in this chapter is the fact that persons with disabilities are discriminated against when seeking employment. It has also highlighted the legal framework governing persons with disabilities in Zambia. The next chapter endeavours to consider the role played by the Government, NGOs and ILO in curbing disability based discrimination when accessing employment.

CHAPTER 2

THE ROLE OF ILO, NGOS AND GOVERNMENT IN PROMOTING ACCESS TO EMPLOYMENT FOR PERSONS WITH DISABILITIES

2.0 Introduction

In ensuring that persons with disabilities have equal access to employment, various institutions both private and public in nature have been established.¹⁴ In this regard, the main players are the government, Non Governmental Organizations and International Labour Organization. Therefore, this chapter focuses on the roles played by these actors in curbing disability based discrimination when accessing employment. This chapter highlights current steps that have been taken in a bid to ensure that there are equal opportunities for everyone including the disabled people.

2.1 The role of International Labour Organization

2.1.1 What is International Labour Organization?

The International Labour Organization (ILO), founded in 1919, is the oldest of the specialized technical agencies of the UN system.¹⁵ The international Labour Organization is a body which is mandated globally to draw up and oversee international labour standards. With its 182 member states, the International Labour Organization seeks to ensure that labour standards are respected in practice and in principle. It is vital to note that ILO is devoted to advancing opportunities for everyone, as well as for people with disabilities, to obtain decent and productive work, based on the principles of free will, equity, security and human dignity.¹⁶ The issue of curbing disability based discrimination

¹⁴ International Labour Organization, Inclusion of Persons with disabilities in Zambia 2008

¹⁵ International Labour Organization, people with intellectual disabilities-Opening pathways to training and employment in the African Region, Lusaka Zambia 2010

¹⁶ International Labour Organization, Inclusion of Persons with disabilities in Zambia 2009

has been a subject of much consideration by the International Labour Organization over a long period of time.¹⁷ Disability based discrimination is premised on one's outward look as criteria for selection for employment instead of considering the qualifications for a particular job.

2.1.2 What has ILO done with regard to employment of the disabled?

International Labour Organization promotes employment opportunities for persons with disabilities based on the principles of equal opportunity, equal treatment and mainstreaming and community involvement. It is important to note that in certain circumstances, International Labour Organization realizes its principles of equity through declarations. A good example is the Lusaka Declaration¹⁸ which is aimed at promoting equal opportunities for everyone, including persons with disabilities when accessing employment. The Lusaka declaration provides that persons with disabilities should have access to jobs suited to their interests, skills and abilities. It further provides for sensitizing employers so as to remove the negative attitude towards persons with disabilities. Finally, the Lusaka Declaration provides for the inclusion of persons with disabilities in training and employment. It is through declarations like this one that ILO shows its settled intention of promoting access to employment for persons with disabilities.

The International Labour Organization has throughout its existence formulated international labour standards called conventions.¹⁹ An example of such international labour standards is the ILO Vocational Rehabilitation and Employment of the Disabled, Conventions NO 159 of 1989. It was adopted at the start of the United Nations Decade of

¹⁷ International Labour Organization, people with intellectual disabilities-Opening pathways to training and employment in the African Region, Lusaka Zambia 2010

¹⁸ International Labour Organization Report on employment 2007

¹⁹ A O' Reilly : The right to decent work for people with Disabilities ILO, Geneva 2007

Persons with Disabilities. The Convention requires member States, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The Convention has now been ratified by 80 countries.²⁰ The convention is important because it is premised on ensuring that member states take measures to promote employment opportunities for persons with disabilities which conform to the employment and salary standards applicable to workers generally. Measures referred to are also anchored on providing incentives to employers so as to encourage them to provide training and subsequent employment for persons with disabilities.

Another example of an ILO Convention is the United Nations Convention on the Rights of Persons with Disabilities (2006).²¹ This convention is very cardinal in ensuring that persons with disabilities have equal access to employment opportunities. Perhaps, the most important provision is Article 27 which prohibits discrimination on the basis of disability with regard to all matters concerning all forms of employment including conditions of recruitment. This means that persons with disabilities should be assisted with career advancement in the open labour market as well as assistance in finding, obtaining, maintaining and returning to employment.

Other than through conventions, ILO also collaborates with the media to encourage positive images of persons with disabilities so that the misconception by the employers that is more concerned with the outward look can be dispelled thereby creating a free environment when accessing employment.²² Furthermore, ILO champions the inclusion of persons with disabilities in employment through sensitization campaigns and by making a commitment to persons with disabilities as citizens.²³

²⁰ International Labour Organization Report 2007

²¹ O' Reilly A: The right to decent work for people with Disabilities ILO, Geneva 2007

²³ ILO. Employment Situation of People with disabilities: Towards improved statistical information 2007

2.1.3 Current ILO Projects

Firstly, International Labour Organization ensures that the employment for persons with disabilities is conducted through effective legislation. This project is aimed at enhancing the capacity of governments to implement effective legislation on the employment of persons with disabilities either in form of new laws or revisions to existing laws.²⁴ In this regard, The Persons with Disabilities Act Chapter 65 of the Laws of Zambia has been reviewed and a draft Act to replace it is currently under consideration. The International Labour Organisation rendered its technical and financial support. Many other laws have recently been reviewed from a disability perspective with the support of the International Labour Organisation and proposals for amendments have been made. The whole idea of this project is to ensure that the barriers faced by persons with disabilities are eliminated thereby creating equal opportunities for everyone.²⁵

Secondly, International Labour Organization promotes employment opportunities for persons with Disabilities through a disability inclusion Support Service. This is aimed at assisting countries in their transition from disability policies and services based on separate provisions to an approach emphasizing the full participation of persons with disabilities in the mainstream.

It is essential to note that the scheme builds capacity at regional and national levels to effectively support the full participation of persons with disabilities in mainstream programmes and services focusing on vocational training, entrepreneurship development, employment and micro-finance.

