

ZAMBIA

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1 Population indicators

1.1 What is the total population of Zambia?

According to the 2010 Census of Population and Housing, the total population of Zambia was 13,046,508.¹

1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Zambia. What criteria are used to determine who falls within the class of persons with disabilities in Zambia?

A National Census is used to obtain data on the prevalence of disability in Zambia. In the 2010 Census, measurement of disability was based on the definition from the 1980 WHO International Classification of Impairments, Disabilities and Handicaps (ICIDH).² The ICIDH defined 'disability' as a physical or mental handicap which has lasted for six months or more, or is expected to last at least six months, which prevents the person from carrying out daily activities independently, or from participating fully in education, economic or social activities. The 2010 Census therefore used the terminology 'disability' in the context of the medical model of disability as opposed to the social or human rights model.³

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1 Zambia Central Statistical Office, 2010 Census of Population and Housing Preliminary Report.

2 World Health Organisation 'International Classification of Impairments, Disabilities and Handicaps: A manual of classification relating to the consequences of disease' (1980), available at: http://whqlibdoc.who.int/publications/1980/9241541261_eng.pdf (accessed 26 August 2014).

3 The medical model focuses on a person's impairments and ascribes incapability on such persons. See World Health Organisation and World Bank 'World report on Disability 2011' (2012), available at: http://www.who.int/disabilities/world_report/2011/report.pdf. The social model focuses on the attitudinal and environmental barriers that, together with a person's impairments hinder an active participation in society. See the second para of art 1 of the Convention on the Rights of Persons with Disabilities.

1.3 What is the total number and percentage of people with disabilities in Zambia?

According to the WHO, 2 million women and men in Zambia, or 15 per cent of the population have a disability.⁴ In addition, a higher percentage of persons living with disabilities include persons with hearing and visual disabilities and most PWDs live in rural areas where access to basic services is limited.⁵

1.4 What is the total number and percentage of women with disabilities in Zambia?

The total number of women with disabilities accounts for about 2,4 per cent of the population in Zambia.⁶

1.5 What is the total number and percentage of children with disabilities in Zambia?

The total number of children with disabilities in Zambia accounts for 1,6 per cent of the total population.⁷

1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Zambia?

The most prevalent forms of disability in Zambia include:

- Visual impairment;
- Hearing impairment;
- Physical impairment;
- Communication impairment; and
- Intellectual impairment.⁸

2 Zambia's international obligations

2.1 What is the status of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD) in Zambia? Did Zambia sign and ratify the CRPD? Provide the date(s).

Zambia signed the CRPD on 9 May 2008 and ratified it on 1 February 2010. The Optional Protocol was signed on 29 September 2008 and has not yet been ratified.⁹

4 As above.

5 World report on Disability 2011 (n 3 above) *Zambian Population*.

6 2010 Census of Population and Housing, Key Findings, available at www.zamstats.gov.zm (accessed 9 September 2014).

7 As above.

8 Interview with Mr Wamundila Waliuya, Human Rights and Education Advisor, Africa Development Department at Power International (Lusaka, Zambia, November 2013).

9 United Nations Enable 'Convention and Optional Protocol signatures and ratifications' <http://www.un.org/disabilities/countries> (accessed 23 January 2014).

- 2.2 If Zambia has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Zambia submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?**

Zambia has not submitted its country report and the government department responsible for submission of the report is the Ministry of Justice through the International Law and Agreements department. Zambia is currently in the process of preparing its country report on the CRPD. The reason for the delay has been resource based in that it requires resources to gather the information and to convene a workshop with relevant stakeholders to consolidate the information. However, Zambia is now in the process of preparing the report for submission.

- 2.3 While reporting under various other United Nations' instruments, under the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Zambia also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant 'concluding observations' adopted? If relevant, were these observations given effect to? Was mention made of disability rights in Zambia's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?**

UN Instruments¹⁰

- **The International Covenant on Economic, Social and Cultural Rights**

In April 2005, Zambia submitted its state report to the Committee on Economic Social and Cultural rights. Zambia did not specifically report on matters of disability rights and persons with disabilities. It was noted that the information provided in the report was not sufficient for the Committee on Economic, Social and Cultural Rights to be fully able to assess developments in the status of implementation of most of the provisions of the Covenant.¹¹

In addition, although Zambia has adopted a number of laws in the area of economic, social and cultural rights, the Covenant has not yet been fully incorporated in the domestic legal order.¹²

In the concluding observations of the Committee, it recommended that Zambia:

- exercise a stronger monitoring function in relation to private social security schemes and funds so as to ensure that those schemes provide adequate social protection to their beneficiaries;

10 Office of the High Commissioner for Human Rights 'Ratification status for Zambia' http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID (accessed 11 August 2014).

11 Committee on Economic Social and Cultural Rights 'Consideration of reports by states parties under articles 16 and 17 of the Covenant – Concluding observations of the Committee on Economic, Social and Cultural Rights' E/C.12/1/Add.106, paras 11 and 13.

12 Office of the High Commissioner for Human Rights 'Reporting status for Zambia' http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode (accessed 11 August 2014).

