

**A CRITICAL ANALYSIS OF THE EFFICACY OF THE PERSONS WITH  
DISABILITIES ACT IN PROMOTING AND PROTECTING THE WELFARE  
OF PERSONS WITH DISABILITIES: A CASE OF THE PHYSICALLY  
DISABLED.**

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

**UNZA**

**2011**

### Declaration

I, **Mariah Mbewe, (27036456 )** 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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**THE UNIVERSITY OF ZAMBIA**

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DISABILITIES ACT IN PROMOTING AND PROTECTING THE WELFARE  
OF PERSONS WITH DISABILITIES: A CASE OF THE PHYSICALLY  
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## **Abstract**

Persons with disabilities, specifically the physically disabled constitutes the largest group of the population comprising 35.2 percent of persons with disabilities, with a larger part living in rural areas. They have been and continue to be marginalized as a result of prejudice and as such they are discriminated against and excluded from the mainstream society. In this regard they are usually poor and engage in menial jobs and low income generating businesses.

Legislation on disability has been repealed and policies have been formulated to address disability issues, however, persons with disabilities continue to be marginalized. This therefore necessitates research into this area. Thus this essay pays attention to the Persons with Disabilities Act with the aim of determining its effectiveness in addressing matters of disability as well as whether it conforms to international values on disability especially with regards to the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). In this regard it examines different international instruments such as the instrument mentioned above.

This paper also looks at the necessity of harmonizing different Acts of Parliament in a manner that can assist in improving the welfare of persons with disabilities. It underscores the fact that issues of disability are cross-cutting issues in which regard every government ministry has a role to play in addressing the interests of persons with disabilities, and this calls for concerted efforts by the different ministries to improve the welfare of persons with disabilities. Essentially, this means that it is necessary that different Acts of Parliament are harmonized in a manner that addresses issues of disability effectively. Thus it looks at whether and the extent to which different Acts of Parliament address disability issues and gives recommendations to that effect.

## **Dedication**

To my father, Mr. Goodluck Mbewe, who taught me to cultivate the spirit of perseverance and for the sacrifices he made to my advantage as well as to all those who have contributed to my academic life. For this, I shall remain forever indebted to them and forever love and cherish them.

## **Acknowledgements**

Above all I wish to thank Jehovah God for making it possible for me to have come this far and I also wish to record my indebtedness and gratitude to my supervisor Miss C. Chitupila who made many perspective and helpful comments that helped shape this work. So grateful I am for her support and supervision.

I should like to express my particular gratitude to CAMFED Zambia for supporting me financially. I wish to thank my family for the unlimited support and for believing in me. My deep and profound gratitude goes to my sisters Diana Mbewe Sinyangwe and my twin sister Shera Mbewe, for the unwavering love, financial and emotional support.

I should like to thank Henry Mwewa my friend for supporting and inspiring me. I reaffirm my eternal devotion to you for always being there to help me maintain a proper perspective on life and living as well as for putting up with many weekends that went into typing and editing of this work. You've been a great friend and I am so deeply indebted to you.

I owe a great debt to Vivian Jumbe who inspired and strengthened me throughout the ordeal. I also wish to express great thanks to Mr. James Mwewa for the assistance rendered during data collection and Mr. Patrick Muyenga, the Rehabilitation Officer of ZAPD, for providing the necessary information and materials used in this dissertation. I also wish to express my gratitude to Thomas Banda for his valuable comments and for being there for me.

I wish to express my gratitude to my friends Ottiliah Muhwende, Falesi Banda, Racheal Munyemba, Grant Chisapa, Grace Kambinda, Tresford Chikonde and to many others whose names are just too numerous to mention. Thanks a lot for being the great people you have been. But for you, I would not have treaded this far.

I owe a great debt to the graduating law class 2011 for being helpful in every way possible; am grateful to you all for the support that you continually offered to me in my pursuit of an LLB degree.

## **Table of Statutes**

The Constitution Cap. 1 of the Laws of Zambia

Education Cap. 134 of the Laws of Zambia

The Employment Act Cap. 270 of the Laws of Zambia

Citizen Economic Empowerment Act 2006

Persons with Disabilities Act Cap. 65 of the Laws of Zambia

Public Health Cap. 295 of the Laws of Zambia

Technical Education, Vocational and Entrepreneurship Training Act 1998

Town and Country Planning Act Cap. 283 of the Laws of Zambia

### **Table of International Instruments**

UN Convention on the Rights of Persons with Disabilities (UN CRPD)

Universal Declaration on Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No.159) 1983

**Table of Cases**

Brown v. Board of Education of Topeka (1954) 347 U.S. 283

### **List of Acronyms**

|        |                                                                      |
|--------|----------------------------------------------------------------------|
| ICCPR  | International Convention on Civil and Political Rights               |
| ICESCR | International Convention on Economic, Social and Cultural Rights     |
| NGO    | Non Governmental Organization                                        |
| PWDs   | Persons with disabilities                                            |
| DPOs   | Organizations for Persons with Disabilities                          |
| UDHR   | Universal Declaration of Human Rights                                |
| UN     | United Nations                                                       |
| UNCRPD | United Nations Convention on the Rights of Persons with Disabilities |
| ZAFOD  | Zambia Federation for Persons with Disabilities                      |
| ZAPD   | Zambia Agency for Persons with Disabilities                          |

**Table of Contents**

| <b><u>Contents</u></b>                  | <b><u>Page</u></b> |
|-----------------------------------------|--------------------|
| Title Page-----                         | i                  |
| Declaration-----                        | ii                 |
| Supervisor’s Recommendation-----        | iii                |
| Abstract-----                           | iv                 |
| Dedication-----                         | v                  |
| Acknowledgements-----                   | vi                 |
| Table of Statutes-----                  | vii                |
| Table of International Instruments----- | viii               |
| Table of Cases-----                     | ix                 |
| List of Acronyms-----                   | x                  |

**Chapter 1: General Introduction**

|                                                      |   |
|------------------------------------------------------|---|
| 1.0 Introduction-----                                | 1 |
| 1.1 Statement of Problem-----                        | 2 |
| 1.2 Objectives of the Research-----                  | 2 |
| 1.3 Specific Research Questions-----                 | 3 |
| 1.4 Rationale and Justification of the Research----- | 4 |
| 1.5 Definitions-----                                 | 5 |

1.6 Research Methodology-----5

1.7 Outline of Chapters -----5

**Chapter 2: A look at the current situation of the disabled and the reasons for the continued marginalization of persons with disabilities**

2.0 Introduction-----7

2.1 Legal definition of disability-----7

2.2 Categories of disability -----9

2.3 Categories of Physical Disability-----10

2.4 Current situation of the physically disabled -----10

2.5 The socio-economic causes of the marginalization of the disabled-----14

2.6 Conclusion-----16

**Chapter 3: Analysis of the Persons with Disabilities Act and the UN CRPD and other International Instruments**

3.0 Introduction-----17

3. 1 History of disability legislation in Zambia-----17

3.2 Current disability legislation in Zambia (physical disability) -----19

3.2.1 Persons with Disabilities Act -----19

3.2.2 Accessibility and Reasonable Accommodation-----20

3.2.3 Discrimination and Education-----24

3.2.4 Accessibility to Premises-----26

3.2.5 The Plight of Persons with Disabilities in Rural Areas-----28

3.3 International legislation on disability -----30

3.3.1 The UN CRPD-----31

3.3.2 ILO Convention Vocational Rehabilitation and Employment (Disabled Persons)-----32

3.3.3 ICCPR and ICESCR-----33

3.3.4 The Universal Declaration on Human Rights (UDHR) -----33

3.4 Harmonising domestic and international legislation on disability-----33

3.5 Conclusion-----34

**Chapter 4: Discussion on different Acts of Parliament: Harmonisation of Acts of Parliament in Addressing Disability Issues**

4.0Introduction-----36

4.1 Education Act -----36

4.2 Public Health Act-----38

4.3 Citizen Economic Empowerment Act -----39

4.4 Town and Country Planning Act -----42

4.5 Employment Act-----44

4.6 Conclusion-----45

**Chapter 5: Conclusion and Recommendations**

5.0 Conclusion-----46

5.1 Recommendations-----48

5.1.0 Accessibility-----48

5.1.1 Reasonable Accommodation-----48

5.1.2 Political Will -----48

5.1.3 Education-----48

5.1.4 Disability Awareness programs to thwart prejudice-----49

5.1.5 Provision of Social Security Schemes-----49

5.1.6 Provision of Database-----50

5.1.7 Employment-----50

5.1.8 Domesticate the UN CRPD-----50

5.1.9 Prioritise land allocation-----50

**Bibliography -----51**

## **Chapter one**

### **General Introduction**

#### **1.0 Introduction**

People with disabilities are found in all human societies and they constitute approximately 10 per cent of the global population.<sup>1</sup> As a group, persons with disabilities are subjected to discrimination or exclusion, consequently, the disabled constitutes the world's poorest and most marginalized persons with about eighty percent of them in developing countries living below the poverty line.<sup>2</sup>

In Zambia traditionally, the society believed that disability was a form of misfortune in the family brought about by offending ancestors; having a person with disability in the family was therefore, considered as a taboo.<sup>3</sup> Having a person with disability in the family was also regarded as an embarrassment and they were considered as incapable of doing anything on their own and isolated.<sup>4</sup> However, since Zambia attained its independence, there has been a recognition that persons with require government intervention to be integrated in the mainstream of society.

This has been done through the formulation of policies and enactment of laws to govern disability issues, for instance the enactment of the Handicapped Persons Act of 1968 which was repealed by the Persons with Disability Act<sup>5</sup>, in order to ensure that law remains responsive to the changing needs in society. Nevertheless, people with disabilities still constitute the most marginalized group not only in the Zambian society but globally. The aim of this essay, therefore, is to show how the disabled are disadvantaged in society with regards to their enjoyment of human rights, access to basic needs and the protection of their welfare as well as to find out the root cause of their being

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<sup>1</sup>ILO, 'Skills and Employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva: ILO, 2007), page 9.

<sup>2</sup> Malcolm and Momm, 'Self employment for Disabled People: Experiences from Africa and Asia.' ILO (Geneva, 1989).

<sup>3</sup> Zambia agency for persons with disabilities. <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>4</sup> Malcolm and Momm, 'Self employment for Disabled People: Experiences from Africa and Asia'. ILO (Geneva, 1989), page 7.

<sup>5</sup> Persons with Disabilities Act, Cap. 65

marginalized. It will look at how response legislation governing disability is to the welfare of persons with disabilities as well as how international instruments address issues of disability and the extent to which national legislation conforms to international values on disability as enshrined in instruments such as the United Nations Convention on the Rights of Persons with Disabilities.

**1.1 Statement of the Problem**

Despite, the availability of an elaborate policy and legal framework aimed at addressing the needs of the disabled, they are perceived as second class citizens, are victims of prejudice and considered incapable of occupying active roles in society.<sup>6</sup> Additionally, they are denied sufficient opportunities to contribute positively to national development. The prejudice begins right from the community itself due to lack of knowledge were the disabled are perceived as inhuman social aberrations, aggressive, lazy and as having poor social skills.<sup>7</sup> Due to the aforementioned reasons the disabled are the most marginalized social group with little or no political strength, meager economic resources and occupying some of the most degrading positions in society.<sup>8</sup>

**1.2 Objectives**

The objectives of the research are to;

- (a) Provide a critical analysis of the persons with Disabilities Act Cap 65 of the Laws of Zambia.
- (b) Evaluate the enjoyment of human rights by persons with disabilities.
- (c) Highlight the root causes as to why the disabled are marginalized.