It is clear from the foregoing that the International Labour Organization plays a crucial role in curbing disability based discrimination when accessing employment. It is now

²⁴ A O Reilly : The right to decent work for people with Disabilities ILO, Geneva 2007

²⁵ ILO.Strategies for skills acquisition and work for persons with disabilities in southern Africa, Zambia 2007

important at this point to consider the role played by the Government in curbing disability based discrimination when accessing employment.

2.2 The role of Government

2.2.1 What is Government?

Government refers to the institutional framework that administers the affairs of people in a particular country. Government further means government of the republic of Zambia²⁶ In this regard, the government plays a role in curbing disability based discrimination. The role of the government in promoting equal opportunities for persons with disabilities has been shown through the pronouncements by its officials, enactment of laws and creation of institutions to perform functions in that regard.

2.2.2 Pronouncements by government officials

The Zambian government is committed to ensuring that persons with disabilities have equal access to employment. This can be supported by quoting Mr. Kaingu Michael in his Speech during a conference held in Lusaka in which he stated that:

“The Zambia government is keen and committed to promoting the affairs of persons with disabilities including access to employment.”²⁷

²⁶ Section 2 of the Interpretation of General Provisions Act Chapter 2 of the Laws of Zambia

²⁷ Honourable Michael Kaingu, Minister for Community Development and Social Services during official opening of the People with Intellectual Disabilities: Opening Pathways to Training and Employment in the African Region 9 – 11 March 2010

Furthermore, His Excellency the President of the Republic of Zambia Mr. Rupiah Banda in his opening address to the National Assembly 2010 clearly stated that the plight of persons with disabilities is on government's agenda. It is clear that by these pronouncements the government is keen in ensuring that the plight of Persons with Disabilities is addressed including access to employment.

2.2.3 Formulation of Laws

Furthermore, the Government has shown its settled intention in promoting employment opportunities for persons with disabilities by enacting a number of laws.²⁸ These Laws include the Persons with Disabilities Act Chapter 65 of the Laws of Zambia which will be discussed in the next chapter in detail. This piece of legislation does not allow discrimination on grounds of disabilities when accessing employment. Secondly, the Constitution is another manifestation of government's intention in curbing disability based discrimination. This is because the government in power drives the Constitution making process in terms of political will and financial support. In Zambia, the constitution is the supreme law of the land. It does not allow discrimination.

Article 23(1) provides that no law shall make any provision that is discriminatory either of itself or in its effect. Discrimination is defined in Article 23(3) which states that "discrimination means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description."²⁹

Though the constitution does not expressly mention persons with disabilities, it by necessary implication covers persons with disabilities. Having looked at the pronouncements by government and the laws, it is now important to consider the institutions through which government addresses the concerns of persons with Disabilities.

²⁸ Speech by the former minister of Community Development and Social services during the conference for persons with intellectual disabilities held in Lusaka on the 9-10th March 2010

²⁹ Article 23 of the Constitution of Republic of Zambia Chapter 1 of the Laws of Zambia

2.2.4 Institutions Established by Government to Address Employment concerns for Persons with Disabilities

The two institutions that government operates through in ensuring that there is no discrimination against persons with disabilities are the Ministry of Community Development and Social Services and the Zambia Agency for Persons with Disabilities. It is therefore vital to examine their specific roles in curbing disability based discrimination.

2.2.4.1 Ministry of Community Development and Social Services

The government ensures that persons with disabilities are protected against discrimination when accessing employment through Policy development. It is through the Ministry of Community Development and Social Services that policies are formulated. An example of a policy that has been formulated is the National Employment and Labour Market Policy (NELMP) adopted in 2005. This policy provides a major focus for pro-employment service strategies and focuses on special interest groups including people with disabilities. It is vital to note that discussions are in progress on the expansion of an accomplishment plan to deal with disability issues contained in this policy. Additionally, a disability policy with reference to the professional training of persons with disabilities was adopted in 2007 and a national plan of action on comprehensive professional training is presently being developed, with support from the International Labour Organization. It is important to note that all the policy guidelines are in line with the International Labour Organization Conventions which are concerned with curbing discrimination.³⁰

2.2.4.2 The role of Zambia Agency for Persons with Disabilities

Zambia Agency for Persons with Disabilities is established under Section 3 of the Persons with Disabilities Act Chapter 65 of the Laws of Zambia. Section 6 provides for the functions of the Agency which are to:

³⁰ Interview with Mubita Nawa. National Coordinator on Disability issues in Zambia. 02/10/2010

plan, promote and administer services for all categories of persons with disabilities, keep statistical records relating to incidences and causes of disabilities, which may be used for the planning, promotion, administration and evaluation of services for persons with disabilities, keep a register of persons with disabilities, provide rehabilitation, training and welfare services to persons with disabilities, promote research into general rehabilitation programmes for persons with disabilities, to promote public awareness relating to the prevention of disabilities and the care of persons with disabilities and co-operate with ministries and other organizations in the provision of preventive, educational, training, employment and rehabilitation and other welfare services for persons with disabilities³¹.

It is clear that the Zambia Agency for persons with Disabilities has the responsibility of coordinating the implementation of the National Policy on Disability and acts as an advisory body to the Ministry of Community Development and Social Services. It provides a wide range of social services to persons with disabilities both at individual and family level. Zambia Agency for Persons with Disabilities provides skills and employment to persons with Disabilities through its farm centres and works with Disabled Peoples Organizations. The Disabled Peoples Organizations include Disability Initiatives Foundation, Disacare Wheelchair Centre, Zambia National Library and Cultural Centre for the Blind and Zambia Association on the Employment for Persons with Disabilities.

Regard must be had to the fact that Zambia Agency for Persons with Disabilities is anchored on a vision that by 2030, persons with disabilities shall enjoy equal opportunities which are usually available in society and are essential for the fundamental elements of living and development.

Furthermore, Kafwambulula Chola, Chairman for Zambia Agency for Persons with Disabilities stated in the Post Newspaper dated 28th March, 2010 that:

“The institution recognizes the importance of other Ministries and the need to have a broader institutional framework to maximize the work being undertaken. Therefore, it has entered into institutional arrangements with various Ministries, NGOs and private sector to clearly articulate the interests of persons with disabilities particularly in the field of employment through National Policy on Disability”.