- take adequate measures to address the difficulties faced by widows and orphans, and in particular to eliminate harmful traditional practices; and
- ensure that street children be provided with preventive and rehabilitative services for physical and sexual abuse, as well as adequate food, clothing, housing, health care and educational opportunities.¹³

Most of these observations and recommendations have not yet been given effect to, although efforts are being made through the constitutional review process and law review and revision which is currently in progress in Zambia.

• **The Convention on the Rights of the Child**

In May 2003, Zambia submitted its state report to the Committee on the Rights of the Child.¹⁴ Zambia reported that it had made positive efforts to protect the interests of children belonging to the most vulnerable groups. Zambia reported that the Law Development Commission is working towards ensuring that domestic legislation fully reflects the principles of the Convention.

Regional Instruments

• **African Charter on Human and Peoples' Rights**

Zambia is currently working on its initial report on the African Charter on the Rights and Welfare of the Child. The National Policy on Disability has been drafted and is before Cabinet for consideration. The Policy provides a framework through which the government will enhance the coordination of efforts by all stakeholders engaged in uplifting the rights of persons with disabilities.

2.4 Was there any domestic effect on Zambia's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Zambia's legislature to incorporate it into the legal system before the instrument can have force in Zambia's domestic law? Have Zambia's courts ever considered this question? If so, cite the case(s).

After ratifying the CRPD, Zambia has since enacted the Persons with Disabilities Act 6 of 2012. According to its preamble, the Persons with Disabilities Act seeks to domesticate the CRPD and its Optional Protocol. However, the Persons with Disabilities Act only domesticates some of the provisions of the CRPD such as those relating to the general principles,¹⁵ legal capacity,¹⁶ education,¹⁷ health,¹⁸ habilitation and rehabilitation,¹⁹ and personal mobility.²⁰

Under Zambian Law, no international or regional treaties which are signed or acceded to are self-executing but require enabling legislation to become enforceable. Furthermore, the Constitution of the Republic of Zambia of 1996 does not include provisions on the role of international law with regard to the interpretation of the Bill of Rights and statutory interpretation. In the case of *Attorney General v Roy Clarke*,²¹ the Supreme Court held that in applying and construing the Zambian statutes, the courts should take into account international

13 As above.

14 As above.

15 The Persons with Disabilities Act, sec 4.

16 Sec 8.

17 Sec 22.

18 Sec 28.

19 Sec 33.

20 Sec 40.

21 (2008) AHRLR 259 (ZaSC 2008).

treaties to which Zambia is a signatory. However, the Supreme Court acknowledged that unless the international treaties are domesticated, they are only of persuasive value and as such not necessarily binding on Zambian courts.

2.5 With reference to 2.4 above, has the CRPD or any other ratified international instrument been domesticated? Provide details

As mentioned earlier, after ratifying the CRPD, Zambia has since enacted the Persons with Disabilities Act of 2012. Zambia has domesticated some of the provisions of the CRPD. Besides the said piece-meal domestication, Zambia has not domesticated any other international or regional instruments on the protection and promotion of disability rights.

3 Constitution

3.1 Does the Constitution of Zambia contain provisions that directly address disability? If so, list the provisions, and explain how each provision addresses disability.

Article 112(f) of the Constitution provides that the state shall endeavour to provide to persons with disabilities such social benefits and amenities that are suitable for their needs and are just and equitable. This provision seeks to ensure that persons with disabilities receive appropriate and necessary support services so as to facilitate the full inclusion in communities and also full enjoyment of their human and fundamental rights. However, article 112(f) falls within the Directive Principles of State Policy.²² According to Article 111 of the Constitution, the provisions of the Directive Principles of State Policy are non-justiciable and cannot therefore be legally enforced in any court, tribunal or administrative institution. Effectively, the disability provisions of the Constitution cannot be enforced and their enforcement is subject to availability of state resources, or in so far as general welfare of the public avoidably demands.²³

3.2 Does the Constitution of Zambia contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.

Article 23 of the Constitution generally prohibits discrimination either in statutes²⁴ or in the manner any person is to be treated.²⁵ In sub-clause (3) of article 23, the term 'discrimination' is defined to mean affording different treatment to different persons attributable, wholly or mainly to race, tribe, sex, place of origin, marital status, political opinion or creed whereby persons of one such description are subjected to certain restrictions or unfavourable treatment which is not afforded to persons of another description. While article 23 does not expressly prohibit discrimination on the basis of disability, the High Court in Zambia has held the

²² 1996 Constitution of Zambia, part IX.

²³ Art 110 (2) of the Constitution.

²⁴ Art 23 (1) of the Constitution.

²⁵ Art 23 (2) of the Constitution.

Constitutional provisions that generally prohibit discrimination as capturing disability discrimination.²⁶

4 Legislation

4.1 Does Zambia have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.

Zambia has taken a step towards introducing a new Act to address disability – the Persons with Disabilities Act. However, the Act has been criticised for falling short of some of the standards prescribed by the CRPD. While the Act seeks to domesticate the CRPD, it only provides a piece-meal domestication whereby some but not all the provisions of the CRPD are reproduced in the Act.²⁷ By implication, it means that provisions of the CRPD which are not reproduced remain undomesticated such that enforcing them would be problematic since Zambia adopts a dualistic approach to domestication of international and or regional treaties.