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<sup>6</sup> Arne H Eide, ME Loeb , SINTEF Report ‘Living Conditions among People with Activity Limitations in Zambia: A National Representative Study.’(Blindern, 2006).

<sup>7</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/lawindex.shtml> (accessed on 20<sup>th</sup> September 2011).

<sup>8</sup> Malcolm and Momm, ‘Self employment for Disabled People: Experiences from Africa and Asia.’ILO (Geneva, 1989), page 6.

- (d) Analyse the role and possible effects of the harmonization of other Acts of Parliament such as the Education Act, Health Act, and the Town and Country Planning Act with the principles of the Persons with Disability Act.
- (e) Analyse the effectiveness of the applicability of Persons with Disabilities Act in rural areas as well as whether it addresses gender issues.
- (f) Review the development and role of international legal instruments on disability such as the United Nations Convention on the rights of persons with Disabilities (UN CRPD), ILO Convention on vocational Rehabilitation and Employment (Disabled Persons), 1983 (No. 159), the ILO Convention concerning Discrimination in Respect of Employment and occupation, 1958 (No. 11), and the United Nations Convention on Economic, social and Cultural Rights (UNCESc).
- (g) Make recommendations on what can be done to improve the welfare of the disabled in society.

### **1.3 Research Questions**

- 1) Has the Persons with Disabilities Act served its purpose in promoting the welfare of the disabled?
- 2) Why have persons with disability continued to be marginalized in society?
- 3) Is it possible to break down the systems of social stigma and discrimination that have disadvantaged the disabled?
- 4) What is the role of government, the private sector and civil society in ensuring equitable treatment of the disabled with regard to political participation, human rights and economic empowerment?
- 5) How can domestic disability legislation be enhanced to meet the needs of the disabled, in concert with other Acts of parliament?

- 6) Analyse the role of international legislation in promoting the welfare of persons with disabilities?
- 7) How can domestic legislation on disability be harmonized in a manner that conforms to international legal instruments such as the UN Convention on the rights of persons with disabilities?
- 8) Does current legislation on disability address the needs of the disabled in rural areas?

#### **1.4 Rationale and Justification of the Research**

Some improvements have been constantly made to the law relating to the disabled in that new legislation has been enacted from time to time since Zambia's attainment of independence. This legislation has consistently been improved upon, repealed and replaced to ensure that it remains more responsive to the needs of the disabled in a changing society, while conforming to international instruments on the subject matter.<sup>9</sup> However, such interventions have not improved the welfare of the disabled to an appreciable degree as the disabled still remain disadvantaged in Zambian society.<sup>10</sup>

Therefore, this calls for recommendations on how best disability related legal instruments can be improved both on the domestic and international front to ensure they remain relevant to changing times while bettering the welfare of the physically and mentally challenged. There is also need to ensure a change in the human society's attitude towards the disabled as this is one of the main contributing factors to the above stated problem.

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<sup>9</sup> Zambia agency for persons with disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>10</sup> ILO, 'Employment of People with Disabilities: A Human Rights Approach (East and Southern Africa).' (Geneva, 2005), page 16.

## **1.5 Definitions**

Social exclusion -means lack of access to the institutions of civil society (legal and political systems), and to the basic levels of education, health, and financial well being necessary to make access to those institutions a reality.

Social inclusion- is the converse of social exclusion and is affirmative action to change the circumstances and habits that lead to (or have led to) social exclusion.

Mainstreaming- means integrating disability into development cooperation. This is the process of assessing the implications for disabled people of any planned action, including legislation, policies and programmes, in all areas and at all levels. The ultimate goal is to achieve disability equality.

## **1.6 Methodology**

This study will be based on both primary and secondary information. The primary information will include interviews. Secondary sources will include Statutes, Textbooks, Journals, and judicial decisions, Articles, Reports and student obligatory essays.

## **1.7 Essay Outline**

### **1.0 Chapter One**

1.1 General introduction

1.2 Statement of the problem

1.3 Significance of the study

1.4 Definition of key concepts

1.5 Objectives of the study

1.6 Methodology

### **2.0 Chapter Two**

2.1 Legal definition of a disabled person.

- 2.2 Categories of disability.
- 2.3 Current situation of the disabled in Zambia.
- 2.4 The socio-economic causes of the marginalization of the disabled.

### **3.0 Chapter Three**

- 3.1 History of disability legislation in Zambia.
- 3.2 Current domestic disability legislation in Zambia.
- 3.3 International legislation on disability: the United Nations Convention on the rights of persons with Disabilities (UN CRPD), ILO Convention on vocational Rehabilitation and Employment (Disabled Persons), 1983 (No. 159)., the ILO Convention concerning Discrimination in Respect of Employment and occupation, 1958 (No. 11), and the United Nations Convention on Economic, social and Cultural Rights (UNCESc).
- 3.4 Harmonizing domestic and international disability legislation.

### **4.0 Chapter Four**

- 4.1 Integrating the Persons with disabilities Act with other pieces of legislation such as the Education Act, Health Act and the Infrastructure Development Act.

### **5.0 Chapter Five**

- 5.1 Conclusion
- 5.2 Recommendations

In conclusion, this is an introductory chapter. It has laid the foundation for the subsequent chapters and these will be analysed in the light of this chapter.

## **Chapter Two**

### **A Look at the Current Situation of the Disabled: Reasons for the Continued Marginalization of Persons with Disabilities**

#### **2.0 Introduction**

This chapter aims to look at the definition of disability in the Act and as defined by some scholars, it will also look at the different categories of disability and the current situation of the disabled in Zambia as well as why people with disabilities are marginalized. In which case it is going to consider the socio-economic causes as to why persons with disabilities are marginalized.

#### **2.1 Legal Definition of a Disabled Person**

The term disability is a complex phenomenon reflecting an interaction between features of a person's body and features of the society in which he lives. Disability can either be defined in a narrow sense or in a broad sense depending on who will be recognized as a person with disability and as such protected by the relevant legislation or particular policy on disability.<sup>11</sup>

When defined from a narrow point of view, disability basically entails the identification of an individual as disabled without paying any particular attention to his or her physical or social environment, here emphasis is put on the physical or mental condition of an individual. This is also known as the medical model.<sup>12</sup>

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<sup>11</sup>Malcom and Momm, 'Self Employment for Disabled people: Experiences from Africa and Asia.' ILO (Geneva: 1989).page 7.

<sup>12</sup>ILO, Skills and Employability of persons with disabilities: <http://www.ilo.org/..wcms-115100..pdf>.(Accessed on 22<sup>nd</sup> November, 2010).

The definition of the term disability in a broader perspective considers the question of disability as being intrinsically related to such factors as culture, time and the environment. This simply means that society itself creates a disability. This entails that a decision as to whether a particular person should be classified as being disabled is clearly dependant on living conditions and availability of artificial aids unlike the physical conditions only.<sup>13</sup> This is the definition which is advocated for mostly unlike the medical perspective as it tends to ignore the abilities of persons with disabilities.

The World Health Organization (WHO) on the other hand, defines disability as an umbrella term, covering impairments, activity participation restrictions.<sup>14</sup> Nevertheless, this paper mainly focuses on disability as defined in a broad perspective.

The persons with disabilities Act defines "disability" as any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other animals trained for that purpose.<sup>15</sup>

A person with disability on the other hand is defined in the same section as a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability.

A disabled person is also defined to mean anyone who experiences significant limitations in one or several functions because of a physical, sensorial or mental impairment or deficiency<sup>16</sup>.

Disability as will be shown later has both social and health implications. It should also be noted that almost always than never, disability goes hand in hand with discrimination, exclusion and denial of

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<sup>13</sup> Malcom and Momm, 'Self Employment for Disabled people: Experiences from Africa and Asia'. ILO (Geneva: 1989).page 5.

<sup>14</sup> ILO. 'Employment of People with Disabilities: A Human Rights Approach (East and Southern Africa)' (Geneva,2005), page 7.

<sup>15</sup> Persons with Disabilities Act, Cap 65. S. 2

<sup>16</sup> Malcom and Momm, 'Self Employment for Disabled people: Experiences from Africa and Asia.'ILO (Geneva, 1989).Page 7.

equal opportunities in education, training and employment. This simply shows that disability has to a great extent a dimension of human rights and as such it is a political issue.<sup>17</sup>

## **2.2 Categories of Disability**

The Persons with Disabilities Act<sup>18</sup> does not expressly state the different categories of disability, however, mention is made in section 2 impliedly of the different categories of disability. The relevant section is couched in the following manner;

"Person with disability" means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability".

From the section under consideration the following categories have been identified and this includes; Mental disability; Physical disability (orthopedically disabled persons); Sensory Disability (Visual and Hearing); and Speech disability.

This paper, however, mainly focuses on physical disability. Physical disability relates to person's body unlike the mind as the term suggests.

Among people with disabilities, those who are physically disabled constitute the largest group of the population comprising 35.2 percent with a larger part living in rural areas. Thus addressing their needs will eventually lead to a recognition and realization of the rights and interest of all persons with disabilities because as the largest group their voices can be better heard. Therefore, this paper mainly focuses on the how the Persons with disabilities Act responds to their interests while analyzing the reasons why and how the constraints faced by physically disabled people can be addressed in the protecting and promoting their welfare.

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<sup>17</sup>ILO, 'Employment of People with Disabilities: A Human Rights Approach (East and Southern Africa).' (Geneva, 2005), page 7.

<sup>18</sup>Persons with Disabilities Act, Cap, 65

### 2.3 Categories of Physical Disability

The persons with disabilities Act only highlights the four main categories of disability as shown above. However, physical disability can further be divided in to the following categories;

**PARAPLEGIC:** this is paralysis up to the bottom part of a person's body. This entails that a person losses control of the bottom part of the body, essentially the legs. This is severe as mobility becomes restricted or difficulty.<sup>19</sup>

**QUADRIPLEGIC:** persons under this category of physical disability are those who are permanently unable to use their arms and legs.<sup>20</sup>

**ATLEAST MOBILE:** persons under this category are more flexible or mobile though with the assistance of supportive aids such as clutches and calipers.<sup>21</sup>

### 2.4 The Current Situation of the Disabled in Zambia

Throughout the world there is an undeniable link between disability, poverty and exclusion. People with disabilities constitute the most marginalized minority group world over.<sup>22</sup> The disabled constitute about 80 % of the world's poor mostly in developing countries. The World Health Organization (WHO) estimates that some 690,000 to one million people in Zambia or 7 to 10 percent of the population have a disability and that higher percentage of them live in rural areas where access to basic services is limited.<sup>23</sup>

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<sup>19</sup> ILO, 'Job creation for Disabled People: A Guide for employers Organizations.' (Geneva, 1992), page 5.

<sup>20</sup> An interview conducted with Mr. Muyenga, P., the Rehabilitation Officer for Zambia Agency for Persons with Disability on 19<sup>th</sup> Nov 2010.