³¹ Section 6(a)(b)(c)(d)(e)(f) of the persons with Disabilities Act Chapter 65 of the Laws of Zambia

The government is committed to ensuring that Persons with Disabilities are treated equally as they access employment. The government is attempting to realize its keen interest through the Zambia Agency for persons with Disabilities and the Ministry of Community Development and Social Services.

2.3 The role of Non Governmental Organizations

2.3.1 What is a Non -Governmental Organization?

Nongovernmental organization refers to any non profit, voluntary citizen's group which is organized at local or international level.³² Some are organized around specific issues. When it comes to employment, Non Governmental Organizations advocate and encourage equal opportunities for persons with disabilities. In this regard, it is important to examine their role in curbing disability based discrimination.

2.3.2 What have NGOs done?

NGOs play a role in ensuring that persons with disabilities are not discriminated against. One of the NGOs is the Zambia Federation of the Disabled (ZAFOD); it is an umbrella organization representing several disabled persons organizations. The main organizations that form ZAFOD include Zambia National Association of Disabled Women, Zambia National Association of the Deaf, Zambian National Association of the Hearing Impaired, Zambian National Association of the Partially Sighted, Zambia National Association of the Physically Handicapped, Zambian Association of Children and Adults with Learning Disabilities, Zambian National Federation of the Blind, National Vocational and Rehabilitation Centre, Zambia Association of Parents of Children with Disabilities, Disability Initiatives Foundation, Disacare Wheelchair Centre, Zambia National Library and Cultural Centre for the Blind and Zambia Association on the Employment for Persons with Disabilities. Its main activities include advocacy and

³² M. Todaro, S. Smith. **Economic Development**. 8th Ed. 2003. India: Dorling Kindersley. 2003

awareness-raising. It also provides diminutive loans to people with disabilities and training in small-scale business management.

Being the umbrella organization, Zambia Federation of the Disabled (ZAFOD) embarked on a project called Advancing Disabilities Quality in 2008. This project ensures that persons with disabilities are treated equally as they access employment. In one instance, a fully qualified prospective employee was denied employment on grounds of his disability. The employer actually stated in the letter of regret that it could not be possible for them to employ him by reason of his disability. Zambia Federation of the Disabled (ZAFOD) investigated the matter which saw the complainant being given a job and awarded damages.³³

Zambia Federation of the Disabled (ZAFOD) is also premised on carrying out accessibility audits in ensuring that all working places or premises are user friendly to persons with disabilities. This therefore curbs disability based discrimination because everyone will have access to the premises notwithstanding the nature of their physical status.³⁴ From the foregoing, it can be said that ZAFOD plays an instrumental role in curbing disability based discrimination when persons with disabilities seek employment.

2.3.3 Legal Resources Foundation

Another NGO that plays a role to a large extent in ensuring employment concerns of the disabled are addressed is the Legal Resources Foundation. It was founded in the late 1990s. It provides free legal services to indigent members of the general public through offering legal advice and representation in courts of law. It employs qualified Lawyers as well as Paralegal officers who discharge the duties.

³³ Interview with Ms Likasi Ruth officer at Zambia Federation of the Disabled on 21th October 2010 at 12:30

³⁴ Zambia Federation of Disability Organization-Advancing Disability Equality Project, Policy brief 2008

2.3.4 Zambia Association on Employment of Persons with Disabilities

Zambia Association on Employment of Persons with Disabilities (ZAEPD) is also vital in curbing disability based discrimination in accessing employment. It is an organization, officially registered in 2001. The principle of the organization is to find and create jobs for skilled persons with disabilities and, as a result, improve the living standard of persons with disabilities and their families in Zambia³⁵.

Zambia Association on Employment of Persons with Disabilities (ZAEPD) collaborates with the Finnish Association on Intellectual Development Disabilities (FAIDD), which financially supports a number of successful capacity-building and employment programmes based in five provinces namely Lusaka, Central, Copperbelt, Luapula and Southern Provinces. The partnership is in terms of money so as to improve the services provided by Zambia Association on Employment of Persons with Disabilities (ZAEPD).

Furthermore, Zambia Association on Employment of Persons with Disabilities (ZAEPD) has invested in a piggery, block marketing, bee keeping, fish farming and poultry initiatives in the above provinces. These initiatives employ both persons with disabilities and non-disabled persons.

It is important to appreciate that each scheme provides a constructive illustration of what successful vocational guidance and on-the-job support can provide to people with disabilities. This helps to raise awareness on the importance of diversity in accessing employment.

2.3.5 Finnish Association on Intellectual Development Disabilities (FAIDD)

This is a Finnish initiative organization premised on ensuring that the employment plight of persons with disabilities is addressed. Regard must be had to the fact that the Finnish

³⁵ Zambia Association on Employment of Persons with Disabilities report for the year 2009

Association on Intellectual Development Disabilities carries out research. For instance it carried out a research which assessed joblessness and poverty levels and provided the confirmation-based data to design future programmes. The data emphasized that traditional sectors such as agriculture, hospitality and manufacturing were more receptive to employment of persons with disabilities.

Secondly, FAIDD embarked on a project called the Inclusion Programme, which provides peer support for girls and women with intellectual disabilities and was conceived as a result of the obvious absence of girls and women in vocational training courses and employment population. The programme addresses the negative attitudes and practices that hinder girls and women from accessing employment through public awareness campaigns. It is clear from the foregoing that indeed Non Governmental Organizations are instrumental in curbing disability based discrimination.

2.4 Conclusion

This chapter has discussed the role played by ILO, Government and NGOs in curbing disability based discrimination for persons with disabilities when accessing employment. More importantly, ILO curbs discrimination against persons with disabilities by ensuring that member states observe the international labour standards. ILO receives reports from member states and carries out audits. The nature of these audits is to ensure that there is compliance with labour standards. The government through the Ministry of Community Development and Social Services and Zambia Agency for Persons with Disabilities formulates policies that are aimed at prohibiting discrimination when accessing employment. The Government has further expressed its intention of ensuring that persons with disabilities are protected against discrimination through enacting a number of laws such as the constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia and the Persons with Disabilities Act Chapter 65 of the Laws of Zambia. All these laws expressly or by necessary implication cover persons with disabilities. The NGOs also play a critical role in ensuring that persons with disabilities have equal access to employment. In all fairness, the role played by the Government, ILO and NGOs in prohibiting discrimination against persons with disabilities cannot be under estimated at

all. Their functions are centered on ensuring that the principles of equality are adhered to in the employment sector thereby curbing disability based discrimination when accessing employment.