Subject only to the Constitution, section 3 of the Act provides that where there is any inconsistency between the provisions of any other law and the provisions of the Persons with Disabilities Act, then the provisions of the Persons with Disabilities Act shall prevail to the extent of the inconsistency. The import of this particular provision is that the provisions of the Persons with Disabilities Act shall prevail over any other law (other than the Constitution) in so far as that other law impacts on the rights of persons with disabilities. It follows that provisions of the CRPD that are domesticated such as the right to legal capacity, health, education, personal mobility and habilitation and rehabilitation will prevail over all other laws.

Further, section 9 of the Persons with Disabilities Act also makes progressive provisions for the protection of the rights of persons with disabilities who come into contact with law enforcement officers, including the courts. It reads:

Subject to the Constitution, law enforcement agencies shall take into account the disability of a person on arrest, detention, trial or confinement of the person with disability and make reasonable accommodation for that person accordingly, including at investigative and other preliminary stages of the matter.

The foregoing provision seeks to ensure that persons with disabilities are accorded the necessary and appropriate reasonable accommodation as they come into contact with law enforcement agencies.

The other Act that impacts profoundly on persons with disabilities is the Mental Disorders Act (MDA).²⁸ The MDA seeks to provide for the treatment and custody of persons with mental and intellectual disabilities, and also for the

26 In the case of *Sela Brotherton (suing in her capacity as National Secretary of the Zambia Federation of Disability Organisation) v Electoral Commission of Zambia* (2008/HP/ 0818), it was held that even though disability is not one of the expressly prohibited discrimination grounds, public officers are generally estopped from administering public resources in a discriminatory manner. Therefore, the respondent was found to have discriminated against the applicants by failing to provide appropriate support services to allow persons with disabilities to participate in the electoral process.

27 See section 2.4 above.

28 Cap 305 of the Laws of Zambia, 1951.

administration of their estates.²⁹ In its interpretation section, the MDA uses very derogatory words such as 'idiots', 'imbecile', and 'lunatics' to describe persons with disabilities.³⁰ Such terminology encourages stigma and prejudicial attitudes against persons with disabilities.

In section 8, the MDA empowers police officers to apprehend and arrest any person whom he or she has reason to believe is 'mentally disordered or defective' and is a danger to himself or herself, or is wandering at large and unable to take care of himself or herself. Such provisions obviously put persons with disabilities at risk of being arrested if in his or her subjective determination, a police officer has reasons to believe that a person has a mental illness and that he or she may be a danger to himself or herself. The person so arrested is kept in a prescribed hospital or prison.³¹

In section 9, the MDA provides that magistrates may, during the course of an inquiry into the state of mind of any person, order the detention of such person. The reason for the detention is no other than that person is of 'unsound mind'.³² The MDA, therefore, discriminates against persons with intellectual and mental disabilities in that it singles them out for unfavourable treatment which is not extended to others.

The Wills and Administration of Testate Estates Act 60 of 1994 is another example of legislation that discriminates against persons with disabilities. It contains a provision that disqualifies people from legal acts, such as the capacity to make a will, on the basis of disability. Furthermore, the Electoral Commission Act 24 of 1996 has no provisions to ensure that persons with disabilities exercise the right to vote on an equal basis with others. Laws that authorise deprivation of liberty or psychiatric interventions, without the free and informed consent of the person concerned, also fall into the category of laws that discriminate against persons with disabilities.³³

4.2 Does Zambia have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.

The following is some of the legislation that indirectly addresses issues relating to disability:

- The Criminal Procedure Code³⁴ affects persons with disabilities in that in sections 161 to 167 it provides that persons with mental disabilities who are unable to defend themselves in criminal proceedings, or who plead the insanity defence, are to be detained at the President's pleasure. The Criminal Procedure Code also provides for periodic reviews of the state of mind of the person so detained.
- The Prisons Act³⁵ provides that prisoners adjudged to be 'mentally disordered or defective' should be detained until they serve their sentence.³⁶ The Prisons Act does not provide for any reasonable accommodation in prison for persons with intellectual or mental disabilities.

29 Preamble of the MDA.

30 Sec 2 of the MDA.

31 As above.

32 Sec 9 of the MDA.

33 Sections 161-167 of the Criminal Procedure Code, Cap 88 of the Laws of Zambia. These provisions authorise the imprisonment of persons with disabilities, on His Excellence's Pleasure, on account of either not being able to defend oneself or if one pleads insanity in criminal proceedings.

34 Cap 88 of the Laws of Zambia.

35 56 of 1965

36 Sec 70.

The foregoing is by no means the only legislation indirectly touching on disability issues.

5 Decisions of courts and tribunals

5.1 Have the courts (or tribunals) in Zambia ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.

There are a number of cases that the courts have determined which relate to disability. The following are some of the cases, including a brief summary of facts and the decision:

- *Sela Brotherton (suing in her capacity as National Secretary of the Zambia Federation of Disability Organisations) v Attorney General & 16 Others*:³⁷ In this case, the Plaintiff had commenced court proceedings seeking amongst others orders for the adjustments of several public and private buildings which were not accessible to persons with disabilities. The High Court determined the matter on a preliminary issue and held that the action was statute barred on the grounds that the Plaintiff commenced court proceedings outside the 12 years statutory period.
- *Sela Brotherton (suing in her capacity as National Secretary of the Zambia Federation of Disability Organisations) v Electoral Commission of Zambia*:³⁸ The Plaintiff commenced court proceedings seeking amongst others orders and declarations that the respondent was discriminating against persons with disabilities by failing to provide them with the necessary services and amenities to allow them to participate in the electoral process on equal basis with others. The Court ruled that there was discrimination in that the respondent is obliged to manage public affairs in a manner that is not discriminatory.