<sup>21</sup> An interview conducted with Mr. Muyenga, P., the Rehabilitation Officer for Zambia Agency for Persons with Disability on 19<sup>th</sup> Nov 2010.

<sup>22</sup> ILO, 'Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva: 2007), Page 1.

<sup>23</sup> Zambia Central Statistical Office. 2000 Census: <http://www.Zambiastats.gov.zm/media/chapter-9-disability-final2.pdf>. (Accessed on 22nd November 2010).

People with disabilities are more likely to experience disadvantages, exclusion and discrimination in society and are the most affected by unemployment.<sup>24</sup> When they work, they are often found in the informal sector, usually performing menial low paid jobs, engaged in low income generating businesses and about 80 percent of people with disabilities are employed in the agricultural sector, making it by far the most common occupation.<sup>25</sup> Essentially persons with disabilities mostly live in poverty. From the governance perspective, poverty not only means little or lack of access to incomes through employment, but also exclusion from participation in institutions and processes that govern one's life, leading to voicelessness and powerlessness in these processes and institutions.<sup>26</sup> Poverty also manifests itself in low educational opportunities, inadequate access to resources, and lack of freedom to exercise choice and participate fully in national development. Without good governance, available scarce resources are generally not put to good use in combating poverty due to lack of transparency, rampant corruption and an uncertain legal system that hinders economic growth.<sup>27</sup>

Prior to the 1970s people with disabilities were perceived as more vulnerable than productive, they were merely seen as being in need of protection rather than people who can live independently and contribute actively in society when economically empowered, this perception followed the medical paradigm of defining disability. The perception of disability only as an issue of social welfare has been criticized for preventing sound social and economic development as well as perpetuating exclusion of persons with disabilities from the mainstream society, because it involves the confinement of people with disabilities in special homes where they can be given handouts.<sup>28</sup>

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<sup>24</sup> Malcom and Momm, 'Self Employment for Disabled people: Experiences from Africa and Asia'. ILO (Geneva, 1989), Page 7.

<sup>25</sup> Zambia Central Statistical Office. 2000 Census: <http://www.Zambiastats.gov.zm/media/chapter-9-disability-final2.pdf>. (Accessed on 22<sup>nd</sup> November 2010).

<sup>26</sup> Civil Society for Poverty Reduction (CSPR): Governance and Poverty Reduction: Proposals for the Fifth National Development Plan-2006-2011.

<sup>27</sup> Civil Society for Poverty Reduction (CSPR): Governance and Poverty Reduction: Proposals for the Fifth National Development Plan-2006-2011.

<sup>28</sup> Disability Rights Education and Defense Fund: [http:// www.dredf.org/international/zamb2.html](http://www.dredf.org/international/zamb2.html). (Accessed on 23<sup>rd</sup> November 2010).

Nevertheless, there been a shift in emphasis away from the “medical approach” as regards the situation and the welfare of persons with disabilities in society which puts emphasis on their impairment and thus necessitate confinement and perpetrate exclusion, towards the “human rights approach”, which emphasizes the development of the abilities of persons with disabilities. It basically entails that the people with disabilities are entitled to full participation in society as a matter of right which rights are supposed to be safe guarded by disability specific legislation.<sup>29</sup> This shift in the paradigm was intended to provide equal opportunities for disabled people and to expose their segregation, institutionalization and exclusion as typical forms of disability-based discrimination.<sup>30</sup> It is trite, however, that people with disabilities do need special protection as well as empowerment measures in the form of skills training and provision of social welfare. However, this should be delivered neither in a way that can corrode the dignity of persons with disabilities nor in a way that would perpetrate their exclusion from mainstream society such as confinement with very limited interaction with society as mentioned above.<sup>31</sup>

Thus, the perception has changed from that of mere protection to that of empowerment and integration into mainstream society.<sup>32</sup> The basic idea of integration was that people with disabilities are human beings with rights whose needs must be recognized and that they are entitled to full participation in society in the realization of the potential. The notion of integration has improved the way other people perceive people with disabilities to positive thinking and influenced the establishment of rehabilitation programs.<sup>33</sup> These standards are reflected in the Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (159).

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<sup>29</sup>ILO. ‘Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.’(Geneva, 2007), Page 7.

<sup>30</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 23 November 2010).

<sup>31</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 23 November 2010).

<sup>32</sup> Malcom and Momm. ‘Self Employment for Disabled people: Experiences from Africa and Asia.’ ILO (Geneva, 1989), Page 3.

<sup>33</sup> ILO, ‘Job creation for Disabled People: A Guide for employers’ Organizations.’ (Geneva, 1992), Page 4.

In the same regard the Zambian government has adopted a number of statutes and policies pertaining to people with disabilities, including their right to productive and decent work and to basic services, workers compensation, social security and entrepreneurship.<sup>34</sup> For instance, the Technical Education, Vocational and Entrepreneurship (TEVET) Act of 1998, states that the special needs of people with disabilities will be taken into consideration. A number of policies have been formulated with aim of providing enhanced support for persons with disabilities through increased government spending on disability and developing mainstream policies. For instance, the National Employment and Labor Market Policy of 2005 shows the government intention 's to provide for improved care and support services to vulnerable groups including people with disability.

The adoption of policies and new legislation on disability issues shows that there has been a general recognition of the rights of people with disabilities to education, employment opportunities and freedom from discrimination as well as the need for integration of persons with disabilities into the mainstream of the community.<sup>35</sup>

However, despite the positive development discussed above such as the availability of legislation and the adoption of different policies aimed at protecting and enhancing the interests of persons with disabilities, people with disabilities remain to a large extent excluded from society and prevented from participating fully in society. As a group, the majority of people with disabilities in Zambia live in poverty.<sup>36</sup> Street begging is a prevalent means of survival and literacy levels are very low among the population of disabled persons.<sup>37</sup>

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<sup>34</sup> <http://www.rtfh-watch.org/uploads/media/ca...91AM.so'yint'l.proc.389>. (Accessed on the 14 November, 2010).

<sup>35</sup> ILO, 'Skills and Employability: Employment of people with Disabilities: A Human Rights Approach (East and Southern Africa)' (Geneva 2005), Page 15.

<sup>36</sup> Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 23<sup>rd</sup> November 2010).

<sup>37</sup> Zambia Central Statistical Office. 2000 Census: <http://www.Zambiastats.gov.zm/media/chapter-9-disability-final2.pdf>. (Accessed on 22 November, 2010).

## **2.5 The Socio-Economic Causes of the Marginalization of the Disabled**

In view of the definition of disabled persons, that is ‘people who experience significant limitations because of a physical, mental or sensorial impairment.’ A person with disability will most likely experience restrictions in the ability to fully develop his or potential on account of those limitations coupled with negative social attitude.<sup>38</sup> As a result of the unavoidable consequences of the physical impairment of which they are affected, people with disabilities are considered as incapable of being productive. Their disability is seen as affecting all of their abilities. It is for this reason that they are more likely to experience disadvantages, exclusion and discrimination especially in the labor market. They are mostly constrained in accessing social services by the inaccessible nature of the physical environment, for instance, some cannot access vocational training due to mobility constraints.<sup>39</sup> Consequently, lack of accessibility has significantly contributed the marginalization of persons with physical disabilities as well as any kind of disability generally in society.

Additionally, negative social attitudes such as the view that disabled people are a curse perpetrates exclusion as contact with them is avoided at all costs. In some families, people with disabilities are hidden away as objects of shame or because they may damage the marriage prospects of other family members. Such attitudes have an impact of imputing a feeling of being a burden as well as corroding the confidence of a person with a disability as social perception can influence a person’s perception of self. This can instigate feelings of incapability and inadequacy in a person with a disability.<sup>40</sup>

Nevertheless, it has now been recognized that many of the disadvantages and the fact that they are excluded from the mainstream society are not due to the impairment affecting persons with disabilities but rather as a result of reaction to that impairment by society which is manifested in the

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<sup>38</sup>Malcom and Momm, ‘Self Employment for Disabled people: Experiences from Africa and Asia.’ ILO (Geneva, 1989), Page 3.

<sup>39</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html> . (Accessed on 2<sup>nd</sup> November 2010).

<sup>40</sup> Malcom and Momm, ‘Self Employment for Disabled people: Experiences from Africa and Asia.’ ILO (Geneva, 1989), Page 3.

attitudes, laws and policies adopted by society.<sup>41</sup> For instance confining people with disabilities in social welfare institutions where everything is done and provided for them without allowing any chance for persons with disabilities to interact with non-disabled people entails exclusion from the main stream society and this contributes to the negative attitude people have towards persons with disabilities and the perception that they have no place in the mainstream society.<sup>42</sup>

Additionally, institutional discrimination against persons with disability is a pervasive and long-standing social problem. It builds and reinforces attitudinal discrimination and condones social discrimination.<sup>43</sup> By way of illustration, refusal to admit a physically disabled in a “normal school” on grounds of disability when it has nothing to do with his mental capacity. In public transport paraplegic people are made to pay double fares for the wheel chair.<sup>44</sup> A more practical example of institutional discrimination although it was not perpetrated against the physically disabled who this essay is mainly focusing on, was a situation in which a local commercial bank recently turned away two men who had gone to apply for ATM cards. Their illegibility was based on the fact that they were blind. It took the intervention of the Zambia Federation of the Disabled (ZAFOD) to force the bank to serve the two men and to admit it had discriminated against them and broken the law.<sup>45</sup>

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<sup>41</sup>ILO, ‘Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.’ (Geneva, 2007), Page 7.

<sup>42</sup> Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 23<sup>rd</sup> November 2010).

<sup>43</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 23<sup>rd</sup> November 2010).

<sup>44</sup>An interview conducted with Mr. Muyenga., the Rehabilitation Officer for Zambia Agency for Persons with Disability on 19<sup>th</sup> Nov 2010.

<sup>45</sup> Chinyama,J. NEWS-ZAFOD Fights for Disability: <http://www.irf.org.zm/newsletters/index.php?> (Accessed on 11<sup>th</sup> March 2011).

## **2.6 Conclusion**

Finally, disability has been defined both from a broad and a narrow perspective. The former focuses on the actual physical and mental condition of an individual, while the later emphasizes society's reaction to this condition and the associated consequences of this reaction. Disabled people constitute the majority of the world's poor and the trend is repeated in the Zambian situation. Despite, several government interventions such as pro-disability legal reforms and policies as well as empowerment initiatives, the disabled are still victims of social stigma and marginalization. The root causes of this include negative social attitude coupled with loopholes in the disability related legislation and ineffective implementation of policies as well as the lack of a workable national disability policy. Thus it is evident that the current legal frame work needs further reform. A critical analysis of the current legislation is necessary and this is dealt with in the succeeding chapter.

## **Chapter Three**

### **Analysis of the Persons with Disabilities Act and the UN CRPD and other International Instruments**

#### **3.0 Introduction**

The last chapter considered the definition of disability in the Act and as defined by some scholars, it also looked at the different categories of disability and the current situation of the disabled in Zambia as well as why people with disabilities are marginalized. Thus having considered the foregoing in chapter two, this chapter will outline the history of disability legislation in Zambia, and the current legislation on the subject matter. It will also look at how the available legislation is governing the issues considered in the previous chapter, and in so doing analyze its efficacy in governing matters pertaining to persons with disabilities. It will also look at the different and most fundamental international legislation such as the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), the International Convention on Economic, Social and Cultural Rights (ICESCR) and how issues of disability are addressed therein. Furthermore, it will consider the harmonization of domestic and international legislation as mentioned above. Finally, a conclusion will be drawn summarizing the issues to be raised in this chapter.