The next chapter undertakes to critically analyze the legal framework governing persons with disabilities when accessing employment in Zambia.

CHAPTER THREE

THE LAW GOVERNING PERSONS WITH DISABILITIES IN ZAMBIA

3.0 Introduction

Many countries throughout the world have, in the past years, enacted laws aimed at promoting the rights of persons with disabilities to full and equal participation in society. Zambia is not an exception. In the field of employment, there are several laws that govern matters relating to persons with disabilities. In this regard, the laws under consideration include the Constitution Chapter 1 of the Laws of Zambia, the Persons with Disabilities Act Chapter 65 of the Laws of Zambia, the Employment Act Chapter 268 of the Laws of Zambia, the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia, the Apprenticeship Act Chapter 275 of the Laws of Zambia and the Minimum Wages and Conditions of Employment Chapter 276 of the Laws of Zambia, and its Statutory Instruments 1, 2 and 3 of 2011.

These laws cover persons with disabilities by either specific or general application. Therefore this chapter highlights the extent to which the law protects persons with disabilities in accessing employment.

3.1 The Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia

The constitution simply defines the core aims and existence of a country.³⁶ It prescribes fundamental political principles, and establishing the structure, procedures, powers and duties of a government. Most national constitutions also guarantee certain rights to the people³⁷.

³⁶ V.D. Mahajan, Political theory (4th Ed), New Delhi: S Chand & Company (2003), p. 486.

³⁷ M. M. Munalula, Legal process: Zambian cases, legislation and commentaries. Lusaka: UNZA Press (2004), p. 76

In Zambia, it is the supreme law of the land which derives its power from the people. This is provided for in Article 1(3). It states that:

“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”.

In the case of *Christine Mulundika v the People*³⁸, the appellant challenged the constitutionality of certain provisions of the Public Order Act Cap 104, especially section 5(4). The court held that section 5(4) of the Public Order Act Cap 104 contravenes articles 20 and 21 of the Constitution and is null and void. It is clear that that the thinking behind was that indeed the constitution is the supreme law of the land.

Therefore, all laws including those in the sphere of employment for persons with disabilities have been enacted in consonance with the provisions of the constitution.

Part III of the Constitution guarantees the fundamental rights and freedoms of people. Some of the rights are contained in Articles 11 and 23. Article 11 provides that

“it is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status”.

The words “every person” refers to all citizens of the Republic of Zambia including persons with disabilities. Furthermore, Article 23 states that a law shall not make any provision that is discriminatory either of itself or in its effect. It follows that where a party is denied access to employment by virtue of his or her disability, such an individual can move the court by way of a petition as espoused in Article 28 and rely on Article 23 of the Constitution. The petitioner will claim that his rights are being, are likely to be or are being violated. The High Court for Zambia has constitutional powers to grant remedies as may consider reasonable and fair.

Clearly, the provisions of Article 28 of the Zambian Constitution provide for and confer far reaching authority on the Zambian High Court. This authority is in respect of the High

³⁸ 1995 ZR 20

Court for Zambia's ability to make any order necessary to safe guard the rights of the ordinary man. The Article in question is not only meant to stop infringement of rights as they occur but is enacted in a manner as to prevent possible future infringement of the rights of an individual. Therefore, the constitution protects the rights of all the citizens regardless of physical appearance or originality

The Constitution contains directive principles of state policy in Part IX. These are Economic, Social and Cultural Rights which the government is not able to afford protection immediately. It is important to note that these only serve as guidance to the government in the development of national policies, implementation of national policies, making and enactment of laws and application of the constitution and any other law³⁹. Article 110(f) of the Constitution states that,

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

Pursuant to this article, the government must take progressive measures to ensure that persons with disabilities are protected.

3.2 Employment Act Chapter 268 of the Laws of Zambia

The main Act that governs employment related matters in Zambia is the Employment Act Chapter 268 of the laws of Zambia. The Employment Act defines an employee as:

“any person who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or kind, but does not include a person who is employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee”⁴⁰.

³⁹ Article 111 of the Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia

⁴⁰ Section 3 of the Employment Act Chapter 268 of the Laws of Zambia

It is important to note that the Employment Act is of general application in the sphere of employment. This is because it covers everyone. This means that even persons with disabilities are protected by this Act for as long as they qualified.

3.3 The Minimum Wages and Conditions of Employment Act Chapter 276 of the Laws of Zambia

It is the duty of government through the ministry of Labour and Security to promote job creation on the labour market and ensure that livelihoods of people are improved. The government of the Republic of Zambia has been committed to ensuring proper management of employment and labour sector in the country in order to effectively reduce poverty among people. In attempting to achieve this, a law was enacted in 1982. It is called the Minimum Wages and Condition of Employment Act⁴¹

In its preamble, it provides that it is An Act to repeal and replace the Minimum Wages, Wages Councils and Conditions of Employment Act; to make provision for regulating minimum wage levels and minimum conditions of employment; and to provide for matters connected with or incidental to the foregoing.

Section 3 (1) provides that:

“ If the Minister is of the opinion that no adequate provision exists for the effective regulation of minimum wages or minimum conditions of employment for any group of workers he may, by statutory order, prescribe, rates of wages to be paid to workers by the hour, day, week or month, normal hours of work in any day or week, normal working days in any week or month, rates for any work done in excess of or outside the normal hours of work or the normal working days, rates of paid holidays or any conditions attaching to the granting of such holidays, rates for any piecework, rates of allowance for any food or housing; and any other matter which in the opinion of the Minister is necessary or expedient to prescribe”

Arising from the powers of the minister in section 3(1) of the above Act, the new Statutory Instruments of 7th January 2011 were passed. The new Minimum Wages and Conditions of Employment for protected employees that are contained in Statutory Instruments No 1 and 2 of 2011 replaced those in Statutory Instruments No 56 and 57 for

⁴¹ Chapter 276 of the Laws of Zambia

shop workers and general establishments. The new Statutory Instruments address some of the matters that are not covered in the Employment Act. One of such is the minimum wage for protected employees that are engaged in shops, general establishments. The minimum amount of money to be paid to such workers was increased from K268, 800 to K419, 000 per month. The minimum amount payable to domestic workers is now K250, 000. It was observed by the government that domestic workers in the country were also the most exploited and abused and therefore developed regulations to administer the determination of wages. Therefore, Statutory Instrument No 3 of 2011 was passed.