6 Policies and programmes

6.1 Does Zambia have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability?

The following are the key programmes and policies in place in Zambia which address matters affecting persons with disabilities:

- The National Policy on Education, 1996³⁹ recognises the right to education for each individual, regardless of personal circumstances or capacity. The Ministry of Education has overall responsibility for education, including special education;
- The National Employment and Labour Market Policy (NELP) 2005,⁴⁰ shows the government's intentions to provide improved care and support services to vulnerable groups, including people with disabilities;

37 2009/HP/1402.

38 *Sela Brotherton* (n 26 above).

39 Ministry of Education *Educating our future: National policy on education* (2006).

40 Convention on Biological Diversity (National CHM for the Republic of Zambia): <http://www.biodiv.be/zambia> (accessed 2 September 2014).

- The Sixth National Development Plan (SNDP) 2011 to 2015,⁴¹ builds on the Fifth National Development Plan (FNDP) 2006-2010 and aims to attain the full participation, equality and empowerment of persons with disabilities. It seeks to provide enhanced support to disabled persons through increased government spending on disability; develop inclusive mainstream policies; review existing pieces of legislation; and establish and/or strengthen institutions and systems that cater to people with disabilities.

The government works closely with the Zambia Agency for Persons with Disabilities through the Ministry of Justice in order to address various matters which affect persons with disabilities in Zambia. The Zambia Agency for Persons with Disabilities is a government Agency mandated to safeguard the interests of persons with disabilities in Zambia and to work closely with the DPO in order to ensure the protection and promotion of the rights of persons with disabilities.⁴²

6.2 Does Zambia have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

- The National Youth Policy, 2006,⁴³ aims at including disabled youth in mainstream programmes and projects targeting youth; and
- The National Long-Term Vision 2030⁴⁴ articulates Zambia's development agenda for the next 25 years. One of the objectives is to make Zambia a middle-income country by 2030 in which all people will be provided with opportunities to improve their well-being.

7 Disability bodies

7.1 Other than the ordinary courts and tribunals, does Zambia have any official body that specifically addresses violations of the rights of people with disabilities? If so, describe the body, its functions and its powers.

The Zambia Agency for Persons with Disabilities (ZAPD) is established under the Persons with Disabilities Act to promote the rights of persons with disabilities in Zambia and to mainstream disability issues in all aspects of national development.⁴⁵ However, ZAPD does not specifically address violations of rights of individuals. Some of its functions under the Act are to:

- plan, promote and administer services for all categories of persons with disabilities;
- keep statistical records relating to incidences and causes of disabilities, which may be used for the planning, promotion, administration and evaluation of services for persons with disabilities;
- provide rehabilitation, training, and welfare services to persons with disabilities; and

41 The Redd Desk, a collaborative resource for REDD Readiness 'Sixth National Development Plan 2011-2015 (Zambia)', available at: <http://theredddesk.org/countries/plans/sixth-national-development-plan-2011-2015-zambia> (accessed 2 September 2014).

42 Sec 11 of the Persons with Disabilities Act.

43 Ministry of Sport, Youth and Child Development 'Zambia National Youth Policy – 2006', available at: www.youthpolicy.org/national/Zambia_2006_National_Youth_Policy.pdf (accessed 2 September 2014).

44 Republic of Zambia 'Vision 2030', available at: www.mofnp.gov.zm/index.php/vision-2030 (accessed 2 September 2014).

45 Secs 6 & 7.

- recommend to the government measures to promote the rights of persons with disabilities.

The bodies which are specifically mandated to address violations of rights of people with disabilities are courts and the Human Rights Commission described in question 8 below.

7.2 Other than the ordinary courts or tribunals, does Zambia have any official body that though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.

The main bodies which are specifically mandated to address violations of human rights which also include the rights of persons with disabilities are courts and the Human Rights Commission described in question 8 below.

8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

8.1 Does Zambia have a Human Rights Commission, an Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of people with disabilities? If your answer is yes, also indicate whether the Human Rights Commission or the Ombudsman or Public Protector of Zambia has ever addressed issues relating to the rights of persons with disabilities.

In Zambia, the Human Rights Commission is established by article 25 of the Constitution and its mandate is articulated in the Human Rights Commission Act, Chapter 48 of the Laws of Zambia. It is tasked with the investigation of human rights violations and maladministration of justice and must propose remedies to prevent human rights abuses. It also mediates for victims of human rights abuse and acts as a spokesperson for detainees.⁴⁶

The Commission may investigate on its own initiative or on receipt of complaints or allegations by individuals or groups, to others acting on their behalf. However, its findings lead only to recommendations which have no legal force, although the government and its agencies are expected to act on them.⁴⁷

The Commission receives an allocation in the government budget like all other regular government departments. However, since its inception, the government has not provided the Commission with an adequate budget or facilities required to undertake the mandated tasks. As a result of the lack of a resource base, the Commission has been unable to attract or retain high calibre and skilled personnel. The Commission also receives international support, which tends to be on a project by project basis. The Norwegian government funded the refurbishment of the Commission's offices.⁴⁸

⁴⁶ Their website is available at: www.hrc.org.zm (accessed February 2014).