#### **3.1 History of Disability Legislation in Zambia**

People with disabilities have been and are still marginalized and discriminated against because; among other things society holds preconceived ideas and superstitions about the physically disabled.<sup>46</sup> As a result of prejudice and stereotype, laws and policies have been formulated and implemented without consideration for the needs and interests of people with disabilities. This not only prevented their active participation in communities but also perpetuated their exclusion from

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<sup>46</sup> Zambia agency for persons with disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

the mainstream of society.<sup>47</sup> Nevertheless, there has been recognition that people with disabilities require the intervention of the government in order to be integrated into the mainstream society, especially through the instrumentation of legislation and workable policies.<sup>48</sup>

Legislation on disability in Zambia dates back to the colonial period with the formation a society for the blind in the Copperbelt in 1953.<sup>49</sup> The society was called the Northern Rhodesia Society for the Blind, and it was voluntary and non-governmental. The main objective of the society was the prevention of blindness and the provision of education to the blind. Subsequently, in 1961, the Blind Persons Ordinance was enacted and it established the Northern Rhodesia Society for the Blind.<sup>50</sup> Thus the council established under the Ordinance replaced the former. Consequently, all its assets, responsibilities and liabilities were transferred to the new society. The former council was disbanded because the blind passed a vote of no confidence in it and wanted a society which would be more responsive to their needs and interests.<sup>51</sup>

Nevertheless, despite the establishment of the above statutory bodies, another society called the Society for the Physically Handicapped was also in existence. This was a private institution established, administered and funded by well wishers.<sup>52</sup> In 1965, the Northern Rhodesia Society for the Blind and the Northern Rhodesia Society for the Physically Handicapped were fused and formed the Northern Rhodesia Council for the Blind and the Physically Handicapped. It was thought that by

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<sup>47</sup>Molcom and Momm, 'Self Employment for Disabled People: Experiences from Africa and Asia.' ILO( Geneva, 1989),Page 9.

<sup>48</sup>Daka P. The Handicapped Persons Act: How adequate is it in promoting the welfare of the disabled? 1993(Obligatory essay submitted to The University of Zambia Law School.

<sup>49</sup>Zambia Agency for Persons with Disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>50</sup>Zambia Agency for Persons with Disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>51</sup> Zambia agency for persons with disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>52</sup>P. Daka, The Handicapped Persons Act: How adequate is it in promoting the welfare of the disabled? 1993(Obligatory essay submitted to The University of Zambia Law School.

having one body to administer disability issues the move to promote the welfare of people with disabilities would be strengthened.<sup>53</sup>

The move to promote the welfare of people with disabilities was further strengthened with the enactment of the Handicapped Persons Act in 1968, which repealed the Blind Persons Act enacted during the colonial era. The Handicapped Persons Act referred to all people with disabilities as the handicapped, a step aimed at achieving solidarity among people with disabilities. The Zambia Council for persons with disabilities was established under this Act to provide welfare and rehabilitation services to people with disabilities. However, the Handicapped Persons Act was found to be inadequate in promoting and protecting the welfare of people with disabilities and as such it was repealed in 1996.<sup>54</sup>

### **3.2 Current Domestic Legislation on Disability**

Having considered the history of legislation on disability, it is prudent to outline the current legislation on disability in Zambia. The Handicapped Persons Act was the law governing disability up to 1996 when it was repealed by the Persons with Disabilities Act No. 33 of the Laws of Zambia.<sup>55</sup> In this respect, some provisions of the Persons with Disabilities Act, will be analysed, with the aim of providing a critical analysis and determining the efficacy of this piece of legislation in promoting and protecting the welfare of people with disabilities in Zambia.

#### **3.2.1 The Persons with Disabilities Act<sup>56</sup>**

This Act is divided into seven parts, however, only the salient provisions of this Act will be considered in detail.

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<sup>53</sup> Zambia agency for persons with disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>54</sup> Zambia Agency for Persons with Disabilities: <http://www.zapd.gov.org/index2.php>. (Accessed on 29<sup>th</sup> December, 2010).

<sup>55</sup> Persons with Disabilities Act, Cap 65 of the Laws of Zambia.

<sup>56</sup> Person with Disabilities Act, Cap 65 of the Laws of Zambia.

Part I consists of the interpretation section. Part II provides for the Zambia Agency for Persons with Disabilities (ZAPD) as established in section 3<sup>57</sup>, this will be considered later.

One of the important elements in the integration of persons with disabilities is provision of equal opportunities especially in the area of employment as the lack of employment is one of the key reasons why many persons with disabilities constitute the poorest in societies.<sup>58</sup> Discrimination is provided for in Section 19 (1) which defines discrimination on grounds of disability as follows:

- (a) treating a person with a disability less favourably from a person without a disability
- (b) treating a person with disability less favorably from another person with a disability;
- (c) requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over;
- (d) or and not providing different services or conditions required for that disability.

Discrimination on grounds of disability is defined in an all-inclusive manner in the Act and as such it has a broad application, however; it does not refer to the different types of discrimination as understood in the contemporary international non-discrimination law and practice. These are direct discrimination, indirect discrimination, harassment and incitement to discrimination. Provision of different categories of discrimination in national disability law is necessary in order to ensure the maximum equality for persons with disabilities, since it entails the prevention of even the most subtle forms of discrimination.<sup>59</sup>

### **3.2.3 Accessibility and Reasonable Accommodation**

Another important facet necessary in ensuring the inclusion of persons with disabilities besides non-discrimination is accessibility. It is an important aspect in the context of the enjoyment of human

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<sup>57</sup>Persons with Disabilities Act, Cap. 65.

<sup>58</sup>ILO, 'Skills and Employability: Media guidelines for the portrayal of disability.' (Geneva, 2002), page 3.

<sup>59</sup>ILO, 'Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva, 2007), Page 27.

rights with regards to persons with disabilities and as such it has many implications on the life of a person with disability.

Accessibility is defined by implication in the United Nations Convention on the Rights of persons with disabilities (UN CRPD) <sup>60</sup> as the provision of measures necessary to ensure access by persons with disabilities on an equal basis with other persons to the physical environment, transportation and to other facilities and services open to the public both in rural and urban areas. Granting equal access to all members of societies requires acknowledging the differences that exist among these members; therefore, in order to achieve equality, disability has to be taken into account.<sup>61</sup>

Accessibility entails the provision of different conditions necessary for persons with disabilities to have access to social services and other essential elements of living and development.<sup>62</sup> However, accessibility is not unequivocally provided for in the Persons with Disabilities Act.<sup>63</sup> In this regard the act does not expressly state what areas or interventions need to be carried out in a bid to ensure accessibility. There is also need that the conditions so described in the Act are prescribed in such a way as to ensure the dignity of persons with disabilities. This entails that the conditions must not be so degrading that their application would cause ridicule or embarrassment to fall upon the person for whom they are intended.

Despite the above short comings, it can be argued that the Persons with Disabilities Act provides for reasonable accommodation. Section 19 (1) (d) refers to reasonable accommodation, although not in a manner that is explicit.<sup>64</sup> Reasonable accommodation as defined by the International Labour Organization (ILO), entails taking note of the fact that sometimes disability can affect an

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<sup>60</sup> UN CRPD, article 9.

<sup>61</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 11<sup>th</sup> March 2010).

<sup>62</sup>Decent Work for Persons with Disabilities 'Disability audit of legislation relevant to education, vocational training and employment of persons with disabilities in Zambia' A report to the International Labour Organization by the institute for Human Rights at Abo Akademi University. (Finland, 2008), Page 7.

<sup>63</sup> Persons with Disabilities Act, Cap. 65, s.19 (1)(c).

<sup>64</sup> Persons with Disabilities Act, Cap. 65, s.19 (1)(d).

individual's ability to carry out an obligation in the usual way and creating an enabling environment; overcoming barriers erected by the physical and social environment, for instance, provision of ramps in places of work to ensure access.<sup>65</sup> The persons with disabilities Act fails to explicitly state that failure to provide reasonable accommodation amounts to discrimination. This is necessary in order to ensure equal access to opportunities in society, thereby preventing exclusion as a typical form of discrimination on grounds of disability. This renders the Act ineffective to that extent.<sup>66</sup>

The requirement to make reasonable accommodation is distinct from accessibility in the sense that it is an individualized measure which is permanent (can last for instance, with regards to employment the duration of the employment of a person in whose favour it is accorded). Accessibility on the other hand, is a measure of general application and is permanent.<sup>67</sup> Thus this may include measures put in place by government for persons with disabilities generally.

Reasonable accommodation and accessibility are essential in the promotion of the welfare of persons with disabilities as these measures facilitate the inclusion of persons with disabilities into mainstream society. It enhances their independent living, especially in the fields of vocational training, education and employment. It entails recognizing both stereotypes and structural barriers as obstacles to inclusion and removing them. Therefore, legislative provisions cannot be effective without expressly providing reasonable accommodation and accessibility; because for all intents and purposes, a failure to do so perpetrates a subtle form of discrimination against persons with disabilities. Hence, it is necessary accessibility is clearly defined in the Act, however as mentioned

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<sup>65</sup>ILO, 'Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva, 2007), Page 20.

<sup>66</sup>Disability Rights Education and Defense Fund: <http://www.dredf.org/international/zamb2.html>. (Accessed on 11<sup>th</sup> March 2010).

<sup>67</sup>ILO, 'Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva, 2007), Page 32.

above the Persons with Disabilities Act does not provide or define it explicitly. Therefore, the Act can be said to be ineffective to that extent.

The Act does not require institutions to give preferential treatment to the disabled in terms of the performance standards expected of them, that is according affirmative action. Despite making provision for them to work properly in employment, education and other institutions persons with disabilities may be expected to perform to the same standard as those who are able bodied. This constitutes an injustice since the performance of persons with disabilities is impaired by their physical ailment. Consequently, they do not mitigate discrimination as defined in section 19 (1) (c).

Besides the aforementioned provisions on discrimination, the Act also addresses discrimination in employment institutions. The former aspect is provided for in Section 20<sup>68</sup> and prohibits the discrimination of persons with disabilities when advertising for employment, when recruiting persons for employment; when offering terms or conditions of employment; when considering promotion, transferring or training such persons or providing any other benefits related to employment. This is an all-encompassing provision with regard to discrimination in employment and only when it is read in harmony with section 19(d) which states, though implicitly that reasonable accommodation should be provided in order to achieve equality of opportunity aimed at overcoming structural disadvantages experienced by persons with disabilities.

Additionally, with regards to employment of persons with disabilities, the drafters of the Act under consideration were alive to the fact that employment is important as a way of achieving an independent living, considering the fact that persons with disabilities have been subject to discrimination in the area of employment<sup>69</sup>. In this respect the Act provides for tax rebates for those who employ a minimum of three persons with disabilities. This is aimed at encouraging employers

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<sup>68</sup>Persons with Disabilities Act; Cap. 65

<sup>69</sup>ILO, 'Skills and employability: Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines.' (Geneva, 2007), Page 20.

to engage persons with disabilities.<sup>70</sup> However, as an incentive, this provision is inadequate because it cannot benefit employers who employ one or two persons with disabilities. This entails that an employer would opt not to employ a person with a disability, as it makes no difference whether he employs one person with a disability or none at all. Moreover, the enforcement mechanism of this provision is weak with the result that it is not strictly applied. Therefore, its effectiveness is open to discussion.