It is important to note that these Statutory Instruments promote access to employment as they afford protection to everyone. Therefore, where a person with disability alleges that some provisions have been breached, he or she is free to take the matter to court.

3.4 Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia

The Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia is yet another piece of legislation that affords protection to persons with disabilities in securing employment. The Act came into existence in a bid to resolve disputes between employees and employers. The importance of this Act in curbing disability discrimination cannot be over emphasized. Perhaps the most important section to the foregoing is 108(1). It provides that,

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

Subsection (2) *provides*:

“that any employee who has reasonable cause to believe that the employees' services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the Court”

Persons with disabilities who may face the situations stated in this provision are free to take their matters to the Industrial and Labour Relations Court for redress.

3.5 Apprenticeship Act Chapter 275 of the Laws of Zambia

The aim of the Act is to regulate the employment of apprentices in various trades; to provide for the registration, transfer, modification and rescission of contracts of apprenticeship; to provide for the appointment of inspectors and to specify their powers; to provide for the making of regulations; and to provide for matters incidental to or connected with the foregoing.

Essentially, an apprenticeship is a means of taking on an individual who will learn the skills and practices that are associated with a given career path⁴². Most of their training is done on the job while working for an employer who helps the apprentices learn their trade, in exchange for their continuing labour for an agreed period after they become skilled.⁴³

The Act is considered as an important means of acquiring experience and through which employment opportunities for persons with disabilities can improve. It will be discriminatory for any person controlling an apprentice to discriminate against a qualified person with a disability on the basis of a disabling condition in admission to employment, a program established to provide apprenticeship or other training. This is not expressly provided for but by virtue of the Act deriving its existence from the constitution, discrimination is forbidden. This piece of legislation therefore affords protection by general application to persons with disabilities in accessing employment.

3.6 The Persons with Disabilities Act Chapter 65 of the Laws of Zambia

It is important to note that all the laws discussed above are of general application. Therefore, it is vital to examine the law that specifically addresses issues of persons with disabilities. This law is called the Persons with Disabilities Act Chapter 65 of the Laws of Zambia. It was enacted in 1996. The Act came into existence because the Handicapped

⁴² L Paul. The Oxford Illustrated History of Britain. Oxford publishers.(1984) pp. 382

⁴³ Section 3(b) of the Apprenticeship Act Chapter 275 of the Laws of Zambia

Act 1968 was inadequate in addressing the issues of persons with disabilities. This is because it lacked provisions on certain disability issues, for instance the one relating to promoting equal access to employment opportunities.

The Act contains salient features that curb disability based discrimination. The fundamental nature of this Act is to disallow discrimination on grounds of disability. One important provision is section 19. It describes “discrimination” as firstly,

“treating a person with a disability less favourably from a person without a disability”.

This situation refers to direct discrimination because it is one involving persons with disabilities being treated differently as compared with the non disabled. For instance, where two people with same qualifications apply for a job, same treatment must be afforded in arriving at whom the company has employed. Anything to the contrary will amount to discrimination.

Secondly,

“treating a person with a disability less favourably from another person with a disability”.

This situation refers to the type of discrimination that occurs where two or more persons with disabilities are afforded different treatment.

Thirdly,

“requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over; or not providing different services or conditions required for that disability”

This type of discrimination occurs where persons with disabilities are subjected to undertake activities which persons without disabilities have advantage over.

It is clear that the provision is sufficient in defining disability based discrimination for persons with disabilities as they access employment. Disability discrimination can take many different forms. It can consist of comments about the disability, made by managers or executives, accompanied by some type of adverse employment action or decision.

Such action might include refusal to promote and less favorable employment conditions. It is important to note that the purpose of the Persons with Disabilities Act is to enable disabled persons live independently in society by enjoying equal opportunities at work. It does this by ensuring that persons with disabilities are not discriminated against as they access employment. As noted above disability related discrimination occurs where less favourable treatment is given to the disabled person for a reason related to his or her disability and the employer can not show justification for the said treatment.⁴⁴

It is important to note that justification cannot be accepted if the situation is one rendering it possible to adjust. For example where a disabled person applies for employment with the Mining Company, the Mining Company can refuse his or her application on account of disability. This is because such an individual cannot succeed in working underground taking into account the nature of the job. However, if the situation is that there is a department for persons with disabilities then it is incumbent upon the mining authorities to adjust and provide employment. Failure to do so will amount to discrimination thereby breaching the provisions of the Persons with Disabilities Act Chapter 65 of the Laws of Zambia.

In the English case of Nottingham County Council v Meikles⁴⁵ which was decided on similar provisions as those in the Persons with Disabilities Act, the Court of Appeal found that the failure by the employer to make necessary adjustments to fit the disabled person amounted to disability related discrimination. Therefore, the disabled person was awarded damages and afforded employment.

Section 20 is also essential in curbing disability based discrimination in the context of employment. Under this provision of the law, the employer is under obligation to treat individuals the same way notwithstanding the nature of their status. Section 20 provides

⁴⁴ K Abbott. Business Law, Cases and Materials 8th Edition: South Western Publishers 2007

⁴⁵ 2004 AC 34

“that an employer shall not treat a person with a disability differently from a person without a disability when: advertising for employment, recruiting persons for employment, offering terms or conditions of employment, considering promotion, transferring or training such persons; or providing any other benefits related to employment.”

The above provision means firstly, where an employer places an advert for employment, the employer is precluded from discriminating unless the circumstances are those rendering justification.