⁴⁷ As above.

⁴⁸ Human Rights Watch, 2001.

While the Commission has done commendable work relating to the protection and promotion of human rights generally, it has not done much with respect to the rights of persons with disabilities.

9 Disabled peoples organisations (DPOs) and other civil society organisations

9.1 Does Zambia have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

The Zambia Federation of Disability Organizations (ZAFOD) is the umbrella organisation representing several disabled persons organisations in Zambia. Its main activities include advocacy and awareness-raising. It also provides small loans to people with disabilities and training in small-scale business management.

The following DPO's are members of ZAFOD:

- Zambia National Association of Disabled Women;
- Zambia National Association of the Deaf;
- Zambian National Association of the Hearing Impaired;
- Zambian National Association of the Partially Sighted;
- Zambian National Association of the Physically Handicapped;
- Zambian Association of Children and Adults with Learning Disabilities;
- Zambia Association of Parents of Children with Disabilities; and
- Mental Health Users Network of Zambia (MHUNZA).

Other significant organisations include:

- Zambian National Federation of the Blind;
- Zambia National Library and Cultural Centre for the Blind; and
- Zambia Association on the Employment for Persons with Disabilities.

Further, some of the key stakeholders where disability rights in Zambia are concerned include the following:

- Ministry of Community Development and Social Services (MCDSS);
- Zambia Agency for Persons with Disabilities (ZAPD);
- Concerned line Ministries – Education, Health, Justice;
- Disabled People's Organisations (DPOs);
- Zambia Law & Development Commission (ZLDC);
- Action on Disability Development (ADD);
- The Human Rights Commission;
- Opportunity Zambia (OZ);
- International Labour Organisation (ILO);
- Sight Savers International (SSI);
- Zambia National Federation of the Blind (ZANFOB); and
- Power4Good / POWER International.

9.2 In the countries in Zambia's region (Southern Africa) are DPOs organised/coordinated at national and/or regional level?

In Zambia, DPOs are organised at a national level. ZAFOD is the umbrella organisation representing several disabled persons organisations in Zambia. Its main activities include advocacy and awareness-raising. It also provides small loans to people with disabilities and training in small-scale business management. ZAFOD also coordinates all other DPOs in Zambia.

9.3 If Zambia has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

The main government agency responsible for promoting the rights of persons with disabilities and coordinating disability issues within government in line with article 33(1) of the CRPD is ZAPD. In addition to this, ZAPD engages directly with the Ministry of Justice on matters of legal advice and policy concerning the rights of persons with disabilities.⁴⁹ It is unfortunate that not much has been reported on how well these government agencies have ensured the involvement of DPOs in the implementation process. Zambia is currently undergoing law review and revision and it is hoped that matters on the implementation of article 33(1) of the CRPD will be considered.

With regard to monitoring the Convention, ZAPD engages with DPOs and so far there has been no available report on any surveys that may have been conducted.

9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?

DPOs in Zambia often engage with government and its agencies on matters concerning the implementation of the CRPD either through the Ministry of Justice, or the Department of Gender and Community Development. However, there are no reports or much information on the outcome of the engagement due to the fact that DPOs have limited resources and sometimes lack awareness on key issues to be addressed.

9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?

Although the Zambian government has appointed disability focal point persons in all the ministries, most of them lack awareness of disability rights and the actual provisions of the CRPD. Furthermore, the framework within which they are supposed to operate has not been established. The Government has also established a Technical Committee to oversee the implementation process of domestication with the involvement of civil society and representatives from disability organisations.

The following are some of the barriers:

- lack of awareness amongst policymakers on the CRPD;
- lack of resources and technical capacity by DPOs to conduct research that can inform the implementation of the CRPD; and

49 www.disabilityadjusted.com/disabilityorganisations.html (accessed 14 August 2014).

- lack of a unified voice by DPOs (DPOs tend to organise by disability type and each DPO lobbies for issues which are more relevant to it).

9.6 Are there specific instances that provide ‘best-practice models’ for ensuring proper involvement of DPOs?

An example of ‘best practice model’ for ensuring the involvement of DPOs is the establishment of the Advancing Disability Equality Project (ADEPt) by ZAFOD with a view of facilitating the protection and promotion of the rights of persons with disabilities through strategic litigation aimed at setting up legal precedents on disability rights.⁵⁰ ZAFOD identifies meritorious cases where the rights of persons with disabilities have been violated and transmits them to selected law firms for legal advice and possible prosecution before courts of law; ZAFOD mobilises financial resources to meet the legal costs of prosecuting such cases. In this way, persons with disabilities will not have to bear the high legal fees which often hinder commencement of disability rights litigation.

9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities that resulted from the engagement of DPOs in the implementation process?

As stated in 9.5 above there have not been any tangible outcomes due to the lack of awareness and resources which has affected the process of engagement and implementation.

9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?

The research has not revealed a very positive outcome with respect to engagement of DPOs in the implementation process. There is a great need for capacity building, awareness raising and improved resources in order to ensure better engagement in the implementation process.