### **3.2.3. Discrimination and Education**

The later aspect of discrimination addressed by the Act is discrimination in the framework of learning institutions and is provided for in section 21. It stipulates conditions on which a learning institution can be considered to have discriminated against a person with a disability. The conditions range from refusal or failure to accept or admit a person with a disability on the grounds of their disability to expelling a pupil or student on grounds of their disability and discriminating against a person with a disability in any other way on the grounds of that person's disability. As prevention of discrimination is an essential element in the protection and promotion of the welfare of persons with disabilities; the Act comprehensively addresses disability. Nevertheless, due to the fact that it does not explicitly provide for the requirements of accessibility it is ineffective in promoting the welfare of persons with disabilities as shown above. An attempt has been made in section 22<sup>71</sup>, though it still remains ambiguous. It is not clear what is implied in the term "adequate facilities". To what extent can adequacy be assessed objectively? What standards or criteria are used to quantify whether facilities are adequate or not?

In order to ensure equal access to education and improve literacy levels for persons with disabilities, the Act imposes an obligation on any person who establishes a special school to provide adequate facilities. As well as maintain a special fund for the repair, servicing and purchase of technical aids

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<sup>70</sup> Persons with Disabilities Act; Cap. 65, S. 24

<sup>71</sup> Persons with Disabilities Act, Cap. 65

and appliances for persons with disabilities. Such a fund has to be provided for by parliament.<sup>72</sup> This is in recognizance with the fact that the enjoyment of second generation rights such as the right to education and more so where education needs for persons with disabilities are in question, special facilities have to be provided; therefore this indeed necessitates the intervention of government.

The main weakness with this provision is that it does not specify what percentage of the funds allocated to the education sector will be used for the purpose mentioned above. There are no provisions stipulating the need for comprehensive feasibility studies to ascertain what percentage would fully cover the cost, quality and quantity of these facilities. The percentage is left to the discretion of parliament irrespective of whether it will adequately cover the cost of such implements or ensure sufficient numbers thereof.<sup>73</sup> For example, government came up with a policy whereby 5% of all the funds allocated to the education sector are directed towards special needs education.<sup>74</sup> Thus the government allocates funds to institutions admitting persons with disabilities. However, the allocation of only 5% the aforementioned funds is clearly insufficient to adequately cater for the special educational needs of persons with disabilities who constitute approximately 10% of the Zambian population.<sup>75</sup> For instance, the purchase of technical aids in all institutions admitting persons with disabilities country wide.

It should also be noted that the Persons with Disabilities Act does not specify a person or body to which a person with disability can turn to for redress in case he or she has been discriminated against. It only has a general penalty clause. This is problematic as it practically undermines the efficiency of the Act.<sup>76</sup> Moreover the absence of precedents on the subject matter entails that; there has not been effective persecution of offenders, though it is common knowledge that persons with disabilities continue to be marginalized.

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<sup>72</sup>Persons with Disabilities Act, Cap. 65, S. 22

<sup>73</sup> Persons with Disabilities Act Cap. 65, s.23 (2)

<sup>74</sup>Interview conducted with anonymous at the Ministry of Education on 15<sup>th</sup> March 2011.

<sup>75</sup>Zambia Central Statistical Office. 2000 Census: <http://www.Zambiastats.gov.zm/media/chapter-9-disability-final2.pdf>. (Accessed on 22 November, 2010).

<sup>76</sup> Persons with Disabilities Act, Cap 65, s.32

Furthermore, with regards to learning institutions mention is not explicitly made for the provision of reasonable accommodation. This affects the efficacy of the above provisions on education because where reasonable accommodation is not provided in every way possible attainment of quality education for the physically challenged is limited. For instance, mobility constraints among other things adversely affect persons with physical disabilities in performing different tasks.<sup>77</sup>

### **3.2.4 Accessibility to premises**

The need for provision of accessibility in employment and educational premises has been discussed above. However, this part considers accessibility generally. This is an important factor in the integration of persons with disabilities in the main stream society or ensuring the enjoyment of equal opportunities which are generally available in society and necessary for the fundamental elements of development of persons with disabilities.<sup>78</sup>

Prior to the 1970s, before government began to intervene in matters concerning persons with disabilities, the rights of persons with disabilities in society were not recognized and as such buildings were not built with person with disability in mind. Thus many public buildings are inaccessible to persons with disabilities. The library at the University of Zambia main campus for instance, is by and large still inaccessible to the paraplegic.<sup>79</sup>

In order to address this flaw, ZAPD has been authorized to issue adjustment orders to any person it considers that his premises (where members of the public are ordinarily admitted) is not accessible to persons with a disability.<sup>80</sup> An adjustment order includes a description of the premises and how the described premises should be adjusted to fulfill the accessibility demands of persons with

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<sup>77</sup>ILO, 'Skills and Employability: Strategies for skills acquisition and work for persons with disabilities in Southern Africa, Zambia.' (Geneva, 2007), Page 18.

<sup>78</sup>ILO, 'Employment of people with Disabilities: A Human Rights Approach ( East and Southern Africa).' (Geneva, 2005), Page 8.

<sup>79</sup>C. Kafwambulula, Does the Persons with Disabilities Act No. 33/1996 protect the human rights of the disabled in Zambia, 2001. ( Obligatory essay submitted to the University of Zambia Law School).

<sup>80</sup> Persons with Disabilities Act, Cap. 65, s.25 (2)

disabilities.<sup>81</sup> However, subsection 1 of section 25 restricts the issuance of adjustment orders only to premises constructed before the commencement of this Act. The fact that there are some structures built before 1996 which are inaccessible to persons with disabilities, inclusive big institutions such as the library at the University of Zambia main campus entails that the enforcement of this provision is negligible.

Additionally, section 25 does not apply to premises constructed after the commencement of the Persons with Disabilities Act. This is problematic because there is no guarantee that all premises constructed after the commencement of this Act are constructed in a way that guarantees access of such premises to persons with disabilities. Even though reference is made to the Town and Country Planning Act<sup>82</sup>, it seems that the said Act is not as sensitive as expected to the issue (this will be covered further in the succeeding chapter).<sup>83</sup> An overview of accessibility to different services, facilities and institutions presents a mixed picture. Hotels and banks are accessible to less than 40% of individuals with disabilities who use them. Places of worship, health care clinics, shops and schools are on the other hand reported to be accessible by the majority of those with disabilities (over three-fourths). Perhaps the most notable shortcomings are public transport, accessible to 65% and the workplace, accessible to 68% of the disabled population. Close to one-third of those with disabilities who use public transport or who work experience barriers to accessing these important services. The mixed picture demonstrated with regards to accessibility indicates that 16 potential exists for improving accessibility for people with disabilities.<sup>84</sup>

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<sup>81</sup>Persons with Disabilities Act, Cap. 65, s.2

<sup>82</sup> Town and Country Planning Act ,Cap. 283

<sup>83</sup>Persons with Disabilities Act Cap. 65, s. 26

<sup>84</sup> Arne H Eide, MF Loeb , SINTEF Report 'Living Conditions among People with Activity Limitations in Zambia: A National Representative Study.'(Blindern, 2006).

Additionally, the Persons with Disabilities Act is silent on gender issues, although it is of general application. The trend is that females who are disabled face double the challenges males go through. It would be more effective if specific provisions on women were made available in the Act.<sup>85</sup>

**3.2.5 The Plight of Persons with Disabilities in Rural Areas**

ZAPD is a body which replaced the Zambia Council for Persons with Disabilities and is mandated to coordinate rehabilitation, provide welfare services to persons with disabilities and promote programs for the integration of persons with disabilities into mainstream society. For instance, it provides sponsorship for persons with disabilities who have been accepted in colleges and universities as well as integration of persons with disabilities into the National Technical and Vocational Education Training System (TEVET) has continued to increase.<sup>86</sup>

In spite of the functions outlined in the foregoing section, it can be argued that ZAPD lacks the capacity to effectively address most of the issues concerning disability. Several factors account for failure in this regard. Firstly, ZAPD is constrained in carrying out its mandate by a lack of sufficient funding and political will.<sup>87</sup> Furthermore, although ZAPD is mandated to operate on a national scale, it is constrained by a weak infrastructural and institutional framework. Therefore, its operations in rural areas can be said to be negligible because of its absence in some districts. The organization only has offices in 33 out of the 74 districts present in Zambia. For instance, there is no district office for the Agency in Western province.<sup>88</sup>

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<sup>85</sup>Gilbert, ILO. ‘Link and Learn: Inclusion of Women with Disabilities in ILO Wedge Program.’ (Geneva, 2007), page 13.

<sup>86</sup>Interview conducted on 16 February, 2011 with Mr. Muyenga, P., the Rehabilitation Officer for Zambia Agency for persons with Disabilities.

<sup>87</sup>Interview conducted on 16February, 2011 with Mr. Muyenga, P., the Rehabilitation Officer for Zambia Agency for persons with Disabilities.

<sup>88</sup> Interview conducted on 16 February, 2011 with Mr. Muyenga, P., the Rehabilitation Officer for Zambia Agency for persons with Disabilities.

Persons with disabilities in rural areas usually constitute the poorest in this minority group because they are constrained when it comes to accessing social services since such services are limited in rural communities. Additionally, there is generally no formal support program for persons with disabilities in rural areas. This is also as a result of a negative social attitude embodying stigma and discrimination as well as deliberate exclusion which may occur, for instance, because parents or people living with a person with a disability may feel embarrassed to have such individuals under their care.<sup>89</sup>

This is mostly due to a lack of awareness and sensitization on issues of human rights for the physically challenged and their role in national development.<sup>90</sup>

Therefore, the presence of ZAPD in rural areas is necessary, since raising awareness on disability matters is one of its mandates. This is necessary as a means of breaking down systems of social stigma and preventing discrimination.

Finally, by and large the Persons with Disabilities Act<sup>91</sup> contain comprehensive provisions concerning the promotion, protection of the welfare and interest of persons with disability with regards to employment and discrimination on grounds of disability. However, as discussed above there are some ambiguities in the Act that renders it inefficient in promotion and protection of the welfare of persons with disabilities. Furthermore, the Persons with disabilities Act does not provide for the basic human rights apart from recognizing the right to education by implication. Having considered some of the salient provisions of the Persons with Disabilities Act, the paper will now focus on some of the international legislation on disability and later the harmonization of the Persons with Disabilities Act with such international legislation on the subject matter as will be considered.

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<sup>89</sup>Mobilising ability: Working with HIV,AIDS and Disability in Zambia: <http://www.hisp.org/portals/7/resources/st...pdf>. (Accessed on 2<sup>nd</sup> January, 2011).

<sup>90</sup> Government Action on Disability Policy 'A Global Survey :Part II - Government Replies as Country Profiles Zambia.'(Lusaka, 1996).