Secondly, it means that during the process of recruitment, every person must be subjected to the same modalities. The employer must not deliberately make it difficult for persons with disabilities not to pass the interviews by merely taking into account their physical disabilities. Therefore, where a person with a disability has met the necessary qualifications, section 20 obliges the employer not to discriminate but to provide employment.

Lastly, it means that even where employment is offered to person with disabilities, the employer must for all intents and purposes offer terms and conditions that are standard. By standard terms, is meant terms and conditions which are in consonance with the law. Where the employer, takes advantage of the situation and decides to offer exploitative conditions, then he will be in breach of section 20 of the Persons with Disabilities Act Chapter 65 of the Laws of Zambia. From the foregoing, it can be said that section 20 is critical in protecting persons with disabilities as they access employment. It can be seen from the foregoing that the Persons with Disabilities Act prohibits discrimination against a qualified individual with regard to job application procedures, the hiring, or discharge of employees, terms, conditions and privileges of employment.

It can be concluded that the law governing employment for persons with disabilities in Zambia is broad. Most of the laws apply to persons with disabilities in general sense. The Persons with Disabilities Act Chapter 65 of the Laws of Zambia is the only piece of legislation that applies to persons with disabilities in specific sense. Its fundamental nature is to prohibit discrimination on grounds of disabilities.

Despite having laws in place, people consider persons with disabilities in a different way as compared to persons without disabilities. It is important to consider the employer's perception of persons with disabilities.

3.7 Employer's Perception of the Disabled Persons

Although, there are many laws that govern the issues related to persons with disabilities, many are still struggling to enter the labour market. It is vital to note that persons with disabilities habitually find employment difficult to acquire and feel excluded from the labour market because of their disabilities. This impenetrability is often traced to the attitudes of employers toward employing persons with disabilities.⁴⁶ Negative attitudes are often acknowledged as a major barricade to successful job placement⁴⁷. Negative attitudes are kept in place by mythologies regarding people with disabilities as workers. The above views can be amplified by quoting Mr. Mubita Nawa⁴⁸ who stated that:

“The major impediment to persons with disabilities as they access employment is attitude by the employers. Employers tend to concentrate on ones outlook than the skill and diligence that persons with disabilities possess yet persons with disabilities depending on their individual suitability in terms of skill and knowledge are capable of doing anything”.

This means that the laws are not comprehensive to cover all disability issues. They don't provide how mythologies about persons with disabilities can be addressed.

3.8 Practical Difficulties Faced By Persons with Disabilities as they seek employment

The practical obstacle that persons with disabilities face is stigma. Stigma is synonymous with dishonor. Persons with disabilities are considered to be of little value in the sphere

⁴⁶ Mwanza Yona Sole Proprietor of Staring Point Enterprise Petauke on 15th December 2010

⁴⁷ Interview with Musonda Mwamba a Person with disability 2010 10th December, Petauke

⁴⁸ Mr. Mubita Inambao Nawa National Coordinator Disability Issues ILO Zambia 02/10/ 2010

of employment.⁴⁹ That is to say the professionals which the disabled persons have come into contact with, fail to appreciate their full potential therefore this creates the impossibilities for them to access employment.⁵⁰ Following this, they are discriminated against as they access employment.⁵¹ This is premised on negative perceptions that employers have about persons with disabilities. It is attributable to lack of sensitization to employers on the rights of persons with disabilities and issues involved in accessing employment.

3.9 Conclusion

This chapter has discussed the legal framework governing persons with disabilities in Zambia. It has highlighted how the current law affords protections to persons with disabilities as they access employment. It has also discussed the employer's perception of persons with disabilities during recruitment process. The next chapter seeks to provide a comparative analysis of the law governing persons with disabilities in developed and developing countries citing main commonalities and disparities in curbing disability based discrimination when accessing employment. The case study shall be Britain and Malawi.

⁴⁹ P.Daka. Obligatory Law Essay: How adequate is the law protecting the welfare of persons with disabilities .Unza 1993

⁵⁰ D, M Boswell. The Handicapped Persons in the Community (London Fairs Stock publications 1974

⁵¹ Interview with Masauso Mwale: Person with Disabilities 15/12/10

CHAPTER 4

COMPARATIVE ANALYSIS

4.0 Introduction

The issue of curbing disability based discrimination is crucial throughout the world be it in developed or undeveloped countries. This is because persons with disabilities are human beings like anyone else; therefore, their rights must be respected all the time. In this regard, this chapter seeks to provide a comparative analysis of the law governing persons with disabilities in other countries taking Britain and Malawi as case studies. The comparative analysis is premised on examining the extent to which the law affords protection to persons with disabilities in accessing employment.

4.1 Legal Framework in Britain between 1995 And 2010

4.1.1 The Disability Discrimination Act of 1995

The issue of curbing disability discrimination in the sphere of employment has been a subject of much consideration in the United Kingdom. Therefore, the Disability Discrimination Act came into existence in 1995. It existed up to 2010 October. It addressed the challenges which most disabled people experience in everyday life for instance, in accessing employment, goods and services, transport, and education. The Disability Discrimination Act applied to anyone who provided a service to the general public - whether it was a small corner shop or large Multinational Corporation, placing a duty on them to make reasonable adjustments to the way they provided their service so that they did not discriminate against disabled prospective employees.⁵²

⁵² P Toynbee, 'Harman's law is Labour's biggest idea for 11 years' (13.1.2009) The Guardian Newspaper: London , United Kingdom

Section 53A of the Disability Discrimination Act 1995 provided for the creation of the Disability Rights Commission whose main responsibility was to give practical guidance on prevention of disability discrimination and promote equality of opportunities. It is important to note that the Disability Rights Commission issued a code of practice to guide employers. This code prohibited discrimination against persons with disabilities as they access employment. The Disability Rights Commission directly supervised the manner in which the code was put into practice.

It can be said from the foregoing that the issue of curbing disability based discrimination has been critical from time immemorial. This has been through the enactment of laws. The establishment of the Disability Rights Commission was a manifestation of the government's intention to curbing disability based discrimination against persons with disabilities as they access employment.