9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?

Yes:

- Capacity building of DPOs;
- Better collaboration and engagement between DPOs and government agencies in all relevant implementation initiatives;
- Engagement between DPOs and the Human Rights Commission to broaden research, implementation strategies and lessons on field investigations and surveys;
- Encouraging research by DPOs in order to allow for evidence based information to be submitted to government agencies and all relevant stake holders; and
- Strategising on fundraising in order to improve on resources.

⁵⁰ Interview with Wamundila Waliuya (n 8 above).

9.10 Are there specific research institutes in the region where Zambia is situated (Southern Africa) that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?

No. However, the Open Society Initiative for Southern Africa has been a very crucial and key institution in the engagement of DPOs and facilitation of the involvement of DPOs in the area of research and outreach particularly through extensive meetings and collaborations with ZAFOD, MHUNZA and other DPOs.

10 Government departments

10.1 Does Zambia have a government department/departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

See question 7.1 above. ZAPD is a government Agency and established under an Act of Parliament.

11 Main human rights concerns of people with disabilities in Zambia

11.1 Contemporary challenges of persons with disabilities in Zambia (for example, in some parts of Africa ritual killing of certain classes of PWDs, such as people with albinism, occurs).

The most common challenge faced in Zambia is the seclusion of persons with disabilities. Persons with disabilities are often excluded from society by their families and communities generally in the belief that they are cursed. This even affects their right to education because in most instances they are not taken to school. In addition, in some traditional set ups, rituals which may be harmful to a child's health or physical body are conducted on children with disabilities in the belief that disabilities can be cured.

11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:

- **Access to accommodation**

The Constitution does not make specific provisions for the access and accommodation of persons with disabilities. Instead, it only states that the State

shall endeavor to provide among others, decent shelter for all persons.⁵¹ However, this provision cannot be enforced before national courts as it is non-judicial.⁵² Therefore, persons with disabilities continue to lack access to adequate accommodation and usually find themselves in inaccessible accommodation without necessary in-house amenities to enable lead decent lives. The Persons with Disabilities Act provides that the State shall take measures that ensure that persons with disabilities live independently and participate fully in society by among others, identifying and eliminating barriers to accessibility and accommodation.⁵³ However, these provisions do not adequately address the challenge of accessing accommodation for persons with disabilities. The provisions are couched in a manner that merely requires the State to take measures towards providing access to adequate accommodation without specifically conferring a right on persons with disabilities.

- **Access to social security**

Social security plays a very significant role in ensuring that persons with disabilities enjoy adequate standard of living on equal basis with others. This is more so as persons with disabilities are usually excluded from education, vocational training and employment. Section 36 of the Persons with Disabilities Act provides for the promotion of the right to social protection and adequate standard of living for persons with disabilities. However, provisions of the Constitutions that place a duty on the State to provide for social benefits are non-justiciable.

- **Access to public buildings**

Persons with disabilities often find it very difficult to be fully included in societal activities owing to inaccessible public buildings. The plight of persons with physical disabilities and on wheelchairs was brought to the fore in the case of *Sela Brotherton (suing in her capacity as National Secretary of the Zambia Federation of Disability Organisations) v Electoral Commission of Zambia*.⁵⁴ In that case, court proceedings were commenced among others, challenging the setting up of polling stations and voter registration centers in inaccessible public buildings. The Court found that there was discrimination as persons on wheel chairs excluded from fully participating in the electoral process.

However, the constitutional provisions which deal with access to public buildings are non-judicial.⁵⁵ Section 41 of the Persons with Disabilities Act provides that no person shall deny a person with disability access to any premises to which members of the public are ordinarily admitted and that the owner of such premises has an obligation to provide appropriate facilities to make the place accessible to person with disabilities. While provisions of the Persons with Disabilities Act protect the right of access to public places, provisions of the Constitution are compromised by their non-justiciability. At the same time, the *Sela Brotherton v Attorney General* case shows that it is possible for courts to recognise and enforce the right to accessibility.

- **Access to public transport**

Persons with disabilities are usually discriminated against due to the lack of assistive devices and other amenities necessary to enable to access public transport. Generally, public transport vehicles and infrastructure are not equipped with assistive devices for instance, to allow a person on a wheel chair to board a bus or indeed voice recordings to announce when the bus or train approaches a particular

51 Constitution of Zambia, art 112(d).

52 As above, art 111.

53 Persons with Disabilities Act, sec 41(1) and (2).

54 *Sela Brotherton v Electoral Commission of Zambia* (n 26 above).

55 Constitution of Zambia, art 112.

station to enable a visually impaired person know when the bus or train reaches a particular station.

Barriers to access to public transport continue to be a challenge to persons with disabilities notwithstanding that section 42 of the Persons with Disabilities Act provides that a person who provides a service (including public transport) to the public must put in place measures that the service available and access to persons with disabilities in prescribed manner. However, it is of concern that no regulations have been adopted to prescribe the manner in which the measures should be put in place in order to make public transport accessible to persons with disabilities.

- **Access to education**

Persons with disabilities are usually excluded from the education system. This is more so with respect to persons with intellectual and psychosocial disabilities who considered to be untrainable or simply denied education on the basis that there are not enough financial and other resources to for their education. There also very few specialised instructors or teachers to assist persons with disabilities at the level of primary, secondary or even tertiary education. Education facilities also lack infrastructure and other assistive devices necessary to reasonably accommodate persons with disabilities.