<sup>91</sup> Persons with Disabilities Act, Cap 65

### 3.3 International Legislation on Disability

At the international sphere legislation protecting the interests and welfare of persons with disabilities is not binding as international instruments constitutes “soft law.” However, despite being one of the largest minority groups in the world, encompassing 600 million persons of which two out of three live in developing countries, disabled people had been rather ignored during the first three decades of the United Nations' existence. The drafters of the International Bill of Human Rights did not include disabled persons as a distinct group vulnerable to human rights violations. None of the equality clauses of any of the three instruments comprising this Bill (the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) mention disability as a protected category. If disability is raised as an issue in these documents, it is only in connection with social security and preventive health policy.

Nevertheless, developments started taking place after the proposed draft convention on the elimination of all forms of discrimination against persons with disabilities was rejected. General Assembly later clearly affirmed that disabled persons were covered by the "other status" category listed in the equality provisions found in the International Bill of Human Rights. Later the United Nations (UN) declared the year 1981 as the year of the disabled. The outcome of which was the formulation of the World Program of Action concerning persons with disabilities (WPA) which was adopted by the UN General Assembly (GA) in 1982. The program and the declaration emphasized the rights of persons with disabilities to equal opportunities and to an equal share in the living standards resulting from economic and social development.<sup>92</sup>

Additionally, the period between 1983 and 1992 was declared as the International Decade for the Disabled Persons by the UN. This resulted in increased awareness on the rights of persons with

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<sup>92</sup>ILO, ‘Employment of People with Disabilities: A Human Rights Approach (East and Southern Africa)’ (Geneva, 2005), Page 9.

disabilities as well as a new instrument which was supposed to be the basic international legal standard for programs, laws and policies on disability for years to come.<sup>93</sup> The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (StRE) were adopted with the aim of achieving positive and full inclusion of persons with disabilities in all facets of society and were firmly built on the principles and concepts contained in the WPA. The StRE are non-binding but served as strong moral and political commitment on behalf of states to take action for the equalization of opportunities. They were designed to substitute for a treaty on the rights of persons with disabilities.<sup>94</sup>

### **3.3.1 The UN Convention on the Rights of Persons with Disabilities (UN CRPD)**

The UN Convention on the Rights of Persons with Disabilities is the first comprehensive human rights treaty of the 21<sup>st</sup> century on disability. It entered into force in May 2008 and it promotes the full participation of persons with disabilities in social, economic, cultural and political rights. Essentially, it is intended as a human rights instrument with an explicit social development dimension. It provides a renewed impetus in eliminating all forms of discrimination on grounds of disability as well as in positively promoting inclusion of persons with disabilities.<sup>95</sup>

The UN CRPD has a total of 50 articles including comprehensive provisions on education, vocational training and employment. It is based on eight guiding principles and these include; respect for inherent dignity, individual autonomy, non-discrimination, equality of opportunities, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, and accessibility. Non-discrimination is

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<sup>93</sup>ILO, 'Employment of People with Disabilities: A Human Rights Approach (East and Southern Africa)' (Geneva, 2005), Page 10.

<sup>94</sup>ILO, 'Skills and Employability: Strategies for skills acquisition and work for persons with disabilities in Southern Africa, Zambia.' (Geneva, 2007), Page 14.

<sup>95</sup>ILO, 'Skills and Employability: Strategies for skills acquisition and work for persons with disabilities in Southern Africa, Zambia.' (Geneva, 2007), Page 14.

dealt with in article 5, with articles 24 and 27<sup>96</sup>, referring to non-discrimination specifically in the context of education, employment and vocational training. However, these provisions also do not specifically provide for the different categories of discrimination as outlined above. Article 27 of the Convention specifically talks about the rights of persons with disabilities in work and employment and the right to the opportunity to gain a living by work freely chosen and work environment that is open, inclusive and accessible to persons with disabilities.

Accessibility entails the recognition that people with disabilities can live independently and participate actively in all aspects of life and as such necessitates the need by governments to make appropriate measures to ensure equal access to the physical environment and other facilities open to the public.<sup>97</sup>

### **3.3.2 ILO Convention on vocational Rehabilitation and Employment (Disabled Persons)<sup>98</sup>**

This Convention has been ratified by over 80 countries. It was adopted in June 1983. It requires that the representative organizations of employers and workers, as well as those of disabled persons, be consulted on the implementation of national policy on vocational rehabilitation and employment of persons with disabilities. This convention addresses inclusion of persons with disabilities in the open labour market. This is in conformity with article 27 of the UN CRPD.

### **3.3.3 The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not explicitly mention disability, nevertheless, it does clearly state that all human beings are entitled to the rights defined in them. This simply

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<sup>96</sup> UN CRPD

<sup>97</sup> UN CRPD, Article 9.

<sup>98</sup> ILO Convention on vocational Rehabilitation and Employment (Disabled Persons) 1983 (No. 159).

<sup>99</sup> UN CRPD, Article 3.

means that persons with disabilities are entitled to rights enshrined in these instruments by virtue of being human and that a person's disability does not make a person less of a human so as to be prevented from enjoying the rights enshrined in these instruments.

### **3.3.4 The Universal Declaration on Human Rights (UDHR)**

Similarly, the UDHR does not specifically mention disability, however, it states that all Human Rights are born free and equal in dignity and rights, and everyone is entitled to all the rights and freedoms enshrined therein, without any distinction of any kind, such as race, colour, sex....or other status.<sup>100</sup> Therefore, there is no doubt that people with disabilities are covered by the declaration.

Above has been considered some of the most cardinal pieces of legislation at the international level, with the UN CRPD as the basic international legislation on disability. It is comprehensive and binding on state parties that have ratified it. This paper will now look at the harmonization of the Persons with Disabilities Act with international legislation on the subject matter discussed above, specifically the UN CRPD.

### **3.4 Harmonisation of Domestic and International Legislation on Disability**

Zambia ratified the UN CRPD in 2010 and therefore, she is bound by the provisions of this instrument. This entails that any laws on disability and other statutes with a bearing on the welfare of persons with disabilities have to be in conformity with the UN CRPD. This instrument is comprehensive; nevertheless, provisions concerning non-discrimination do not specifically refer to the different categories of discrimination and the same goes for the Zambian Act on Disability.

Furthermore, the Convention provides for the right to adequate standard of living and social protection. On the contrary this right is not justiciable in Zambia (social rights and economic rights are not justiciable in Zambia).<sup>101</sup> The UN CRPD on the other hand, has a specific provision on the

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<sup>100</sup> UDHR, Articles 1 and 2.

<sup>101</sup> The Constitution, Cap. 1, Article 111, (Directives of state principles).

right to adequate standard of living and social protection. Moreover, it also contains provisions on civil and political rights and it is also sensitive to the situation of persons with disabilities in rural areas and as such with regards to accessibility it specifically make mention of the need to make the environment accessible to persons with disabilities in rural areas as well. All this is not accounted for in the country's domestic legislation.

The UN CRPD strongly addresses accessibility. It is unequivocally addressed in the instrument. Besides that, the UN CRPD makes the implementation of the aforementioned provision mandatory by the use of the term shall in the wording of the provision. The case is different in the principle disability in Zambia in the sense that it is not explicitly provided in the Act.

The Persons with Disabilities Act has comprehensive provisions on discrimination and effectively addresses matters concerning education of persons with disabilities which is an important factor in the integration process of persons with disabilities in the main stream society among other things. Nevertheless, by and large the Persons with Disabilities Act need to be amended in order to harmonize it with the UN CRPD which is more comprehensive.

### **3.5 Conclusion**

Finally, for some time persons with disabilities have been marginalized and that their rights were not recognized until it was realized that government intervention is necessary in the realization of the rights of persons with disabilities and promotion of their welfare. Therefore, this intervention has been through the formulation of policies and enactment of different legislation to that effect as well as the repealing of legislation that is irresponsive to the needs of people with disabilities.

Additionally, the adoption of the UN CRPD as a basic piece of legislation on disability at the international level which is binding on member states upon ratification implies a realization by the international community of the need for inclusion and provision of equal opportunities for person

with disabilities. It has also been shown that the Person with Disabilities Act conforms to the provisions of the UN CRPD to a limited extent and as such it has to be amended in order to make it conform to standards outlined in the UN CRPD and essentially domesticate the UN CRPD. Other than that the effective enforcement and application of some of the provisions of the Person with Disabilities Act is weak which is the reason why people with disabilities are still marginalized despite, the availability of legislation governing their welfare and interests.

The Persons with Disabilities Act as have been shown does not contain provisions on the basic human rights among other rights, therefore, besides the need to incorporate the provisions of the UN CRPD into the Act under consideration, a look will be had on other Acts of Parliament as regards how they enhance the effectiveness of the Person with Disabilities Act Person in promoting and protecting the interests of persons with disabilities. This considers the harmonization of the values of Persons with Disabilities Act with other pieces of legislation. This is considered in the succeeding chapter.

## Chapter Four

### **Discussion on different Acts of Parliament: Harmonisation of Acts of Parliament in Addressing Disability Issues**

#### **4.0 Introduction**

This chapter aims to look at some Acts of parliament specifically with the aim of determining as to whether such pieces of legislation respond to disability related issues; bearing in mind that persons with disabilities still remain marginalized to a large extent as shown above despite the availability of a specific legislation addressing their interests. It will consider the need for such other Acts of parliament to operate in concert with the Persons with Disabilities Act.<sup>102</sup> The rights of persons with disabilities are protected by a combination of special and general legislation. Disability issues are inter-ministerial with all government ministries expected to play their respective roles, nevertheless, Ministry of Community Development and Social Services (MCDSS) is responsible for disability issues supported by ZAPD, a government institution established under the Persons with Disabilities Act. Some of the statutes that will be considered include the Public Health Act<sup>103</sup>, the Town and Country Planning Act<sup>104</sup>, the Citizen Empowerment Act<sup>105</sup>, and the Education Act.<sup>106</sup>

#### **4.1 The Education Act<sup>107</sup>**

It should be noted from the outset that the Persons with Disabilities Act does contain provisions on education especially with regard to discrimination, nevertheless it does not address issues of education comprehensively as there is a specific Act in that regard and that is the Education Act. Lack of education is one of the many reasons why persons with disabilities are excluded from the

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<sup>102</sup> Persons with Disabilities Act, Cap. 65 of the Laws of Zambia.

<sup>103</sup> Public Health Act, Cap. 295 of the Laws of Zambia.

<sup>104</sup> Town and Country Planning Act, Cap. 283 of the Laws of Zambia.

<sup>105</sup> Citizen Economic Empowerment Act, 2006.

<sup>106</sup> Education Act, Cap.134 of the Laws of Zambia.

<sup>107</sup> Education Act, Cap.134 of the Laws of Zambia.

mainstream society as well as stigma. The Government policy on education gives a clear picture on how best the country would like to offer education to all regardless of one's status in society in the sense that the Ministry of Education's general principle states that 'every individual has an equal right to educational opportunities irrespective of circumstances or capacity.'<sup>108</sup>

Since the 1970s the Government has continued to work on reforms and policies that would not only provide equal education to all, but also promote positive discrimination of children with disabilities. However, despite such developments, the Education Act under consideration does not explicitly address the need for special attention and the provision of reasonable accommodation as well as the provision of the support persons with disabilities may need in the general education system.<sup>109</sup> The Act in question forsakes the fact that persons who are physically disabled need to be included in 'normal schools', that is, general education and school system necessary to ensure the inclusion of persons with disabilities in the mainstream society. For instance in the case of **Brown v. Board of Education of Topeka**<sup>110</sup>, a land mark decision of the United States Supreme Court, in which the Court ruled that providing separate educational facilities are inherently unequal.