4.1.2 The Equality Act of 2010

The Disability Discrimination Act was repealed in October 2010. It was replaced by the Equality Act. Therefore, all disability related issues are governed by the Equality Act of 2010. The Act fulfils a manifesto commitment of the Labour Party in the 2005 general elections. During its introduction before Parliament, it was said that:

"the Government is committed to creating a fair society with fair chances for everyone. For society to be fair, people must have the chance to live their lives freely and fulfill their potential. To achieve this, we need to tackle inequality and root out discrimination. Equality not only has benefits for individuals but also for society and the economy too. A more equal workforce is a stronger workforce. A more equal society is one more at ease with itself. To help us create the equal and fair society we all want to see, we will introduce an important new package of measures".

From the foregoing, it can be said that the essence of the Equality Act is to prohibit discrimination. This is espoused expressly in section 14 of the Act. This means that where a person with disability has been denied employment by virtue of his or her impairment, he or she can take the matter to court on the strength of the Equality Act and allege that they have been discriminated against. The Act is more comprehensive than the Disability Discrimination Act 1995. This is because; it does not only address disability

related discrimination but also other aspects. These include discrimination on the basis of race, sex, status, ethnic group and so on.

4.1.3 How does the Act afford protection?

For persons with disabilities to be afforded protection under the Equality Act, they must be qualified. This means that the applicant must be able to perform the essential functions of the position. Therefore, a person who has no hands is not qualified to be a lifeguard. But a disabled person is qualified if he or she can perform the essential functions of the job with a reasonable degree of accommodation by the institution. A lecturer whose legs are amputated may be employed if the university facilities are user friendly. This is because if the facilities are not user friendly, it may be difficult for him or her to render his or her services with skill and diligence as the environment will act as an impediment. This is covered in part V of the Equality Act 2010. Therefore, qualification is a question of fact in that the institution needs to define the fundamental responsibilities for every position.

Furthermore, Section 14 of the Equality Act 2010 prohibits discrimination on grounds of disability. This means that persons with disabilities should be treated the same way as persons without disabilities. Therefore, they are afforded equal opportunities as they access employment.

In addition, the employer is under legal obligation to provide reasonable accommodation in order to permit persons with disabilities to complete the application process for a job. This allows persons with disabilities to compete favourably with persons without disabilities.

It can be said from the foregoing that the government of United Kingdom is keen in ensuring that persons with disabilities are protected against discrimination as they access employment. This is because the Equality Act 2010 premises itself on creating a fair environment for everyone including the disabled. This is aimed at avoiding the ramifications of discrimination on society which may also affect the economy.

In conclusion, the Equality Act in the United Kingdom can be said to be an effective piece of legislation in curbing disability based discrimination against persons with disabilities in accessing employment. It makes the recruitment process fair. This is because the employer is under legal obligation to provide reasonable accommodation to persons with disabilities.

4.2 Malawi

Like other countries, the issue of disability discrimination in accessing employment is critical in Malawi. It ratified ILO Convention No 159 concerning Vocation Rehabilitation and Employment of Persons with Disabilities in 1986. Malawi also ratified the ILO Convention concerning Discrimination in Employment No 111. The underpinning principles of these Conventions are equal opportunity, equal treatment of the disabled persons and non discrimination. These principles are reflected in the country's laws as we shall note in due course. The Conventions also recognize the relevance of special positive measures in equalizing opportunities for persons with disabilities. Such measures are anchored on ensuring that persons with disabilities are not discriminated against as they access employment.⁵³

It is clear from the above, that the government of the Republic of Malawi acknowledges the relevance of international instruments that are concerned with promoting access to employment. This has been demonstrated by domesticating most of them into national laws.

Other than through conventions Malawi is committed to ensuring that persons with disabilities are protected against discrimination as they seek employment. This is manifested in Article 13 of the Constitution which in essence obliges the State to adopt

⁵³ ILO, Strategies for acquisition and work for Persons with disabilities in Southern Africa, Malawi February 2007

and implement policies and legislation aimed at ensuring fair opportunities in employment for persons with disabilities. In other words, these serve as guidance to the government in the development of national policies, implementation of national policies, making and enactment of laws and application of the constitution and any other law. Pursuant to this article, the government takes progressive measures to ensure that persons with disabilities are protected as they seek employment.

4.2.1 Legislation concerning disability

The Malawian Handicapped Act of 1971 provided for the creation of the Council for the Handicapped whose responsibility was to promote the welfare of persons with disabilities and to render advice to the minister responsible for disability issues and to provide training to persons with disabilities.

However, the Act was not comprehensive enough to address all disability related issues. Therefore, a new law was passed called the Disability Act in 2008. It focuses on combating disability based discrimination. The Act places an obligation on the state to ensure that persons with disabilities are provided with adequate access to employment opportunity in order to develop their skill. The Act further commits the State to take appropriate steps to make education accessible and makes it unlawful for any learning institution to deny persons with disabilities admission to any course it offers by reason of disability.⁵⁴ This is a good provision because with proper education persons with disabilities are able to access employment provided individual suitability is taken into account.

4.2.2 The Employment Act of Malawi 2000

It is important to note that the Employment Act is vital to disability issues in Malawi. It provides for continuing access to training which in turn promotes access to employment.

⁵⁴ The Malawian Disability Act 2000

Section 5 of the Act⁵⁵ makes it illegal to discriminate against any potential employee on grounds of disability. This means that the Employment Act of Malawi curbs disability based discrimination against persons with disabilities as they access employment by way of specific application.

It is clear that disability issues are critical in Malawi. The direct inclusion of persons with disabilities in the Employment Act of Malawi is fundamental in prohibiting discrimination against persons with disabilities as they access employment.

4.3 Conclusion

In conclusion, this chapter has discussed the approach taken by other countries. One issue that has been brought to the fore is that protecting persons with disabilities against discrimination in the sphere of employment opportunities is very crucial. The Equality Act 2010 in U.K is noteworthy in curbing disability based discrimination in the employment sector. The Equality Act obliges the employer to provide reasonable accommodation to persons with disabilities during recruitment process.