The Persons with Disabilities Act provides for the inclusive education at all levels and that the responsible Minister shall, in consultation with the Minister responsible for education come up with rules and guidelines to ensure that persons with disabilities are not excluded from the general education system on the basis of disability.⁵⁶ The provisions relating to access to education are usually not applied in practice as there no prescribed guidelines or guidelines to ensure that persons with disabilities are included in the education sector. Further, the fact that constitutional provisions⁵⁷ relating to equal and adequate educational opportunities are non-justiable, means that access to education cannot be enforced before courts of law.

- **Access to vocational training**

Persons with disabilities are usually have no opportunities to develop their vocational skills so as to make them self-sufficient economically. As result, persons with disabilities continue to rely on family members or social welfare, both of which have limited resources to adequately provide for persons with disabilities.

There are no express provisions in the Constitution and the Persons with Disabilities Act touching on the access to vocational training. The Technical Education and Vocational Training Act⁵⁸ prohibits the refusal of admission to any institution established for purposes of vocational training on the basis of sex, race, tribe, place of origin, colour or creed. It is noteworthy that disability is not one of the listed grounds upon which refusal to admission is prohibited. This makes both the application and enforcement of access to vocational training very difficult.

- **Access to recreation and sport**

The Persons with Disabilities Act provides that a person with disabilities shall have the right to participate in recreational activities.⁵⁹ However, there are no guidelines or rules as to how this right is to be realized or facilitated. Henceforth, persons with disabilities continue to be excluded from recreation and sporting activities.

56 Persons with Disabilities Act, sec 22 (1) and (2).

57 Constitution of Zambia, art 112 (e).

58 The Technical Education and Vocational Training Act, Cap 138 of the Laws of Zambia, sec 21.

59 Persons with Disabilities Act, sec 7.

- **Access to justice**

Persons with disabilities usually find it difficult to access the courts of law due to inadequate and inaccessible roads and buildings. Even where persons with disabilities, persons with disabilities actually access the physical court premises, they usually have to contend with the inaccessible court procedures which do not reasonably accommodate them. It is in this regard that section 8 of the Persons with Disabilities Act provide that the judicature shall take necessary measures to ensure that persons with disabilities have equal and effective protection of the law without discrimination. Further, section 9 requires law enforcement agencies to reasonably accommodate persons with disabilities during their interview, arrest, detention trial and confinement. In practice however, these provisions are largely ignored. Persons with disabilities have not been able to enforce the right to access to justice owing to the high costs of engaging legal practitioners to represent them and argue the high technical nature of access to justice.

- **Access to health**

The right to health is most important to persons with disabilities. The right to health like any other social, economic and cultural rights in Zambia is not justiciable. As such, there is no legal mechanism to compel government to ensure that persons with disabilities have access to quality health care services. The Constitution is currently under review and this is one of the areas proposed to be included in the Constitution.

- **Access to habilitation & rehabilitation**

According to the World Health Organisation, habilitation refers to deliberate services put in place specifically targeting persons born with disabilities in an effort to make the environment suitable to their condition. Rehabilitation services on the other hand are targeted at persons who acquire disabilities.⁶⁰ There are no measures or mechanisms in place for the promotion, availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation. The common practice amongst employers is that of retiring on medical grounds those who acquire disabilities while in employment. This has been a major concern amongst PWDs who have found themselves in similar situations as evidenced by the number of cases reported to the ADEPt project under ZAFOD.

- **Access to participation in political and public life**

Inaccessible infrastructure, transportation and information usually cause barriers to the participation of persons with disabilities on an equal basis with others. People who are deaf particularly face communication barriers. For example, in many cases information is transmitted through radio stations. Such communication barriers hinder deaf people from participation in public life. Lack of Braille ballot papers means persons with visual impairments are dependent on a third party to cast their vote, which in itself overrides their right to a secret vote.

Further, almost all polling stations are not accessible to wheelchair users who also find it difficult to reach the ballot boxes that are usually placed too high. These and numerous other barriers serve to reinforce the exclusion and isolation of people with disabilities in political and public life, and, more generally, their participation in decision-making in all areas where their interests are affected in both their public and private lives.

60 World report on Disability 2011 (n 3 above).

11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Zambia?

Yes. Persons with disabilities have the right to participate in political life. The challenges exist at a community level with respect to prejudices and stigmatisation. There is no restriction on the right based on disability.

11.4 Are people with disabilities' socio-economic rights, including the right to health, education and other social services protected and realised in your Zambia?

Socio-economic rights are not enforceable in Zambia as they are part of Directive Principles of State Policy and are specifically classified as non-justiable.⁶¹

11.5 Specific categories experiencing particular issues/ vulnerability:

• **Children with Disabilities**

There is no legislation that specifically singles out disabled children for specific address. Zambian legislation instead deals with children in general, particularly with regards to the consideration of the best interests of the child. Children with disabilities fall under the Public Welfare Assistance Scheme (PWAS) which was established to protect vulnerable groups such as orphans, street and disabled children amongst others.