Therefore, in as much as the need for special schools is recognized especially for people like the hearing impaired, this should only be resorted to in extreme circumstances where the only option would be not to attend school at all. Essentially, there is need to recognize the fact it is necessary to promote the inclusion of persons with disabilities in mainstream society through among other things

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<sup>108</sup> Sylvester Mwale, Role of media in advancing disability teaching in Zambia: <http://www.zamnet.zm/letters/index.php?> (Accessed on 11<sup>th</sup> March, 2011).

<sup>109</sup> Civil Society for Poverty Reduction (CSPR), 'Governance and Poverty Reduction: Proposals for the Fifth National Development Plan-2006-2011'.

<sup>110</sup> (1954)347 U.S. 283

providing environments which maximize academic and social development in the normal school settings.<sup>111</sup>

Furthermore, the Education Act does not address discrimination on grounds of disability as a protected ground with regards to admission to school; it only provides an exhaustive list of grounds for denying admission to school as only to constitute those of race and religion.<sup>112</sup> In this regard in order to find a way of enhancing the effectiveness of the Persons with Disabilities Act in concert with the Act under consideration, there is need to ensure the participation of persons with disabilities or their representatives, for instance, in the national council established under the Education Act in section 7(1).<sup>113</sup> Nevertheless, Mr. Size Zulu, an education officer at the Ministry of Education stated that the ministry of Education is also mandating district education boards to ensure that the needs of the children with special needs are met.<sup>114</sup> All the districts are sensitized on inclusive education. This, however, is inadequate; there is need as stated above to ensure the participation of disabled persons Organizations in such councils, for instance, making the Zambia Agency for Persons with Disabilities a permanent member of the national council, in this way disability issues in the light of education needs would be put on the agenda. This way the values of the Persons with Disabilities Act can be enhanced in a way that promotes the welfare of persons with disabilities.

#### **4.2 The Public Health Act<sup>115</sup>**

The Persons with disabilities Act, does not address matters of health regarding persons with disabilities, in fact it only states that inspectors should ensure that adequate arrangements for the

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<sup>111</sup> Disability Rights Education and Defense Fund: <http://www.dredf.org/international/lawindex.shtml>. (Accessed on 11<sup>th</sup> March, 2011).

<sup>112</sup> The Education Act, Cap. 134, s. 24

<sup>113</sup> The Education Act, Cap. 134

<sup>114</sup> Sylvester Mwale, Role of media in advancing disability teaching in Zambia: <http://letters/index.php?> (Accessed on 11<sup>th</sup> March, 2011).

<sup>115</sup> Cap 295 of the Laws of Zambia.

general welfare and health among other things.<sup>116</sup> A perusal of the health Act shows that there is no mention of matters pertaining to disability. Nevertheless, it is an Act of general application and applies indiscriminately to all Zambian citizens. Of notable importance, however, is the fact that there is a policy to the effect that the Ministry of Health provides persons with disabilities access to quality medical services free of cost.<sup>117</sup>

### **4.3 The Citizen's Economic Empowerment Act (2006)**

Wealth creation in Zambia is limited to a minority of the population (particularly in urban areas) and income inequalities are rising.<sup>118</sup> The lack of opportunities for decent employment holds back human development, perpetuates inequality, exacerbates poverty. These issues are particularly pronounced among certain sections of the population, included are people with disabilities. These people face particularly serious challenges in relation to technical and business management skills; market access and information; access to capital including collateral; and must often overcome barriers related to confidence and social status.<sup>119</sup>

The Fifth National Development Plan (FNDP)<sup>120</sup> notes that “the improved economic performance since 1999 has not significantly reduced poverty”, due to weak linkages between the capital intensive sectors which have driven growth and the rest of the economy. Neither has growth translated into a commensurate increase in jobs. Of the 6,184,000 people in the labour force, only about 700,000 are formally employed, and the remainder is either engaged in the informal economy or unemployed.<sup>121</sup> These statistics reflect a pervasive lack of employment and entrepreneurial

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<sup>116</sup> Persons with Disabilities Act Cap. 65,s. 17(2)

<sup>117</sup> ILO, ‘People with Intellectual Disabilities- Opening Pathways to training and Employment in the African Region.’(Zambia, 2010).

<sup>118</sup> Economic Empowerment through MSME Development: <http://www.zda.org.zm/-186-economic-empowerment>. (Accessed on 11<sup>th</sup> March 2011).

<sup>119</sup> Economic Empowerment through MSME Development: <http://www.zda.org.zm/-186-economic-empowerment>. (Accessed on 11<sup>th</sup> March 2011).

<sup>120</sup> Ministry of Finance, Fifth National Development Plan (FNDP) 2006-2011.

<sup>121</sup> Economic Empowerment through MSME Development: <http://www.zda.org.zm/-186-economic-empowerment>. (Accessed on 11<sup>th</sup> March 2011).

opportunities throughout the Zambian population. The apparent breadth of the definition used by the Citizens Economic Empowerment Act (2006) to describe a ‘targeted citizen’ for empowerment underlines this.

The Citizen Economic Empowerment Act in its preamble states that:

An Act to establish the Citizens Economic Empowerment Commission and to define its function and powers; establish the Citizens Economic Empowerment Fund; promote the economic empowerment of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies , promote gender-equality in accessing, owning, managing, controlling and exploiting economic resources; encourage an increase in broad-based and effective ownership and meaningful participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in the economy in order to contribute to sustainable economic growth; remove social customs, statutory provisions or other practices that limit access to any particular gender to skills training that is essential for effective participation in the economic sector; promote the employment of both gender by removing structural and discriminatory constraints that hinder any particular gender from employment opportunities and in so doing ensure equitable income distribution; promote equal opportunity of targeted citizens... order to enhance broad-based economic empowerment; and provide for matters incidental to or connected to the foregoing

As stated above, persons with disabilities mostly live in poverty and usually face difficulties in engaging in meaningful economic activities or being employed in non-demeaning jobs.<sup>122</sup> Thus the Citizen Economic Empowerment Act recognizes persons with disabilities as a targeted citizens intended to benefit from its provision. It defines “targeted citizen” to mean a citizen who is or has been marginalized or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factor including race, sex, educational background, status and disability.<sup>123</sup>

The Act also endeavours to ensure the provision of a level of affirmative action towards entrepreneurs with disabilities by encouraging business development service providers to develop

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<sup>122</sup>Malcom and Momm, ‘Self Employment for Disabled people: Experiences from Africa and Asia.’ ILO. (Geneva, 1989), Page 5.

<sup>123</sup>Citizen Economic Empowerment Act, 2006. S 3

business development service products that enable people with disabilities to work their way out of poverty.<sup>124</sup>

Furthermore, section 7 of the Act in question regulates the composition of the commission which consists of among other members for instance from different ministries, one person representing the disabled.<sup>125</sup> Therefore, there is room in this body for better representation of disability issues. This would assist in bringing in fundamental issues relating to the economic welfare of persons with disabilities.

Additionally, the Act in question also addresses discrimination and explicitly provides protection against discrimination on grounds of disability whether directly or indirectly among other grounds. This is in line with the standards of contemporary international human rights law.<sup>126</sup>

It should be noted that this Act was adopted in 2006, and despite its attractive provisions persons with disabilities constituted the poorest in their communities with most engaged in street begging, this entails that there has not been any significant changes in the welfare of persons with disabilities in this regard.<sup>127</sup> Therefore the question turns on the political will as regards the effective implementation of not only this Act but also other statutes as well as due to failure to Communicate Policies such that the beneficiaries intended never get to be aware of the options available to them.<sup>128</sup> Sometimes, persons with disabilities are not aware of some of the inclusive policies which are formulated with the aim of promoting their welfare. The same applies to Organizations of and for

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<sup>124</sup> Citizen Economic Empowerment Act, 2006. S 3

<sup>125</sup> Citizen Economic Empowerment Act, 2006. S 7 (i)

<sup>126</sup> Citizen Economic Empowerment Act, 2006.s 14

<sup>127</sup> Civil Society for Poverty Reduction (CSPR): Governance and Poverty Reduction: Proposals for the Fifth National Development Plan-2006-2011.

<sup>128</sup> Bill Albert, A.K. Dube, Trine Cecilie Riis-hansen. ‘Has Disability Been Mainstreamed into Development Cooperation?’ (July 2005).

persons with disabilities (DPOs), as they are sometimes equally ignorant of their policies towards issues of disability.<sup>129</sup>

#### 4.4 The Town and Country Planning Act<sup>130</sup>

Persons with disabilities have the potential to earn decent livelihoods to not only support their families but also to contribute to their communities and the wider society.<sup>131</sup> However, they are often prevented from doing so by the fact that they do not have access to opportunities generally available in society which are crucial for the elements of living and development, by and large it is a question of accessibility to different facilities generally available in society. The issue of accessibility is a cross-cutting issue with regards to matters of disability as it is an essential prerequisite of the participation of persons with disabilities in every sphere of life.<sup>132</sup>

Laws and regulations ensuring accessibility to buildings are not sternly enforced under the Act. There is no special transport. When planning to build accessible environments the most difficult obstacles are: attitudinal factors, economic and budgetary factors, lack of legislation and regulations, lack of knowledge, research and information.<sup>133</sup> There is no disability awareness component incorporated in the training of planners, architects and construction engineers. Section 25 of the Persons with disabilities Act<sup>134</sup> restricts the issuance of adjustment orders to buildings constructed before its commencement, in which regard the task to ensure that building or premises are constructed in a manner that ensures accessibility to persons with disabilities is to be addressed by the Town and Country Planning Act.

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<sup>129</sup>Government Action on Disability Policy 'A Global Survey :Part II - Government Replies as Country Profiles Zambia.' (Lusaka, 1996).

<sup>130</sup> Cap. 283 of the Laws of Zambia

<sup>131</sup>ILO, 'Skills and Employability, Employment of people with Disabilities: A Human Rights Approach (East and Southern Africa )' (Geneva 2005),Page 18.

<sup>132</sup>ILO, 'Strategies for skills acquisition and work for persons with disabilities in Southern Africa: Zambia.' (Geneva, 2007), page 17.

<sup>133</sup>Government Action on Disability Policy 'A Global Survey :Part II - Government Replies as Country Profiles Zambia.' (Lusaka, 1996).

<sup>134</sup>Cap. 65 of the Laws of Zambia.

The Town and Country Planning Act, however, do not have regulation on accessible environment. Section 16 and 16A of this however, regulates the substance of structure plans and local plans which are the instruments of planning area. It requires a planning authority authorized to prepare a local plan, to make the plan available for inspection by the general public for twenty-eight days in which the general public can make representations.<sup>135</sup> This can be interpreted to afford persons with disabilities or their representatives among other member of society to object the implementation of a plan so inspected, however, the effectiveness of this approach as a way of ensuring that buildings to which members of the public are ordinarily permitted are build in an accessible manner for persons with disabilities is marginal. However, including a duty to reflect on issues of accessibility in the preparation of such plans would ensure that the Act under consideration becomes more sensitive to the interests of persons with disabilities with respect to accessibility.<sup>136</sup> Especially when cross reference is made to section 25 of the Persons with Disabilities Act referred to above, as it renders support to planning the environment to be accessible to persons with disabilities.