Furthermore, laws in Malawi are essential to persons with disabilities. Perhaps, the most important provision is one contained in the Employment Act which expressly forbids discrimination against persons with disabilities as they seek employment.

The next chapter draws conclusions based on the facts presented in this paper and make recommendations.

⁵⁵ The Employment Act of Malawi 2000

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.0 General Conclusion

The general conclusion is that persons with disabilities seek employment like anyone else in a bid to improve their well being and feel fulfilled. In the process of securing employment, they face discrimination on the basis of their status. Disability discrimination refers to a situation where persons with disabilities are discriminated on the basis of their status. Therefore, the law is used as an instrument of curbing disability based discrimination.

The issue of disability is critical in Zambia. This is because it has been on the political agenda since independence. This has been manifested by enacting laws. The law governing persons with disabilities in Zambia is broad. As noted, most of the laws apply to persons with disabilities generally. This is because persons with disabilities are not expressly stated. The laws that apply to persons with disabilities by necessary implication include, Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia, the Employment Act Chapter 268 of the Laws of Zambia, the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia, the Apprenticeship Act Chapter 275 of the Laws of Zambia and the Minimum Wages and Conditions of Employment Act Chapter 276 of the Laws of Zambia with its Statutory Instruments 1, 2 and 3 of 7th January 2011.

On the other hand, the Persons with Disabilities Act Chapter 65 of the Laws of Zambia is the only piece of legislation that covers employment issues of the disabled persons in a specific sense.

In addition, it has been brought to the fore that the roles played by the government, International Labour Organisation and Non Government Organisations are critical in curbing disability based discrimination. These institutions provide assistance to persons

with disabilities in form of employment, training and small scale loans. Furthermore, the International Labour Organisation has created a number of conventions as well as international treaties on employment matters and any matter of industrial relations. Members ratify, however ratification alone means nothing without domestication. ILO also issues recommendations.

However, despite the roles played by the Government, International Labour Organisation and Non Governmental Organizations, discrimination against persons with disabilities as they seek employment has continued.

Furthermore, the research has also established that negative perceptions by the employers are widespread. Employers tend to concentrate on the outward look of persons with disabilities rather than the skill and qualifications that they possess. This has prevented persons with disabilities from accessing employment.

The practical obstacle that persons with disabilities face is stigma. Stigma is synonymous with dishonour. Persons with disabilities are considered to be of little value in the sphere of employment. That is to say, the professionals which the disabled persons have come into contact with, fail to appreciate their full potential therefore this creates the impossibilities for them to access employment

Lastly, it has been established that the issue of curbing disability based discrimination is critical even in other countries whether developed or undeveloped. For instance, the Equality Act 2010 in the United Kingdom affords protection to persons with disabilities as they seek employment. Similarly, Malawi's Employment Act of 2000 expressly forbids discrimination against persons with disabilities as they seek employment.

Arising from the facts presented, this research has identified the problems faced by persons with disabilities in seeking employment. It has also analyzed the extent to which the law governing persons with disabilities curbs disability-related discrimination with regard to accessing employment.

Therefore, this paper will accordingly make recommendations that will attempt to curb disability discrimination.

5.1 Recommendations

5.1.1 Challenging Myths and Attitudes

Persons with disabilities like others seek and obtain qualifications in a bid to gain employment. However, most employers tend to be reluctant in employing them because of mythologies particularly that they are not productive. Therefore, the government and other relevant authorities should take action to raise awareness in society about persons with disabilities' rights, needs, potential and their contribution.

5.1.2 Empowering persons with disabilities

There is need to recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in labour market. This can be done through sensitizing them on their rights and promoting the full participation in the development of policies and practices related to employment rights at local, national, regional, and global levels.

5.1.3 Integration of persons with disabilities into employment

Zambia should actively support the integration of persons with disabilities into employment. This active support could occur through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small businesses, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. Employers should be encouraged by the State to make reasonable adjustments to accommodate persons with disabilities.

5.1. 4 Establishing effective data base on persons with disabilities in employment

The research further recommends for the creation of effective data base at Zambia Agency for Persons with Disabilities. This will allow the concerned stake holders to strategize, formulate and implement policies that are aimed at curbing discrimination against persons with disabilities as they access employment. This will also allow Zambia Agency for Persons with Disabilities to distribute up-to-date information on available programmes and services to persons with disabilities and the public at large.

5.1.5 Non Governmental Organizations Should Coordinate

The Non Governmental Organizations should consider building networks, coalitions and alliances in civil society. This will allow unity and coordination of efforts to promote employment opportunities for persons with disabilities. This will be through development and implementation of policies and laws. It can also be through fostering network opportunities, together with information sharing through the organization study visits and conferences or seminars.

5.1.6 Increase funding to Zambia Agency for Persons with Disabilities

It is only with adequate funding that Zambia Agency for Persons with Disabilities can fully discharge its functions. It is proposed that the institution needs to be provided with the necessary and adequate financial resources. When this is done, it will contribute to the curbing of disability based discrimination in accessing employment. In otherwords, this will also enable the institution to meet the demands of persons with disabilities as they seek employment.

5.1.7 Creation of the Tribunal for Persons with Disabilities

It is recommended that the Persons with Disabilities Act be amended so as to create the tribunal for Persons with Disabilities. This will make it cheaper, affordable, flexible, and easier for persons with disabilities to have their issues resolved expediently and effectively. This research recommends that the jurisdiction of the tribunal should be:

- (a) To inquire into and make awards and decisions in any dispute relating to disability discrimination under the Persons with Disabilities Act;
- (b) To inquire into, and make awards and decisions relating to any dispute of compensation to be paid under the Persons with Disabilities Act;
- (c) Generally to inquire and adjudicate upon any matter affecting the persons with disabilities rights and obligations
- (d) To perform such acts and carry out such duties as may be prescribed under the Persons with Disabilities Act or any other written law.

5.2 Conclusion

It is clear that the issue of curbing disability based discrimination is critical in promoting employment opportunities for persons with disabilities. Therefore, the recommendations submitted will contribute and afford protection to persons with disabilities in accessing employment.

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