The most common challenge faced in Zambia is the seclusion of children with disabilities. Often families of the children exclude them from society in the belief that it is a curse. This even affects their right to education because in most instances they are not taken to school. In addition, in some traditional set ups, rituals which may be harmful to a child's health or physical body are conducted on children with disabilities in the belief that disabilities can be cured. See section 11.1 above.

• **Women with disabilities**

Women generally suffer discrimination and marginalisation in society whereby they are subjected to maltreatment and exploitation.⁶² Where women have disabilities they are especially vulnerable to abusive treatment such as rape and defilement. In some instances, the nature of their impairments makes it very difficult for them to seek redress.

• **Other (for example, indigenous peoples)**

Indigenous peoples, and people with albinism also suffer multiple discrimination arising from the peculiar circumstances. When such persons have impairments, they are usually subjected to multi-faceted discrimination.

61 Constitution of Zambia, art 111.

62 CRPD, preamble para (q).

12 Future perspective

12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in your country at the moment?

- **The Mental Health Bill of 2012**

It is encouraging to note that the Mental Health Bill of 2012 is currently in progress as it represents a positive step towards the protection of the rights of persons with mental disabilities. In addition, the Persons with Disabilities Act of 2012 is progressive and addresses various matters which are required under the CRPD. The recognition of legal capacity addresses one of the main concerns faced by persons with disabilities in society.

- **The Disability Rights Course and the University of Zambia**

The introduction of a Disability Rights Course at the University of Zambia is also a positive step which will ensure that students, who will eventually become practising lawyers and activists, will be well equipped with the knowledge and expertise to address matters concerning disability rights. The Course will start to be taught at the University to fourth year students in September 2014. In addition, the Legal Aid Clinic at the University of Zambia shall also contain a component on disability rights.

12.2 What legal reforms are being raised? What legal reforms would you like to see in your country? Why?

Given the main areas of concern discussed in the preceding paragraphs, the following are some of the main actions which I believe the government of the republic of Zambia must take into consideration:

- Having appointed disability focal point persons, Zambia should ensure that those appointed as focal point persons are knowledgeable about disability rights issues as promulgated in the CRPD;
- Zambia should ratify the Optional Protocol to the CRPD as soon as possible to show its commitment to fulfilling the promotion and protection of the rights and fundamental freedoms of persons with disabilities in Zambia;
- Government, through its specific ministries, should carry out awareness raising programmes to sensitise their officers on the provisions of the CRPD and disability rights in general;
- Government through its ministries must develop disability inclusive policies and laws that promote participation and involvement of persons with disabilities and reduce discriminatory practices at all levels of society;
- The enactment of a new Mental Health Services Act that promotes and protects the rights and fundamental freedoms of mental health users should be expedited to replace the old discriminatory Mental Disorders Act. The new law should abolish involuntary admission and treatment of mental health users to Mental Health Institutions and focus on ensuring legal capacity and independent living for mental health users;
- The Ministry of Local Government, Early Childhood and Environment should quickly repeal the Town and Country Planning Act and Housing Act to put in place an inclusive law that will promote and ensure the protection of accessibility rights of persons with disabilities to public buildings, facilities and services, including roads.
- The Ministry of Education should review the present Educating Our Future Policy of 1996 to replace it with an Inclusive Education Policy that will promote provision

of reasonable accommodation within the general education system and universal design of curriculum, learning materials and teacher training programmes. Such policy should be backed by inclusive education legislation;

- Government, through the Ministry of Health, should ensure, through policy, administrative and financial measures the facilitation for the provision of free medical care for persons with disabilities as close as possible to their homes. This should include access to HIV/AIDS and reproductive health services;
- Government should ensure the equal participation of persons with disabilities in the political and public life sector through provision of electoral policies and laws that recognise the need for persons with disabilities to exercise their rights participate in the electoral process directly or indirectly. This should include the recognition of the right to a secret ballot;
- The Ministry of Labour and Social Security should as a matter of urgency amend the Labour laws, especially the Employment Act, for the purposes of prohibiting discrimination on the basis of disability in employment; and
- Government should take deliberate measures including institutional, policy, legislative and financial measures, to ensure adequate provision of matters relating to the promotion and protecting of the rights and fundamental freedoms of women and children with disabilities.

It is our view that Zambia still has a lot of work to be done in the promotion and protection of the rights of persons living with disabilities in Zambia. While it is acknowledged that some positive actions have been taken, there is still a lot to be done in achieving a level of participation and inclusion of persons with disabilities in Zambia on an equal basis with others.

There is need to identify and eliminate obstacles and barriers to accessibility in the physical environment, transportation and information communication technology and to provide training to DPO Inspectors on issues of accessibility by persons with disabilities.

Zambia is currently reviewing the Mental Health law to address such crucial matters as legal capacity and the right to independent living. This is a very crucial aspect in ensuring that Zambian laws on disability comply with the standards set out by the CRPD.

It is hoped that at the end of the constitutional review process, most of the matters of concern highlighted will be considered and addressed both at legislative and policy levels and that they will finally be incorporated in the Constitution.

It is hoped that cases will be brought before the courts of law in Zambia regarding disability rights because currently there are no landmark cases or reported judgments which can be referred to and there is need to train judges on matters concerning disability rights. There is very limited precedent and judgments often serve as a very useful source of law in Zambia.