Additionally, the enforcement of the Act with regards to ensuring accessibility of buildings built after the commencement of Persons with Disabilities Act is negligible, it common for Zambia Federation of the Disabled (ZAFOD) a Non-governmental organization to ensure that buildings are constructed in an accessible manner to persons with disabilities, among other things such as addressing institutional discrimination against people with disability which is a pervasive and long-standing social problem. This is being dealt with using the Advancing Disability Equality Project (ADEPt) as a means to this end.<sup>137</sup> ADEPt is a human rights project which aims at advancing and fighting for the rights of people with disability and using this project ZAFOD is working in conjunction with ZAPD to that end. ZAFOD is also using litigation to ensure that the law on

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<sup>135</sup>Town and Country Planning Act, Cap 283, s. 16A (1).

<sup>136</sup>Decent Work for Persons with Disabilities 'Disability audit of legislation relevant to education, vocational training and employment of persons with disabilities in Zambia' A report to the International Labour Organization by the institute for Human Rights at Abo Akademi University. (Finland,2008), page 17.

<sup>137</sup>Chinyama,J. NEWS-ZAFOD Fights for Disability: <http://www.irf.org.zm/newsletters/index.php?> (Accessed on 11<sup>th</sup> March, 2011).

disability is complied with. The ADEPt project manager, Mr. Wamundila Waliuya stated that his organisation is using litigation to change the attitude as well as the behaviour of society towards disabled people.

He stated that:<sup>138</sup>

“By suing individuals and organizations that discriminate against disabled people, we will set precedents.”

Essentially, it is necessary that the Act under consideration addresses the issue of accessibility which as earlier mentioned cuts across all walks of life as regards persons with disabilities especially those who are wheelchair bound.

#### **4.5 The Employment Act<sup>139</sup>**

Unemployment in Zambia is high not only with regards to PWDs but also people who are not disabled. However, unofficial statistics providing an indication of the current situation in Zambia point out that drastically more (about 55%) of those with disabilities are unemployed. The unofficial statistics indicate that unemployment is high among persons with disabilities unlike non-disabled persons; however, the same statistics shows that, of the potentially economically active persons 15 – 65 years of age, 59% of those with disabilities had acquired some skill, the same as those without disabilities.<sup>140</sup>

Nevertheless, the Employment Act has no relevant provisions in the context of persons with disabilities. There is need therefore, to include provisions in the Employment Act imposing an obligation on employers to employ a designated minimum number of persons with disabilities with the necessary skills in order to bridge the gap while ensuring the inclusion of persons with disabilities into the mainstream society. Thus cross reference should be made to the legislation on

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<sup>138</sup>Chinyama,J. NEWS-ZAFOD Fights for Disability: <http://www.irf.org.zm/newsletters/index.php?> (Accessed on 11<sup>th</sup> March, 2011).

<sup>139</sup> Employment Act, Cap. 270

<sup>140</sup>Arne H Eide, ME Loeb , SINTEF Report ‘Living Conditions among People with Activity Limitations in Zambia: A National Representative Study.’(Blindern, 2006).

disability with regards to tax-rebate and non-discrimination in the employment sector. That is to say, such a provision can be enforced in the light of section 24 of the persons with Disabilities Act as well as part VI of the Persons with Disabilities Act<sup>141</sup> which provides for protection against discrimination on grounds of disability in employment.

#### **4.6 Conclusion**

It has been shown that disability issues are inter-ministerial with all government ministries expected to play their respective roles. This practically entails that other Acts of parliament whose enforcement is delegated to different ministries have to play a role in enhancing the effectiveness of the Persons with Disabilities Act in promoting and protecting the welfare of persons with disabilities. For instance, it is usual for persons with disabilities to engage in low income generating businesses due to lack of finance and education among other things, thus the effective implementation of the Citizen Economic Empowerment Act would have a bearing on the economic development of persons with disabilities of course implemented with the values of disability legislation in mind.

Additionally, although some Acts of Parliament necessary if effectively implemented for ensuring the promotion of the welfare of persons with disabilities as well as promoting their human rights, they are not enforced effectively, for instance, if enforced effectively, the Town and Country Planning Act can address the fundamental issue of accessibility of premises to persons with disabilities. This is also due to a lack of political will. It should further be noted that even if there are policies aimed at promoting the welfare of persons with disabilities, especially with regards to the principle of inclusion of persons with disabilities in the mainstream society a lack of awareness on the part of the persons with disabilities themselves and to some extent DPOs affects the implementation of such policies negatively.

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<sup>141</sup> Persons with Disabilities Act, Cap 65

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.0 Conclusion**

This study has attempted to analyse the efficacy of the persons with disabilities Act in promoting and protecting the welfare of persons with disabilities as well as how it can be enhanced to meet the needs of persons with disabilities in concert with other Acts of Parliament. It has been shown that persons with disability constitutes 7 to 10% of the Zambian population of which a higher percentage are physically disabled and most of whom live in rural areas where access to basic services are limited. Realizing that, several government interventions such as pro-disability legal reforms and policies as well as empowerment initiatives have been adopted in order to enhance the welfare of persons with disabilities.

The Persons with Disabilities Act has some positive aspects necessary to address the special needs of persons with disabilities. The existence of ZAPD an independent body mandated to promote and protect the welfare of persons with disabilities is one such aspect. However, this institution is hampered by a lack of sufficient funds and poor institutional framework. With regards to discrimination the Act covers the area of employment, education, and discrimination in various social settings. Nevertheless, the efficacy of the Act is compromised by the absence of explicit provisions on the requirement for reasonable accommodation and accessibility which is a cross-cutting issue in the active participation of persons with disabilities in society. Provision of reasonable accommodation ensures that persons with disabilities are accorded equal opportunities, though this does not entail achieving equal results.

Furthermore, the Act does not have any provisions on social welfare schemes, this makes the efficacy of the Act negligible, because in as much as integration and provision of equal opportunities society are necessary, such values are inadequate were a person is severely disabled and cannot do

any work and much less compete for equal employment for example. Thus to that effect the Act is ineffective.

Additionally, the Act does not provide for basic rights except the right to education and health by implication, in this regard it has been observed that other Acts of parliament have a bearing in ensuring the promotion of the welfare of persons with disabilities. Thus, disability is a cross-cutting issue and as such all ministries have a role to play in promoting and protecting the welfare of persons with disabilities through the appropriate enabling Acts, for instance, the Citizen Economic Empowerment Act which endeavours to promote economic development for persons with disabilities and independent living. However, the Education Act does not address the need to include persons with physical disabilities in “normal schools” thereby failing to provide for reasonable accommodation.

Furthermore, the Persons with Disabilities Act conforms to the UN CRPD to a very limited extent only, as indicated above, the UN CRPD has comprehensive provisions addressing disability issues. This necessitates the need for legislation to domesticate it. It has also been observed that PWDs are marginalized partly due to lack of awareness by the general public on disability, for instance, as regards the role of the person with a disability in the household, unofficial statistics results indicate certain problems of social exclusion such as not making important decisions about one’s life as a disabled person as a result of lack of awareness and education and information directed at the families of individuals with disabilities and society in general. Essentially the Persons with Disabilities Act is inadequate in addressing the interests of persons with disabilities.

## **5.1 RECOMMENDATIONS**

### **5.1.0 Accessibility**

Accessibility is a cross-cutting issue and it has to be addressed in order to ensure equal and active participation of persons with disabilities in society. Part II1, specifically section 16 and 16 A of the Town and Country Planning Act should be amended to impose an obligation on the planning authority to put accessibility issues into consideration in the preparation of plans. This will mean that before construction, permits are granted; the Planning authority should ensure that all construction plans include issues of accessibility for persons with disabilities.

### **5.1.1 Reasonable Accommodation**

The Persons with disabilities Act should have an express provision on reasonable accommodation expressly stating that a failure to do so amounts to discrimination. In addition to that, section 25 of the Persons with Disabilities Act on accessibility should be amended to allow the issuance of adjustment orders to premises constructed after the commencement of the Persons with Disabilities Act.

### **5.1.2 Political Will and advocacy through Concerted Efforts**

The notion that disability is an issue of human rights essentially means that it is always a political issue and as such the promotion and protection of the welfare of persons with disabilities requires the active participation of all ministries by ensuring that the provisions the of different pieces of legislation are effectively enforced . In this regard there is need for a strong political will with regards to promoting and implementation of pro-disability laws and policies.

### **5.1.3 Education**

There is need for the inclusion in the legislation on education of a duty to provide reasonable accommodation in “normal schools” in order to ensure the integration of persons with disabilities in the mainstream society as well as. This can prevent institutional discrimination which is in a subtle

form. The trend is that most special schools are usually located very far from most communities and this is discouraging because in a situation whereby one misses the only means of transport provided would entail that they have to miss school that particular day.

Additionally, the inclusion of persons with disabilities or their representatives in the national council established under the Education Act and generally, in other senior national development positions. This can promote and ensure adequate representation as well as influence formulation of policies.

#### **5.1.4 Disability Awareness programs to thwart prejudice**

Promote and conduct disability awareness programs even in the media in order to change the traditional perception on disability which promoted exclusion.

#### **5.1.5 Provision of Social Security Schemes**

In as much as the provision of equal opportunities is necessary to ensure equal and active participation of persons with disabilities in society in order to achieve independent living ; the provision of social security is necessary especially to those who are severely impaired that they cannot work so that they do not remain marginalized. Additionally, specific interventions should be accorded to the most vulnerable in the group. For instance the aged who, though may not be severely disabled but cannot work or manage to live independently as a result of being old.

#### **5.1.6 Provision of Database**

Database outlining the legal framework and policy framework should be provided as a way of sensitizing persons with disabilities on their rights and the protection available to them under the law. Persons with disabilities continue to be marginalized to great extent not only because the Act may be not effective, but because they are not aware of the choices they may have or the policies which are formulated in order to promote their welfare. Providing a database to that effect is necessary.

### **5.1.7 Employment**

The Persons with Disabilities should provide for sufficient incentives for employers to engage persons with disabilities. Section 24 of the Persons with Disabilities Act on tax rebate is inadequate because it cannot benefit an employer who employs even one person with a disability. In order for this provision to be effective it should be tailored in a manner that tax rebates should be accorded to any employer who employs even one person with disability.

Services for persons with disabilities should be integrated with the general community service and should not be left to one ministry as the case stands now as disability is a cross cutting issue. Other Acts of parliament should also include values promoted by the persons with disabilities Act so as to enhance its effectiveness in promoting and protecting the welfare of persons with disabilities. Ensure the effective implantation of the Citizen Economic Empowerment Act to ensure economic development for persons with disabilities.

### **5.1.8 Domesticate the UN CRPD**

The UN CRPD is a comprehensive international document on the rights of PWDs and the fact that the Persons with Disabilities Act conforms to this document only to a limited extent there is need to domesticate it.

### **5.1.9 Prioritise land allocation**

Prioritise the allocation of land to persons with disabilities as a way of empowering them to own property, thereby encouraging them to become independent.

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## **INTERVIEW**

Interviews conducted with Mr. Patrick Muyenga, the Rehabilitation officer at Zambia Agency for Persons with Disabilities.

Interview conducted with anonymous at the ministry of Education.